

MEDICAL CONTESTED CASE HEARING NO. 11160
M4-10-1459-01

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.

ISSUE

A contested case hearing was held on May 24, 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 additional reimbursement for the compensable injury of (Date of Injury) in the amount of \$495.72 for 120 units of Hydrocod/APAP 10/650 Tablet dispensed to Claimant on May 20, 2008, June 18, 2008, July 15, 2008, August 16, 2008, September 11, 2008, October 9, 2008, November 14, 2008, December 17, 2008 and January 12, 2009; and in the amount of \$61.74 for 90 units of Hydrocod/APAP 10/325 Tablet dispensed to Claimant on February 5, 2009 and March 6, 2009?

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

(Healthcare Provider) is an in-house pharmacy, providing medication to injured parties under workers' compensation law for the rehabilitation facility, Functional Restoration Services. The following table serves to outline the overall dispute between (Healthcare Provider) and Carrier in this case:

Table 1

Date(s) of Service (DOS)	Medication / No. of Units	(Healthcare Provider) Charge to Carrier	Carrier Reimbursement to (Healthcare Provider)	Amount in Dispute
05/20/08 06/18/08 07/15/08 08/16/08 09/11/08	Hydrocodone/APAP 10/650 TAB/120 units	\$1263.60 (\$140.40 x 9)	\$767.88 (\$85.32 x 9)	\$495.72 (\$55.08 x 9)

Date(s) of Service (DOS)	Medication / No. of Units	(Healthcare Provider) Charge to Carrier	Carrier Reimbursement to (Healthcare Provider)	Amount in Dispute
10/09/08 11/14/08 12/17/08 01/12/09				
02/05/09 03/06/09	Hydrocodone/APAP 10/325 TAB/90 units	\$159.80 (\$79.90 x 2)	\$98.06 (\$49.03 x 2)	\$61.74 (\$30.87 x 2)

The evidence presented in the hearing indicated that the reimbursement Carrier provided to (Healthcare Provider) was based on Carrier's calculation of a reasonable and customary fee for the medications.

After its request for reconsideration was denied by Carrier, (Healthcare Provider) requested relief through the Division's Medical Fee Dispute Resolution (MFDR) section in order to obtain the remaining reimbursement totaling \$557.46 from Carrier.

On January 12, 2011 the Division's MFDR Officer issued a decision ("Medical Fee Dispute Resolution Findings and Decision" or MFDRFD) holding that (Healthcare Provider) was not entitled to additional reimbursement at issue from Carrier. The rationale behind the decision was that the Division was not provided with sufficient evidence to substantiate (Healthcare Provider)' usual and customary (U&C) charge for the medications at issue. Following the adverse decision from MFDR, (Healthcare Provider) requested a medical contested case hearing to resolve the fee question in this case.

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 maximum allowable reimbursement (MAR) for prescription drugs in Rule 134.503.

Pursuant to Rule 134.503, the MAR for prescription drugs is 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 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. See Rule 134.503(a)(2)(A). The evidence presented in the hearing revealed that the prescription medication at issue in this case is a generic drug. There is no contract between (Healthcare Provider) and Carrier, so Rule 134.503(a)(3) does not apply to the facts of this case.

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.

(Healthcare Provider) has the burden to establish its entitlement to the additional reimbursement it seeks. (Healthcare Provider)' pharmacy manager, TH, provided an affidavit that was admitted into evidence. Mr. H's April 19, 2011 affidavit indicates that (Healthcare Provider) makes no distinction between AWP and its U&C charges to avoid any discrepancy. (Healthcare Provider) also furnished literature and pricing information from RX30, a professional billing and pricing hardware and software program that (Healthcare Provider) utilizes. The evidence included an e-mail from MP, an employee of RX30, who indicated that RX30 does not calculate AWP itself, but, rather, it obtains current average wholesale pricing information for medications from First DataBank, Inc., a nationally recognized pharmaceutical reimbursement system. Ms. P's e-mail indicated that AWP's may vary if sources other than First DataBank, Inc. are used.

(Healthcare Provider) presented evidence from the RX30 computer program that the AWP for Hydrocodone/APAP 10/325 Tablet on the dispensing dates of May 20, 2008, June 18, 2008, July 15, 2008, August 16, 2008, September 11, 2008, October 9, 2008, November 14, 2008,

December 17, 2008 and January 12, 2009 was 0.9093. The following indicates the calculation of MAR pursuant to Rule 134.503(a)(2)(A) for this medication:

$$\begin{aligned} & \$0.9093 \text{ (AWP)} \times 120 \text{ (\# of Units)} \times 1.25 + \$4.00 \text{ (dispensing fee)} = \$140.395 \\ & \text{(rounded to } \$140.40) \end{aligned}$$

The evidence, particularly the (Healthcare Provider) dispensing records for the period of May 1, 2008 through January 17, 2009 for this medication, was persuasive in showing that (Healthcare Provider)'s U&C charge for this medication (\$140.40) is equal to the amount elicited from the Rule 134.503(a)(2)(A) formula calculation. Therefore (Healthcare Provider) is found to be entitled to additional reimbursement in the amount of \$495.72 (\$55.08 x 9) for Hydrocodone/APAP 10/650 (120 units) dispensed on May 20, 2008, June 18, 2008, July 15, 2008, August 16, 2008, September 11, 2008, October 9, 2008, November 14, 2008, December 17, 2008 and January 12, 2009.

(Healthcare Provider) presented evidence from the RX30 computer program that the AWP for Hydrocodone/APAP 10/325 Tablet on the dispensing dates of February 5, 2009 and March 6, 2009 was 0.675. The following indicates the calculation of MAR pursuant to Rule 134.503(a)(2)(A) for this medication:

$$\begin{aligned} & \$0.6750 \text{ (AWP)} \times 90 \text{ (\# of Units)} \times 1.25 + \$4.00 \text{ (dispensing fee)} = \$79.9375 \\ & \text{(rounded to } \$79.94) \end{aligned}$$

The evidence, particularly the (Healthcare Provider) dispensing records for the period of February 1, 2009 through March 15, 2009 for this medication, was persuasive in showing that (Healthcare Provider)'s U&C charge for this medication (\$79.90) is \$0.04 less than the amount elicited from the Rule 134.503(a)(2)(A) formula calculation (\$79.94). Therefore, as the evidence indicated, (Healthcare Provider) is found to be entitled to additional reimbursement in the amount of \$61.74 (\$30.87 x 2) for Hydrocodone/APAP 10/325 (90 units) dispensed on February 5, 2009 and March 6, 2009.

Though the evidence indicated that (Healthcare Provider) did offer a discount to a very limited number of customers who pay for their medications in cash, the affidavit from Mr. H, dated April 1, 2011 persuasively explained that this amount was statistically insignificant (less than 0.0025%).

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. On (Date of Injury), Employer subscribed to a policy of workers' compensation insurance through Texas Mutual Insurance Company.
 - D. The medications for which additional reimbursement was sought in this case were dispensed as part of the medical care for the compensable injury of December 9, 2002.
 - E. (Healthcare Provider) has no negotiated or contractual pharmacy fee agreement with Texas Mutual Insurance Company payable pursuant to Rule 134.503(a)(3).
 - F. 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 December 9, 2002 in the amount of \$237.16 for 90 units of Methocarbamol 750 Tablet, dispensed on May 20, 2008, June 18, 2008, July 15, 2008, August 16, 2008, September 11, 2008, October 9, 2008, November 14, 2008, December 17, 2008, January 12, 2009, February 6, 2009 and March 6, 2009, which has been paid by the Carrier.
 - G. 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 December 9, 2002 in the amount of \$663.63 for 90 units of Gabapentin 300 MG Capsule, dispensed on May 20, 2008, June 18, 2008, July 15, 2008, August 16, 2008, September 11, 2008, October 9, 2008, November 14, 2008, December 17, 2008, January 12, 2009, February 6, 2009 and March 6, 2009, 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 medication for which additional reimbursement was sought in this case was generic.
 4. On May 20, 2008, June 18, 2008, July 15, 2008, August 16, 2008, September 11, 2008, October 9, 2008, November 14, 2008, December 17, 2008 and January 12, 2009, (Healthcare Provider) dispensed 120 units of Hydrocodone/APAP 10/650 Tablet to Claimant for his compensable injury of December 9, 2002; (Healthcare Provider) billed Carrier a total of \$1263.60 (\$140.40 x 9) for this medication.
 5. On February 5, 2009 and March 6, 2009, (Healthcare Provider) dispensed 90 units of Hydrocodone/APAP 10/325 Tablet to Claimant for his compensable injury of December 9, 2002; (Healthcare Provider) billed Carrier a total of \$159.80 (\$79.90 x 2) for this medication.

6. (Healthcare Provider) established the AWP of the prescription drugs at issue in this case on the dispensing dates in dispute by providing information from RX30, a professional billing and pricing hardware and software program. RX30 obtained this data from a nationally recognized pharmaceutical reimbursement system (First DataBank, Inc.).
7. For the Hydrocodone/APAP 10/650 Tablet, the AWP on the dates of service in dispute (May 20, 2008, June 18, 2008, July 15, 2008, August 16, 2008, September 11, 2008, October 9, 2008, November 14, 2008, December 17, 2008 and January 12, 2009) was 0.9093 pursuant to the data furnished by RX30.
8. For the Hydrocodone/APAP 10/325 Tablet, the AWP on the dates of service in dispute (February 5, 2009 and March 6, 2009) was 0.675 pursuant to the data furnished by RX 30.
9. (Healthcare Provider)' U&C charge for 120 units of Hydrocodone/APAP 10/650 Tablet on the dates of service in dispute (May 20, 2008, June 18, 2008, July 15, 2008, August 16, 2008, September 11, 2008, October 9, 2008, November 14, 2008, December 17, 2008 and January 12, 2009) was \$140.40.
10. (Healthcare Provider)' U&C charge for 90 units of Hydrocodone/APAP 10/325 Tablet on the dates of service in dispute (February 5, 2009 and March 6, 2009) was \$79.90.
11. For the Hydrocodone/APAP 10/650 Tablet, dispensed on May 20, 2008, June 18, 2008, July 15, 2008, August 16, 2008, September 11, 2008, October 9, 2008, November 14, 2008, December 17, 2008 and January 12, 2009, Carrier reimbursed (Healthcare Provider) a total of \$767.88 ($\85.32×9).
12. For the Hydrocodone/APAP 10/325 Tablet, dispensed on February 5, 2009 and March 6, 2009, Carrier reimbursed (Healthcare Provider) a total of \$98.06 ($\49.03×2).
13. The MAR for 120 units of Hydrocodone/APAP 10/650 Tablet, dispensed on the dates of service in dispute (May 20, 2008, June 18, 2008, July 15, 2008, August 16, 2008, September 11, 2008, October 9, 2008, November 14, 2008, December 17, 2008 and January 12, 2009) was \$140.40 which is equal to the amount elicited from the Rule 134.503(a)(2)(A) formula calculation.
14. The MAR for 90 units of Hydrocodone/APAP 10/325 Tablet, dispensed on the dates of service in dispute (February 5, 2009 and March 6, 2009) was \$79.90 which is less than the amount elicited from the Rule 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) is not entitled to additional reimbursement for the compensable injury of (Date of Injury) in the amount of \$495.72 for 120 units of Hydrocod/APAP 10/650 Tablet dispensed to Claimant on May 20, 2008, June 18, 2008, July 15, 2008, August 16, 2008, September 11, 2008, October 9, 2008, November 14, 2008, December 17, 2008 and January 12, 2009; and in the amount of \$61.74 for 90 units of Hydrocod/APAP 10/325 Tablet dispensed to Claimant on February 5, 2009 and March 6, 2009.

DECISION

(Healthcare Provider) is entitled to additional reimbursement in the amount of \$495.72 for 120 units of Hydrocod/APAP 10/650 Tablet dispensed to Claimant on May 20, 2008, June 18, 2008, July 15, 2008, August 16, 2008, September 11, 2008, October 9, 2008, November 14, 2008, December 17, 2008 and January 12, 2009 and \$61.74 for 90 units of Hydrocod/APAP 10/325 Tablet dispensed to Claimant on February 5, 2009 and March 6, 2009.

ORDER

Carrier is 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 29th day of June, 2011.

Judy L. Ney
Hearing Officer