

MEDICAL CONTESTED CASE HEARING NO 12028
M4-10-4007-01

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 \$315.50 for 90 units of Carisoprodol 350 MG Tablet dispensed to Claimant on 08/25/09, 09/22/09, 10/20/09, 11/17/09 and 12/15/09, for \$83.00 for 60 units of Diazepam 5 MG Capsule dispensed to Claimant on 08/25/09, 09/22/09, 10/20/09, 11/17/09 and 12/15/09, for \$589.50 for 180 units of Hydrocodone/APAP 10/500 Tablet dispensed to Claimant on 08/25/09, 09/22/09, 10/20/09, 11/17/09 and 12/15/09 and \$3,792.10 for 15 units of Fentanyl 75 MCG/HR Patch on 08/25/09, 09/22/09, 10/20/09, 11/17/09 and 12/15/09?

PARTIES PRESENT

Petitioner, (Healthcare Provider) (HCP), 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 (HCP) is an in-house pharmacy for Functional Restoration Services (FRS), a facility providing rehabilitation services to workers' compensation patients. It is uncontroverted that the drugs for which (HCP) is seeking reimbursement as listed in the issues above were generic and though (HCP) 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, (HCP) requested relief through the Division's Medical Fee Dispute Resolution (MFDR) section in order to obtain reimbursement in the amount of \$1,985.87. The Division's MFDR Officer issued a decision for the above cited case ("Medical Fee Dispute Resolution Findings and Decision") holding that (HCP) was entitled

to \$95.16 but not entitled to full reimbursement because it had failed to provide sufficient evidence to allow the Division to determine (HCP)' usual and customary (U&C) charge for 4 of the drugs at issue. Following the adverse decision from MFDR, (HCP) 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 (HCP) 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, RFR, 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, (HCP) has the burden to demonstrate its entitlement to the reimbursement it seeks. Therefore, based upon Rule 134.503 (HCP)' 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.

(HCP) 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 its burden, (HCP)' pharmacy manager, TH, testified that (HCP) purchased a computer system called RX30 that apparently 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, (HCP)' U&C charges were as follows:

Table 1

Date of Service	Pharmaceuticals	(HCP) U&C Charge
08/25/09	90 units of Carisoprodol 350 MG Tablet	63.10
09/22/09	90 units of Carisoprodol 350 MG Tablet	63.10
10/20/09	90 units of Carisoprodol 350 MG Tablet	63.10
11/17/09	90 units of Carisoprodol 350 MG Tablet	63.10
12/15/09	90 units of Carisoprodol 350 MG Tablet	63.10
08/25/09	60 units of Diazepam 5 MG Capsule	16.60
09/22/09	60 units of Diazepam 5 MG Capsule	16.60
10/20/09	60 units of Diazepam 5 MG Capsule	16.60
11/17/09	60 units of Diazepam 5 MG Capsule	16.60
12/15/09	60 units of Diazepam 5 MG Capsule	16.60
08/25/09	180 units of Hydrocodone/APAP 10/500 Tablet	117.90
09/22/09	180 units of Hydrocodone/APAP 10/500 Tablet	117.90
10/20/09	180 units of Hydrocodone/APAP 10/500 Tablet	117.90
11/17/09	180 units of Hydrocodone/APAP 10/500 Tablet	117.90
12/15/09	180 units of Hydrocodone/APAP 10/500 Tablet	117.90
08/25/09	15 units of Fentanyl 75 MCG/HR Patch	758.00
09/22/09	15 units of Fentanyl 75 MCG/HR Patch	758.00
10/20/09	15 units of Fentanyl 75 MCG/HR Patch	758.70
11/17/09	15 units of Fentanyl 75 MCG/HR Patch	758.70
12/15/09	15 units of Fentanyl 75 MCG/HR Patch	758.70

The facts in evidence support Mr. Huang'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 (HCP)' 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 (HCP)	MAR	Amount Paid	Amount Due
08/25/09	90 units of Carisoprodol 350 MG Tablet	$0.52470 \times 90 \times 1.25 + 4 = 63.02875$	63.10	63.03	38.92	24.11
09/22/09	90 units of Carisoprodol 350 MG Tablet	$0.52470 \times 90 \times 1.25 + 4 = 63.02875$	63.10	63.03	38.92	24.11
10/20/09	90 units of Carisoprodol 350 MG Tablet	$0.52470 \times 90 \times 1.25 + 4 = 63.02875$	63.10	63.03	38.92	24.11
11/17/09	90 units of Carisoprodol 350 MG Tablet	$0.52470 \times 90 \times 1.25 + 4 = 63.02875$	63.10	63.03	38.92	24.11
12/15/09	90 units of Carisoprodol 350 MG Tablet	$0.52470 \times 90 \times 1.25 + 4 = 63.02875$	63.10	63.03	38.92	24.11
08/25/09	60 units of Diazepam 5 MG Capsule	$0.16855 \times 60 \times 1.25 + 4 = 16.64125$	16.60	16.60	11.05	5.50
09/22/09	60 units of Diazepam 5 MG Capsule	$0.16855 \times 60 \times 1.25 + 4 = 16.64125$	16.60	16.60	11.05	5.50
10/20/09	60 units of Diazepam 5 MG Capsule	$0.16855 \times 60 \times 1.25 + 4 = 16.64125$	16.60	16.60	11.05	5.50
11/17/09	60 units of Diazepam 5 MG Capsule	$0.16855 \times 60 \times 1.25 + 4 = 16.64125$	16.60	16.60	11.05	5.50
12/15/09	60 units of Diazepam 5 MG Capsule	$0.16855 \times 60 \times 1.25 + 4 = 16.64125$	16.60	16.60	11.05	5.50
08/25/09	180 units of Hydrocodone/ APAP 10/500 Tablet	$0.50606 \times 180 \times 1.25 + 4 = 117.8635$	117.90	117.86	71.82	46.04
09/22/09	180 units of Hydrocodone/ APAP 10/500 Tablet	$0.50606 \times 180 \times 1.25 + 4 = 117.8635$	117.90	117.86	71.82	46.04
10/20/09	180 units of Hydrocodone/ APAP 10/500 Tablet	$0.50606 \times 180 \times 1.25 + 4 = 117.8635$	117.90	117.86	71.82	46.04
11/17/09	180 units of Hydrocodone/ APAP 10/500 Tablet	$0.50606 \times 180 \times 1.25 + 4 = 117.8635$	117.90	117.86	71.82	46.04
12/15/09	180 units of Hydrocodone/ APAP 10/500 Tablet	$0.50606 \times 180 \times 1.25 + 4 = 117.8635$	117.90	117.86	71.82	46.04
08/25/09	15 units of Fentanyl 75 MCG/HR Patch	$40.24600 \times 15 \times 1.25 + 4 = 758.612$	758.00	758.00	455.86	302.14
09/22/09	15 units of Fentanyl 75 MCG/HR Patch	$40.24600 \times 15 \times 1.25 + 4 = 758.612$	758.00	758.00	455.86	302.14
10/20/09	15 units of Fentanyl 75 MCG/HR Patch	$40.24600 \times 15 \times 1.25 + 4 = 758.612$	758.70	758.60	456.27	302.33
11/17/09	15 units of Fentanyl 75 MCG/HR Patch	$40.24600 \times 15 \times 1.25 + 4 = 758.612$	758.70	758.60	456.27	302.33
12/15/09	15 units of Fentanyl 75 MCG/HR Patch	$40.24600 \times 15 \times 1.25 + 4 = 758.612$	758.70	758.60	456.27	302.33

The Division's Medical Fee Dispute Resolution Officer determined that (HCP) was not entitled to reimbursement for the Carisoprodol, 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. (HCP) 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 (HCP) 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 present 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), 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 \$95.16 for 30 units of Temazepam 30 MG Capsule dispensed to the Claimant on August 25, 2009, September 22, 2009, October 20, 2009, November 17, 2009 and December 15, 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 medications for which additional reimbursement was sought in this case were all generic.
4. On August 25, 2009, September 22, 2009, October 20, 2009, November 17, 2009 and December 15, 2009, (HCP) dispensed 90 units of Carisoprodol 350 MG Tablet to Claimant

for his compensable injury of (Date of Injury); (HCP) billed Carrier a total of \$315.50 for this medication.

5. On August 25, 2009, September 22, 2009, October 20, 2009, November 17, 2009 and December 15, 2009, (HCP) dispensed 60 units of Diazepam 5 MG Tablet to Claimant for his compensable injury of (Date of Injury); (HCP) billed Carrier a total of \$83.00 for this medication.
6. On August 25, 2009, September 22, 2009, October 20, 2009, November 17, 2009 and December 15, 2009, (HCP) dispensed 180 units of Hydrocodone/APAP 10/500 Tablet to Claimant for his compensable injury of (Date of Injury); (HCP) billed Carrier a total of \$589.50 for this medication.
7. On August 25, 2009, September 22, 2009, October 20, 2009, November 17, 2009 and December 15, 2009, (HCP) dispensed 15 units of Fentanyl 75 MCG/HR Patch to Claimant for his compensable injury of (Date of Injury); (HCP) billed Carrier a total of \$3,792.10 for this medication.
8. (HCP) 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.
9. For the Carisoprodol 350 MG Tablet, the AWP on the dates of service in dispute was 0.52470.
10. For the Diazepam 5 MG Tablet, the AWP on the dates of service in dispute was 0.16855.
11. For the Hydrocodone/APAP 10/500 TAB, the AWP on the dates of service in dispute was 0.50606.
12. For the Fentanyl 75 MCG/HR Patch, the AWP on the dates of service in dispute was 40.24600.
13. (HCP)'s U&C charge for 90 units of Carisoprodol 350 MG Tablet on August 25, 2009, September 22, 2009, October 20, 2009, November 17, 2009 and December 15, 2009, was \$63.10.
14. (HCP)'s U&C charge for 60 units of Diazepam 5 MG Tablet on August 25, 2009, September 22, 2009, October 20, 2009, November 17, 2009 and December 15, 2009 was \$16.60.

15. (HCP)'s U&C charge for 180 Units of Hydrocodone/APAP 10/500 TAB on August 25, 2009, September 22, 2009, October 20, 2009, November 17, 2009 and December 15, 2009 was \$117.90.
16. (HCP)'s U&C charge for 15 Units of Fentanyl 75 MCG/HR Patch on August 25, 2009, September 22, 2009 was \$758.00.
17. (HCP)'s U&C charge for 15 Units of Fentanyl 75 MCG/HR Patch on , October 20, 2009, November 17, 2009 and December 15, 2009 was \$758.70.
18. For the 90 units of Carisoprodol 350 MG Tablet dispensed on August 25, 2009, September 22, 2009, October 20, 2009, November 17, 2009 and December 15, 2009 Carrier reimbursed (HCP) a total of \$194.60.
19. For the 60 Units of Diazepam 5 MG Tablet dispensed on August 25, 2009, September 22, 2009, October 20, 2009, November 17, 2009 and December 15, 2009, Carrier reimbursed (HCP) a total of \$55.25.
20. For the 180 Units of Hydrocodone/APAP 10/500 TAB dispensed on August 25, 2009, September 22, 2009, October 20, 2009, November 17, 2009 and December 15, 2009 Carrier reimbursed (HCP) a total of \$359.10.
21. For the 15 units of Fentanyl 75 MCG/HR Patch dispensed on August 25, 2009, September 22, 2009, October 20, 2009, November 17, 2009 and December 15, 2009 Carrier reimbursed (HCP) a total of \$2,280.53.
22. The MAR for the 90 units of Carisoprodol 350 MG Tablet dispensed on August 25, 2009, September 22, 2009, October 20, 2009, November 17, 2009 and December 15, 2009 was \$63.03, which is equal to the amount elicited from the 134.503(a)(2)(A) formula calculation.
23. The MAR for the 60 units of Diazepam 5 MG Tablet dispensed on August 25, 2009, September 22, 2009, October 20, 2009, November 17, 2009 and December 15, 2009 was \$16.60, which is less than the amount elicited from the 134.503(a)(2)(A) formula calculation.
24. The MAR for the 180 Units of Hydrocodone/APAP 10/500 TAB dispensed on August 25, 2009, September 22, 2009, October 20, 2009, November 17, 2009 and December 15, 2009 was \$117.86, which is equal to the amount elicited from the 134.503(a)(2)(A) formula calculation.

25. The MAR for the 15 units of Fentanyl 75 MCG/HR Patch dispensed on August 25, 2009, and September was \$758.00, which is less than the amount elicited from the 134.503(a)(2)(A) formula calculation.
26. The MAR for the 15 units of Fentanyl 75 MCG/HR Patch dispensed on October 20, 2009, November 17, 2009 and December 15, 2009 was 758.60, which is equal to 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 \$315.50 for 90 units of Carisoprodol 350 MG Tablet dispensed to Claimant on 08/25/09, 09/22/09, 10/20/09, 11/17/09 and 12/15/09, for \$83.00 for 60 units of Diazepam 5 MG Capsule dispensed to Claimant on 08/25/09, 09/22/09, 10/20/09, 11/17/09 and 12/15/09, for \$589.50 for 180 units of Hydrocodone/APAP 10/500 Tablet dispensed to Claimant on 08/25/09, 09/22/09, 10/20/09, 11/17/09 and 12/15/09 and \$3,792.10 for 15 units of Fentanyl 75 MCG/HR Patch on 08/25/09, 09/22/09, 10/20/09, 11/17/09 and 12/15/09. (Healthcare Provider) is entitled to additional reimbursement in the amount of \$1,889.52.

DECISION

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 \$315.50 for 90 units of Carisoprodol 350 MG Tablet dispensed to Claimant on 08/25/09, 09/22/09, 10/20/09, 11/17/09 and 12/15/09, for \$83.00 for 60 units of Diazepam 5 MG Capsule dispensed to Claimant on 08/25/09, 09/22/09, 10/20/09, 11/17/09 and 12/15/09, for \$589.50 for 180 units of Hydrocodone/APAP 10/500 Tablet dispensed to Claimant on 08/25/09, 09/22/09, 10/20/09, 11/17/09 and 12/15/09 and \$3,792.10 for 15 units of Fentanyl 75 MCG/HR Patch on 08/25/09, 09/22/09, 10/20/09, 11/17/09 and 12/15/09. (Healthcare Provider) is entitled to additional reimbursement in the amount of \$1,889.52.

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 July, 2011.

Katherine D'Aunno-Buchanan
Hearing Officer