

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

ISSUES

A contested case hearing was held on July 28, 2010, with the record closing on July 30, 2010, after the receipt of written closing arguments, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the Medical Fee Dispute Resolution Findings and Decision that (Healthcare Provider), Petitioner, is not entitled to additional reimbursement in the amount of \$327.34 for a 90-day supply of Citalopram HBR 20 MG tablets dispensed to Claimant on August 13, 2008?

PARTIES PRESENT

Petitioner appeared and was represented by JB, attorney. Respondent appeared and was represented by BJ, attorney. Claimant did not appear.

BACKGROUND INFORMATION

Petitioner, (Healthcare Provider), hereinafter referred to as (Healthcare Provider), is a mail order pharmacy whose primary business involves filling prescriptions for patients who have suffered a work related injury. (Healthcare Provider) has customers in and is licensed to dispense prescription medications in all 50 states.

On August 13, 2008, (Healthcare Provider) dispensed 270 units of Citalopram Hydrobromide (Citalopram HBR) 20 MG tablets to Claimant. It then billed Respondent, hereinafter referred to as Carrier, \$821.09. Carrier rejected the price charged by (Healthcare Provider), estimated that \$493.75 was a reasonable cost for the medication, and tendered that payment to (Healthcare Provider). (Healthcare Provider) then invoked the Division's Medical Dispute Resolution system in an attempt to secure what it considered to be full payment for the medications dispensed to Claimant.

On May 5, 2010, the Division's Medical Fee Dispute Resolution Officer issued a decision that (Healthcare Provider) had failed to provide sufficient evidence to determine (Healthcare Provider)'s usual and customary (U&C) charge for the Citalopram HBR, the MAR (Maximum Allowable Reimbursement - the lesser of the U&C or formula amount pursuant to Division Rule 134.503) could not be determined, and (Healthcare Provider) was not entitled to any additional reimbursement. (Healthcare Provider) appealed that decision to a contested case hearing.

An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. (Texas Labor Code §408.021). The term "health care" includes a prescription drug, medicine, or other remedy. (Texas Labor Code

§401.011(19)(E)). The commissioner of the Division of Workers' Compensation is directed by statute to adopt a fee schedule for pharmacy and pharmaceutical services that will provide reimbursement rates that are fair and reasonable; assure adequate access to medications and services for injured workers; and minimize costs to employees and insurance carriers. (Texas Labor Code §408.028(f)). Insurance carriers must reimburse for pharmacy benefits and services using the fee schedule or at rates negotiated by contract. (Texas Labor Code §408.028(g)). The commissioner has adopted reimbursement methodology to establish the MAR for prescription drugs in Division Rule 134.503. At the time (Healthcare Provider) dispensed the prescription drugs the subject of this hearing, Rule 134.503 provided that the MAR for prescription drugs would be the lesser of the provider's U&C charge for the same or similar service or a fee established by formulas based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical reimbursement system such as Redbook or First Data Bank Services in effect on the day the prescription drug was dispensed. For generic drugs, the formula was $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \4.00 dispensing fee) and for brand name drugs the formula was $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \4.00 dispensing fee). (Division Rule 134.503(a)(2)).

On December 11, 2003, (Executive Director), the Executive Director of the Texas Workers' Compensation Commission, issued Advisory 2003-21 to address the determination of a pharmacy's U&C charge for prescription drugs. In part, the Advisory states:

The Commission's pharmacy prescription pricing rule is based, in part, on several important provisions concerning health care provider charges. First, fee guidelines are based, in part, on a provision that payment may not be in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf (Texas Labor Code Section 413.011(d)). Also, "[a] health care provider commits an offense if the person knowingly charges an insurance carrier an amount greater than that normally charged for similar treatment to a payor outside the workers' compensation system, except for mandated or negotiated charges" (Texas Labor Code §413.043(a)).

Parties requesting medical dispute resolution should ensure that they abide by the statute and rule references outlined above. The Commission's Medical Dispute Resolution Section has indicated that parties filing a dispute have the burden of proof to support their position for advocating additional reimbursement. The burden of proof includes production of sufficient evidence to support that the reimbursement requested is in accordance with the factors listed in §413.011(b) of the Texas Workers' Compensation Act.

(Healthcare Provider) asserts that its U&C charge for any prescription drug is 178% of its AWP plus a dispensing fee of \$4.50. In an affidavit signed on July 14, 2010, (Healthcare Provider)'s reimbursement manager, (Reimbursement Manager), stated that (Healthcare Provider) charges that amount in every state where it is permitted to bill its U&C, but in three of those states, Missouri, New Jersey and Maryland, its rates are different. (Reimbursement Manager) states that (Healthcare Provider) lowered its rates in those three states so it can stay competitive.

In a global response to discovery, (Healthcare Provider) stated that (Healthcare Provider) fills prescriptions for customers injured in auto accidents, but only where there is no-fault insurance.

The response further stated that auto injury customers “must prepay the AWP minus 10%.” Auto injury cases make up approximately 9% of (Healthcare Provider)’s business. Additionally, some of (Healthcare Provider)’s business involves private pay individuals who pre-pay their prescriptions. (Healthcare Provider) charges those individuals 90% of AWP, plus a \$3.00 dispensing fee, for generic drugs and AWP plus the dispensing fee for brand name drugs. (Reimbursement Manager) stated that the lower prices are charged because (Healthcare Provider)’s administrative costs were minimal and there were no collection costs for that segment of its business. Pre-pay workers’ compensation customers account for less than 1% of (Healthcare Provider)’s business.

(Reimbursement Manager) testified at the hearing in this matter that the AWP for Citalopram is \$2.421 per unit. He also testified that (Healthcare Provider) charges all Texas customers the formula rate under Rule 134.503, but that there may be some pre-pay customers in Texas who are charged 90% of AWP. The only differences between most of its customers and its pre-pay customers are that the pre-pay customers have settled their claims and must submit payment before the prescriptions are filled.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

FINDINGS OF FACT

1. The parties stipulated as follows:
 - A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers’ Compensation.
 - B. On _____, Claimant was employed by (Employer).
 - C. Claimant sustained a compensable injury on _____.
2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and the name and street address of Carrier’s registered agent, which document was admitted into evidence as Hearing Officer’s Exhibit Number 2.
3. Petitioner has multiple price structures in states that do not have mandated fee schedules.
4. Petitioner has different price structures for different customers in the same state depending on whether the customer’s payment is made in advance or is paid through a workers’ compensation insurance carrier.
5. As a routine business practice, Petitioner charges pre-pay workers’ compensation and no-fault auto insurance customers 90% of the AWP of prescription drugs.
6. The lower price Petitioner charges pre-pay customers is not a negotiated or mandated price.
7. Petitioner failed to prove that its U&C charge for Citalopram HBR is more than the amount calculated for a generic prescription drug under Rule 134.503.

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the Medical Fee Dispute Resolution Findings and Decision that (Healthcare Provider), Petitioner, is not entitled to additional reimbursement in the amount of \$327.34 for the 90-day supply of Citalopram HBR 20 MG tablets dispensed to Claimant on August 13, 2008

DECISION

(Healthcare Provider), Petitioner, is not entitled to additional reimbursement for the 90-day supply of Citalopram HBR 20 MG tablets dispensed to Claimant on August 13, 2008.

ORDER

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RON WRIGHT, PRESIDENT
TEXAS MUTUAL INSURANCE COMPANY
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723**

Signed this 10th day of August, 2010.

KENNETH A. HUCHTON
Hearing Officer