

**SOAH DOCKET NO. 454-11-7518.M4  
MDR NO. M4-05-1646-01**

<b>VISTA MEDICAL CENTER HOSPITAL,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>ZURICH AMERICAN INSURANCE</b>	§	
<b>COMPANY,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Vista Medical Center Hospital (Vista) challenges the denial of additional reimbursement by Zurich American Insurance Company (Zurich) for outpatient services, specifically a lumbar epidural steroid injection (ESI), CPT Code 62311, provided to an injured worker on January 12, 2004. The Administrative Law Judges (ALJs) find that Vista did not present evidence proving it is entitled to additional reimbursement for services rendered in connection with the ESI procedure. Accordingly, Vista’s request for additional reimbursement is denied.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

There are no issues of notice or jurisdiction. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law at the end of this Decision and Order without further discussion here.

After Vista and Zurich disagreed about the amount of reimbursement for the ESI, Vista filed a request for medical fee dispute resolution with the Medical Review Division (MRD) of the Texas Department of Insurance, Division of Workers’ Compensation (Division).<sup>1</sup> On May 31, 2011, the Division issued its Medical Fee Dispute Resolution Findings and Decision

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<sup>1</sup> Effective September 1, 2005, the Legislature dissolved the Texas Workers’ Compensation Commission (Commission) and created the Division of Workers’ Compensation within the Texas Department of Insurance. Act of June 1, 2005, 79th Leg., R.S., ch. 265, § 8.001, 2005 Tex. Gen. Laws 469, 607. This Decision and Order refers to the Commission and its successor collectively as the Division.

(MRD Decision), denying Vista any additional reimbursement.<sup>2</sup> Vista requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the MRD Decision. A hearing convened before ALJs Henry D. Card and Sharon Cloninger on May 22, 2012, at SOAH's hearing facilities in Austin, Texas. Vista was represented by attorney Cristina Y. Hernandez. Zurich was represented by attorney Steven M. Tipton. The record closed on September 21, 2012, following the filing of post-hearing briefs.

## II. DISCUSSION

### A. Applicable Law

This case is governed by Texas Labor Code § 401.001 *et seq.*, also known as the Texas Workers' Compensation Act (Act). The workers' compensation insurance program created by the Act covers all medically necessary health care.<sup>3</sup> Although amended several times, Section 413.011 of the Act generally directs the Division's Commissioner to establish medical policies and guidelines relating to fees charged or paid for medical services for employees who suffer compensable injuries, including guidelines relating to payment of fees for specific medical treatments or services.<sup>4</sup> The Act has consistently required that the fee guidelines for medical services be fair and reasonable, ensure quality medical care, and achieve effective medical cost control.<sup>5</sup> Moreover, the guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid

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<sup>2</sup> Zurich Exhibit 2.

<sup>3</sup> Tex. Lab. Code § 401.011.

<sup>4</sup> This section of the Act has been amended on several occasions as follows:

Acts 1993, 73<sup>rd</sup> Leg. ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77<sup>th</sup> Leg., ch. 1456, Sec. 6.02, eff. Jun. 17, 2001; Acts 2003, 78<sup>th</sup> Leg., ch. 962, Sec. 1, 2, eff. Jun. 20, 2003.

Amended by:

Acts 2005, 79<sup>th</sup> Leg., ch. 265, Sec. 3.233, eff. Sept. 1, 2005.

Acts 2007, 80<sup>th</sup> Leg. R.S., ch. 1177, Sec. 2, eff. Sept. 1, 2007.

Acts 2007, 80<sup>th</sup> Leg., R.S. ch. 1177, Sec. 2, eff. Jan. 1, 2011.

<sup>5</sup> Tex. Lab. Code § 413.011(d).

by that individual or by someone acting on that individual's behalf.<sup>6</sup> In setting such guidelines, the increased security of payment afforded by the Act also must be considered.<sup>7</sup>

Prior to March 1, 2008, the Division did not have a fee guideline for medical services provided in an outpatient acute care hospital such as Vista.<sup>8</sup> In reimbursing providers for services without a fee guideline, an insurance carrier is required to reimburse at a fair and reasonable rate, as described in Section 413.011(d) of the Act.<sup>9</sup> Until May 2006, "fair and reasonable reimbursement" was defined as follows:

Reimbursement that meets the standards set out in Section 413.011 of the Texas Labor Code, and the lesser of a health care provider's usual and customary charge, or

(A) the maximum allowable reimbursement, when one has been established in an applicable Commission fee guideline,

(B) the determination of a payment amount for medical treatment(s) and/or service(s) for which the Commission has established no maximum allowable reimbursement amount, or

(C) a negotiated contract amount.<sup>10</sup>

Effective May 2, 2006, the Division defined "fair and reasonable reimbursement" as reimbursement that:

- (1) is consistent with the criteria of [Texas] Labor Code § 413.011;
- (2) ensures that similar procedures provided in similar circumstances receive similar reimbursement; and
- (3) is based on nationally recognized published studies, published Division medical dispute decisions, and values assigned for services involving similar work and resource commitments, if available.<sup>11</sup>

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<sup>6</sup> Tex. Lab. Code § 413.011(d).

<sup>7</sup> Tex. Lab. Code § 413.011(d).

<sup>8</sup> Effective March 1, 2008, the Division adopted a fee guideline for outpatient medical services. 28 Tex. Admin. Code (TAC) § 134.403. By its terms, that fee guideline applies only to outpatient medical services provided on or after March 1, 2008.

<sup>9</sup> 28 TAC § 134.1(f) from Oct. 7, 1991 until May 16, 2002, when it became 28 TAC § 134.1(c). On May 2, 2006, it became 28 TAC § 134.1(c)(3). In 2008, it was amended to become 28 TAC § 134.1(e)(3).

<sup>10</sup> 28 TAC § 133.1(8).

<sup>11</sup> 28 TAC § 134.1(d)(1)-(3). Amended in 2008 to 28 TAC § 134.1(f)(1)-(3).

When the Division has not established a fee guideline for a particular procedure, service, or item, the Division's rules require carriers such as Zurich to develop and consistently apply a methodology to determine fair and reasonable reimbursement.<sup>12</sup>

## **B. Evidence and Argument**

In its request for reimbursement presented to Zurich in February 2004, Vista asked for \$16,645.10 for the ESI services it provided to the injured worker.<sup>13</sup> Zurich reimbursed Vista \$583.27 for those services.<sup>14</sup> In its request for medical dispute resolution at the MRD, Vista contended that seventy percent of its billed charges constituted fair and reasonable reimbursement. Vista sought additional reimbursement of \$14,999.83 in that request. The MRD Decision states that Vista did not establish the amount it requested was fair and reasonable.

For the SOAH hearing, Vista altered its theory and requested recovery based on the average payments made to Vista in 2003, 2004, 2005, and 2007 from various workers' compensation carriers for CPT Code 62311, in line with the analysis made in the Renaissance cases and in reliance on the Texas Department of Insurance's Advisory 2003-09, a March 2005 MDR Newsletter, and Commissioner's Bulletin #B-0009-07,<sup>15</sup> plus interest. Vista seeks additional reimbursement of approximately \$3,670.78, asserting that this amount for CPT Code 62311 is a fair and reasonable reimbursement.<sup>16</sup>

In support of its position, Vista relied on two recent Division decisions involving Renaissance Hospital.<sup>17</sup> In those cases, the Division found that the average payment by all insurance carriers in the Texas workers' compensation system during the same year and

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<sup>12</sup> 28 TAC § 133.304(i)(1) (eff. July 15, 2000); 28 TAC § 134.1(e) (eff. May 2, 2006).

<sup>13</sup> Zurich Exhibit 3 at 6.

<sup>14</sup> Zurich Exhibit 3 at 10 and Zurich Exhibit 4 at 13.

<sup>15</sup> Vista's Post-Trial Brief at pages 3 and Attachment B. *See also* Vista Exhibits 7, 8, and 9.

<sup>16</sup> Vista Post-Trial Brief at Attachment B, page 3.

<sup>17</sup> *Renaissance Hospital v. Zurich American Insurance Company*, MR Nos. M4-08-2454-01 (Decision Sept. 15, 2011) and M4-08-0446-01 (Decision October 11, 2011).

involving the same procedures that Renaissance provided was the best evidence in those cases of an amount that would achieve a fair and reasonable reimbursement.

Zurich took issue with the two Renaissance cases.<sup>18</sup> Zurich also pointed out that Vista's proposed methodology was not the same as that used in those cases.<sup>19</sup>

Vista observed that Zurich did not present any testimony at the SOAH hearing. Although Zurich offered evidence showing the amount it reimbursed Vista, Vista asserted that Zurich did not present sufficient evidence that the amount it reimbursed Vista was fair and reasonable under the statutory standards.<sup>20</sup>

Zurich argued that Vista was prohibited by law and precedent from raising its new basis for recovery.<sup>21</sup> If the new theory were considered, however, Zurich argued that Vista failed to prove that methodology met the criteria of the Texas Labor Code and the Division's rules. Zurich contended that Vista failed to show that allowances based on historical average payments were necessary for employees to gain access to outpatient services, failed to demonstrate cost control, and failed to show that those payments did not exceed amounts paid for persons of an equivalent standard of living. Zurich argued that Vista's methodology did not take into consideration the increased security of payment afforded by the Texas Labor Code, was not consistent with the most current methodologies and models used by Medicare, and was not based on nationally recognized studies.<sup>22</sup> Zurich contended that Vista's use of a simple average was statistically and legally unsupportable.

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<sup>18</sup> The ALJs offer no opinion and makes no decision on whether the methodology used in the Renaissance cases is valid for determining fair and reasonable reimbursement.

<sup>19</sup> Zurich's Rebuttal Closing Argument at 1 through 5.

<sup>20</sup> Vista Post-Trial Brief at 3.

<sup>21</sup> Zurich's Closing Argument at 5 through 8.

<sup>22</sup> Zurich's Closing Argument at 9 through 16.

### **C. Conclusion**

Vista failed to establish how its proposed methodology and its requested additional reimbursement levels comply with the requirements of the Texas Labor Code. Accordingly, Vista did not meet its burden of proof and is not entitled to additional reimbursement from Zurich for the services in question.

### **III. FINDINGS OF FACT**

1. On January 12, 2004, Vista Medical Center Hospital (Vista) provided outpatient services for administration of a lumber epidural steroid injection (ESI) to a workers' compensation claimant.
2. Zurich American Insurance Company (Zurich) was the responsible workers' compensation insurer for the claimant.
3. Vista billed \$16,645.10 for the ESI services, CPT Code 62311.
4. Zurich reimbursed Vista \$583.27 for the ESI services.
5. At the time Vista provided the services, there was no fee guideline in place for outpatient services.
6. Vista requested \$14,999.83 additional reimbursement for the services in dispute.
7. Zurich denied Vista's request for additional reimbursement.
8. Vista timely filed a request for medical fee dispute resolution with the Medical Review Division (MRD) of the Texas Insurance Department—Division of Workers' Compensation (Division).
9. In its request for medical dispute resolution filed at the MRD, Vista asked for \$14,999.83 in reimbursement or, in the alternative, a minimum of 70 percent of its billed charges.
10. On May 31, 2011, the MRD issued its Medical Fee Dispute Resolution Findings and Decision (MRD Decision) denying additional reimbursement to Vista.
11. Vista timely requested a hearing at the State Office of Administrative Hearings (SOAH) to contest the MRD Decision.
12. A hearing convened before Administrative Law Judges (ALJs) Henry D. Card and Sharon Cloninger on May 22, 2012, at SOAH's hearing facilities in Austin, Texas. Vista was represented by attorney Cristina Y. Hernandez. Zurich was represented by attorney

Steven M. Tipton. The record closed on September 21, 2012, following the filing of post-hearing briefs.

13. For the SOAH hearing, Vista altered its theory and requested recovery based on the average payments made to Vista in 2003, 2004, 2005, and 2007 from various workers' compensation carriers for CPT Code 62311, for a total of \$3,670.78, plus interest.
14. The evidence does not show that Vista's proposed methodology and requested additional reimbursement levels were fair and reasonable and that Vista is entitled to additional reimbursement.

#### **IV. CONCLUSIONS OF LAW**

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. Tex. Lab. Code § 413.031 and Tex. Gov't Code ch. 2003.
2. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051 and 2001.052.
3. The services provided to the claimant were not covered by a fee guideline issued by the Division, and so were required to be billed and reimbursed at a fair and reasonable rate, within the meaning of Texas Labor Code § 413.011.
4. Vista had the burden of proof in this proceeding by a preponderance of the evidence.
5. Vista did not prove the additional reimbursement it sought complied with the applicable criteria for reimbursement under the Texas Labor Code.
6. Vista did not prove it is entitled to additional payment from Zurich for the services provided to the claimant.

**ORDER**

**IT IS ORDERED** that Zurich is not required to pay Vista any additional reimbursement for the services provided to the claimant.

**SIGNED November 19, 2012.**

  
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**SHARON CLONINGER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

  
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**HENRY D. CARD**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**