

MEDICAL CONTESTED CASE HEARING NO 11153
M4-10-1847-01

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 April 5, 2011 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 reimbursement for the compensable injury of (Date of Injury) in the amount of \$907.26 for 10 units of Fentanyl 75 MCG/HR Patch dispensed to Claimant on 9/19/08, 10/18/08, 11/13/08 and 12/17/08, for \$22.20 for 60 units of Diazepam 5 MG Capsule dispensed to Claimant on 9/19/08, 10/18/08, 11/13/08 and 12/17/08 and for \$184.20 for 180 units of Hydrocodone/APAP 10/500 Tablet dispensed to Claimant on 9/19/08, 10/18/08, 11/13/08 and 12/17/08?

PARTIES PRESENT

Petitioner, (Healthcare Provider), appeared and was represented by HK, attorney. Respondent/Carrier, Texas Mutual Insurance Company, appeared and was represented by BJ, attorney. Claimant did not appear and his attendance was excused.

BACKGROUND INFORMATION

Petitioner/Subclaimant, (Healthcare Provider), hereinafter referred to as (Healthcare Provider) is an in-house pharmacy for (Rehabilitation Service Center), a facility providing rehabilitation services to workers' compensation patients. It is uncontroverted that the drugs for which (Healthcare Provider) is seeking reimbursement as listed in the issues above were generic and though (Healthcare Provider) does provide pharmacy services to a very limited number of cash patients at a reduced rate, the majority of its business is to provide medications to workers' compensation patients.

After its requests for reconsideration were denied by Carrier, (Healthcare Provider) requested relief through the Division's Medical Fee Dispute Resolution (MFDR) section in order to obtain reimbursement in the amount of \$1,568.46. The Division's MFDR Officer issued a decision for the above cited case ("Medical Fee Dispute Resolution Findings and Decision") holding that (Healthcare Provider) was not entitled to reimbursement from Carrier because it had failed to

provide sufficient evidence to allow the Division to determine (Healthcare Provider)' usual and customary (U&C) charge for the drugs at issue. Following the adverse decision from MFDR, (Healthcare Provider) appealed to a medical 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)).

At the time (Healthcare Provider) dispensed the prescription drugs the subject of this hearing, Rule 134.503, provided that the maximum allowable reimbursement (MAR) for prescription drugs is the lesser of the provider's usual and customary (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 DataBank Inc. in effect on the day the prescription drug was dispensed. For generic drugs, the formula is AWP per unit multiplied by the number of units multiplied by 1.25, plus a \$4.00 dispensing fee (Rule 134.503(a)(2)).

On December 11, 2003, RR, 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.

Accordingly, (Healthcare Provider) has the burden to demonstrate its entitlement to the reimbursement it seeks. Therefore, based upon Rule 134.503 (Healthcare Provider)' usual and customary (U&C) charge must be compared to the rate determined by applying the average wholesale (AWP) price formula. The maximum allowable reimbursement (MAR) rate will then be the lesser of the two figures.

(Healthcare Provider) asserts that its U&C charge is the same as the AWP formula, AWP per unit multiplied by the number of units multiplied by 1.25, plus a \$4.00 dispensing fee (Rule 134.503(a)(2)(A)). To meet their burden, (Healthcare Provider)' pharmacy manager, TH, testified that (Healthcare Provider) purchased a computer system called RX30 that purportedly determined the cost of each prescription by applying the AWP formula in accordance with the guidelines of Rule 134.503.

Mr. H's testimony and the supporting documentation were sufficient to prove that on the dates of service, (Healthcare Provider)' U&C charges were as follows:

Table 1

Date of Service	Pharmaceuticals	(Healthcare Provider) U&C Charge
09/19/08	10 units of Fentanyl 75 MCG/HR Patch	507.10
10/18/08	10 units of Fentanyl 75 MCG/HR Patch	507.10
11/13/08	10 units of Fentanyl 75 MCG/HR Patch	506.70
12/17/08	15 units of Fentanyl 75 MCG/HR Patch	758.00
09/19/08	60 units of Diazepam 5 MG Capsule	16.60
10/18/08	60 units of Diazepam 5 MG Capsule	16.60
11/13/08	60 units of Diazepam 5 MG Capsule	16.60
12/17/08	60 units of Diazepam 5 MG Capsule	16.60
09/19/08	180 units of Hydrocodone/APAP 10/500 Tablet	117.90
10/18/08	180 units of Hydrocodone/APAP 10/500 Tablet	117.90
11/13/08	180 units of Hydrocodone/APAP 10/500 Tablet	117.90
12/17/08	180 units of Hydrocodone/APAP 10/500 Tablet	117.90

The facts in evidence support Mr. H's testimony that the RX30 computer system does determine the AWP by utilizing a nationally recognized pharmaceutical reimbursement system.

Petitioner provided the AWP of the prescription drugs in question utilizing a nationally recognized pharmaceutical reimbursement system so that a comparison between (Healthcare Provider)' U&C charge and the AWP formula could be effected; and as such, based upon the facts in evidence, Petitioner met its burden of proof. See chart below:

Table 2

Dates of Service	Pharmaceuticals	AWP formula AWP per unit multiplied by the number of units multiplied by 1.25, plus a \$4.00 dispensing fee	U&C Charge of (Healthcare Provider)	MAR	Amount Paid	Amount Due
09/19/08	10 units of Fentanyl 75 MCG/HR Patch	40.24600 x 10 x 1.25 + 4 = 507.075	507.10	507.08	305.35	201.73
10/18/08	10 units of Fentanyl 75 MCG/HR Patch	40.24600 x 10 x 1.25 + 4 = 507.075	507.10	507.08	305.35	201.73
11/13/08	10 units of Fentanyl 75 MCG/HR Patch	40.24600 x 10 x 1.25 + 4 = 507.075	506.70	506.70	305.08	201.62
12/17/08	15 units of Fentanyl 75 MCG/HR Patch	40.24600 x 15 x 1.25 + 4 = 758.6125	758.00	758.00	455.86	302.14
09/19/08	60 units of Diazepam 5 MG Capsule	0.16855 x 60 x 1.25 + 4 = 16.64125	16.60	16.60	11.05	5.55
10/18/08	60 units of Diazepam 5 MG Capsule	0.16855 x 60 x 1.25 + 4 = 16.64125	16.60	16.60	11.05	5.55
11/13/08	60 units of Diazepam 5 MG Capsule	0.16855 x 60 x 1.25 + 4 = 16.64125	16.60	16.60	11.05	5.55
12/17/08	60 units of Diazepam 5 MG Capsule	0.16855 x 60 x 1.25 + 4 = 16.64125	16.60	16.60	11.05	5.55
09/19/08	180 units of Hydrocodone/APAP 10/500 Tablet	0.50606 x 180 x 1.25 + 4 = 117.8635	117.90	117.87	71.82	46.05
10/18/08	180 units of Hydrocodone/APAP 10/500 Tablet	0.50606 x 180 x 1.25 + 4 = 117.8635	117.90	117.87	71.82	46.05
11/13/08	180 units of Hydrocodone/APAP 10/500 Tablet	0.50606 x 180 x 1.25 + 4 = 117.8635	117.90	117.87	71.82	46.05
12/17/08	180 units of Hydrocodone/APAP 10/500 Tablet	0.50606 x 180 x 1.25 + 4 = 117.8635	117.90	117.87	71.82	46.05

The Division's Medical Fee Dispute Resolution Officer determined that (Healthcare Provider) was not entitled to reimbursement for the Hydrocodone/APAP, Diazepam or Fentanyl dispensed to Claimant on the dates listed above. The preponderance of the evidence is contrary to the decision of the Medical Fee Dispute Resolution Officer. (Healthcare Provider) provided sufficient evidence to establish the fee schedule charge computed in accordance with Rule

134.503(a)(2)(A) for the drugs that are the subject of this hearing on the date they were dispensed and (Healthcare Provider) is entitled to reimbursement.

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 (Date of Injury), Claimant was the employee of (Employer), and sustained a compensable injury.
 - C. The medications for which reimbursement was sought in this case were dispensed as part of the medical care for the compensable injury of (Date of Injury).
 - D. (Healthcare Provider) has no negotiated or contractual pharmacy fee agreement with Texas Mutual Insurance Company payable pursuant to Rule 134.503(a)(3).
 - E. The preponderance of the evidence is not contrary to the Medical Fee Dispute Resolution Findings and Decision that (Healthcare Provider), Petitioner, is entitled to reimbursement for the compensable injury of (Date of Injury) in the amount of \$395.16 for 90 units of Orphenadrine and \$55.08 for 30 units of Temazepam 30 MG Capsule dispensed to the Claimant on 09/19/08, 10/18/08, 11/13/08 and 12/17/08 which has been paid by the Carrier.
2. Respondent delivered to Petitioner 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. The medications for which additional reimbursement was sought in this case were all generic.
4. On September 19, 2008, October 18, 2008, November 13, 2008 (Healthcare Provider) dispensed 10 units of Fentanyl 75 MCG/HR Patch and 15 units and on December 17, 2008 to Claimant for his compensable injury of (Date of Injury); (Healthcare Provider) billed Carrier a total of \$2,278.90 for this medication.
5. On September 19, 2008, October 18, 2008, November 13, 2008 and December 17, 2008, (Healthcare Provider) dispensed 60 units of Diazepam 5 MG Tablet to Claimant for his

compensable injury of (Date of Injury); (Healthcare Provider) billed Carrier a total of \$66.40 for this medication.

6. On September 19, 2008, October 18, 2008, November 13, 2008 and December 17, 2008, (Healthcare Provider) dispensed 180 units of Hydrocodone/APAP 10/500 Tablet to Claimant for his compensable injury of (Date of Injury); (Healthcare Provider) billed Carrier a total of \$471.60 for this medication.
7. (Healthcare Provider) established the AWP of the prescription drugs at issue in this case on the dispensing dates in dispute by providing information from a nationally recognized pharmaceutical reimbursement system.
8. For the Fentanyl 75 MCG/HR Patch, the AWP on the dates of service in dispute was 40.24600.
9. For the Diazepam 5 MG Tablet, the AWP on the dates of service in dispute was 0.16855.
10. For the Hydrocodone/APAP 10/500 TAB, the AWP on the dates of service in dispute was 0.50606.
11. (Healthcare Provider)'s U&C charge for 10 Units of Fentanyl 75 MCG/HR Patch on September 19, 2008, and October 18, 2008, was \$507.10.
12. (Healthcare Provider)'s U&C charge for 10 Units of Fentanyl 75 MCG/HR Patch on November 13, 2008, was \$506.70.
13. (Healthcare Provider)'s U&C charge for 15 Units of Fentanyl 75 MCG/HR Patch on December 17, 2008, 2008, was \$758.00.
14. (Healthcare Provider)'s U&C charge for 60 units of Diazepam 5 MG Tablet on September 19, 2008, October 18, 2008, November 13, 2008 and December 17, 2008 was \$16.60.
15. (Healthcare Provider)'s U&C charge for 180 Units of Hydrocodone/APAP 10/500 TAB on September 19, 2008, October 18, 2008, November 13, 2008 and December 17, 2008 was \$117.90.
16. For the 10 units of Fentanyl 75 MCG/HR Patch dispensed on September 19, 2008, October 18, 2008, November 13, 2008 and 15 units on December 17, 2008 Carrier reimbursed (Healthcare Provider) a total of \$1,371.64.
17. For the 60 Units of Diazepam 5 MG Tablet dispensed on September 19, 2008, October 18, 2008, November 13, 2008 and December 17, 2008, Carrier reimbursed (Healthcare Provider) a total of \$44.20.

18. For the 180 Units of Hydrocodone/APAP 10/500 TAB dispensed on September 19, 2008, October 18, 2008, November 13, 2008 and December 17, 2008 Carrier reimbursed (Healthcare Provider) a total of \$287.28.
19. The MAR for the 10 units of Fentanyl 75 MCG/HR Patch dispensed on September 19, 2008, and October 18, 2008 was \$507.10, which is equal to the amount elicited from the 134.503(a)(2)(A) formula calculation.
20. The MAR for the 10 units of Fentanyl 75 MCG/HR Patch dispensed on November 13, 2008 was \$506.70, which is less than the amount elicited from the 134.503(a)(2)(A) formula calculation.
21. The MAR for the 15 units of Fentanyl 75 MCG/HR Patch dispensed on December 17, 2008 was \$758.00 which is less than the amount elicited from the 134.503(a)(2)(A) formula calculation.
22. The MAR for the 60 units of Diazepam 5 MG Tablet dispensed on September 19, 2008, October 18, 2008, November 13, 2008 and December 17, 2008 was \$16.60, which is equal to the amount elicited from the 134.503(a)(2)(A) formula calculation.
23. The MAR for the 180 Units of Hydrocodone/APAP 10/500 TAB dispensed on September 19, 2008, October 18, 2008, November 13, 2008 and December 17, 2008 was \$117.87, which is which is less than the amount elicited from the 134.503(a)(2)(A) formula calculation.

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 contrary to the Medical Fee Dispute Resolution Findings and Decision that (Healthcare Provider), Petitioner, is not entitled to reimbursement for the compensable injury of (Date of Injury) in the amount of \$907.26 for 10 units of Fentanyl 75 MCG/HR Patch dispensed to Claimant on 9/19/08, 10/18/08, 11/13/08 and 12/17/08, for \$22.20 for 60 units of Diazepam 5 MG Capsule dispensed to Claimant on 9/19/08, 10/18/08, 11/13/08 and 12/17/08 and for \$184.32 180 units of Hydrocodone/APAP 10/500 Tablet dispensed to Claimant on 9/19/08, 10/18/08, 11/13/08 and 12/17/08.

DECISION

(Healthcare Provider) is entitled to \$907.22 for 10 units of Fentanyl 75 MCG/HR Patch dispensed to Claimant on 9/19/08, 10/18/08, 11/13/08 and 15 units dispensed on 12/17/08, \$22.20 for 60 units of Diazepam 5 MG Capsule dispensed to Claimant on 9/19/08, 10/18/08, 11/13/08 and 12/17/08 and for \$184.20 for 180 units of Hydrocodone/APAP 10/500 Tablet dispensed to Claimant on 9/19/08, 10/18/08, 11/13/08 and 12/17/08.

ORDER

Carrier is liable for the additional reimbursement 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 22nd day of June, 2011.

Katherine D'Aunno-Buchanan
Hearing Officer