



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

Medi-Plus Pharmacy

Respondent Name

Kmart Corporation

MFDR Tracking Number

M4-12-1939-01

Carrier's Austin Representative

Box Number 17

MFDR Date Received

February 7, 2012

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Medi-Plus Pharmacy, an independent pharmacy has been providing medications in accordance to 134.503."

Amount in Dispute: \$935.42

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "For all medications, Respondent's audit company utilizes the Red Book pharmaceutical reimbursement system..."

The AWP of the medication hydrocodone [sic] for the dates of service in dispute was 0.07778. This AWP was used to calculate the reimbursement as defined in DWC Rule 134.503(c)(1)(B) is as follows:

0.07778 x 90 x 1.25 + 4.00 = 12.75

In conclusion, Respondent has correctly paid for these medications in accordance with the DWC Rules. No additional reimbursement should be allowed."

Response Submitted by: Downs-Stanford, P.C.

SUMMARY OF FINDINGS

Table with 5 columns: Dates of Service, Disputed Services, Amount In Dispute, Amount Due, Fee Guidelines. It contains three rows of data regarding prescription medication services and associated costs.

## ***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

### **Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
3. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - 3 – Charge for pharmaceuticals exceed the fees established by the fee schedule/UCR rates.
  - W1 – Workers compensation state fee schedule adjustment
  - 193 – Original payment decision is being maintained. This claim was processed properly the first time.
  - 18 – Duplicate claim/service.
  - 247 – A payment or denial has already been recommended for this service.
  - W4 – No additional reimbursement allowed after review of appeal/reconsideration.

### **Issues**

1. What are the rules that address the fees for the disputed services?
2. How is reimbursement established for disputed dates of service February 21, 2011 through June 13, 2011?
3. How is reimbursement established for disputed dates of service July 11, 2011 through October 3, 2011?
4. How is reimbursement established for disputed date of service November 28, 2011?
5. Did the requestor support the request for additional reimbursement?

### **Findings**

1. The dispute consists of pharmaceutical services for dates of service February 21, 2011 through November 28, 2011.

On January 1, 2011, the division adopted amendments to 28 Texas Administrative Code §134.503 on an emergency basis, pending the adoption of a long-term pharmacy fee guideline that conformed to all applicable laws. Therefore, emergency rule 28 Texas Administrative Code §134.503, effective from January 1, 2011 through June 29, 2011, 35 Texas Register 11775 (emergency rule 134.503), is the rule to address the fees for disputed dates of service February 21, 2011 through June 13, 2011.

The preamble for the proposed new rule 28 Texas Administrative Code §134.503, published July 1, 2011, states:

Adopted emergency rule amendments to §134.503 were published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11775), with a renewal extension published in the April 22, 2011, issue of the *Texas Register* (36 TexReg 2549). The renewed emergency adoption expires June 29, 2011 and the original rule becomes re-effective while this proposal undergoes the formal rulemaking process required under the Administrative Procedure Act.

For this reason, 28 Texas Administrative Code §134.503, effective March 14, 2004, 29 TexReg 2346 (former rule 134.503), is the rule to address the fees for disputed dates of service July 11, 2011 through October 3, 2011.

The division then adopted 28 Texas Administrative Code §134.503, effective October 23, 2011, 36 TexReg 6949 (new rule 134.503). Therefore, this is the rule to address the fees for disputed date of service November 28, 2011.

2. For disputed dates of service February 21, 2011 through June 13, 2011, emergency rule 134.503(c) states:

The reimbursement for prescription drugs shall be as follows:

- (1) a negotiated or contract amount between the insurance carrier and the pharmacy, or the pharmacy processing agent, if applicable, that is greater than the reimbursement established by paragraph (3)(A) of this subsection may be paid for prescription drugs used for an injured employee's claim at any time when it is necessary to secure health care for an injured employee;

- (2) A negotiated or contracted amount between the insurance carrier and the pharmacy, or the pharmacy processing agent, if applicable, that is less than the reimbursement established by paragraph (3)(A) of this subsection; or
- (3) In the event a negotiated or contract amount between the insurance carrier, pharmacy, or pharmacy processing agent does not exist, the lesser of:
  - (A) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data **in effect on the day the prescription drug is dispensed** [emphasis added]:
    - (i) Generic drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee = reimbursement amount;
    - (ii) Brand name drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee = reimbursement amount;
    - (iii) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either subparagraph (A)(i) or (ii) of this paragraph; or
  - (B) the provider's billed amount.

No documentation was found to support the existence of a contract. Reimbursement for the dates of service in question is the lesser of the fee established by the applicable AWP formula, or the provider's billed amount pursuant to emergency rule 134.503(c)(3).

- 3. For disputed dates of service July 11, 2011 through October 3, 2011, former rule 134.503(a) states:

The maximum allowable reimbursement (MAR) for prescription drugs shall be the lesser of:

- (1) The provider's usual and customary charge for the same or similar service;
- (2) The fees established by the following formulas based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical reimbursement system (e.g. Redbook, First Data Bank Services) **in effect on the day the prescription drug is dispensed** [emphasis added].
  - (A) Generic drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee = MAR;
  - (B) Brand name drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee = MAR;
  - (C) A compounding fee of \$15 per compound shall be added for compound drugs; or
- (3) A negotiated or contract amount.

Review of the submitted information finds: (1) no documentation to support that a contract exists between the parties; and (2) no denial codes or assertions refuting that the amount charged is the usual and customary amount. Consequently, the MAR for the disputed dates of service in question is established by determining the lesser of the charged amount and the AWP formula pursuant to former rule 134.503(a)(2).

- 4. For disputed date of service November 28, 2011, new rule 134.503(c) states:

The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:

- (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data **in effect on the day the prescription drug is dispensed** [emphasis added]:
  - (A) Generic drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee per prescription = reimbursement amount;
  - (B) Brand name drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee per prescription = reimbursement amount;
  - (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
- (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
  - (A) health care provider; or

(B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

Reimbursement for the date of service in question is the lesser of the fee established by the applicable AWP formula, or the billed amount pursuant to emergency rule 134.503(c).

5. The pharmaceuticals in dispute were dispensed on February 21, 2011 through November 28, 2011. The medication in dispute is Hydrocodone/APAP 10/650 tablets, NDC 00591050305. Review of the submitted documentation finds that:

- The requestor provided documentation sourced from First Data Bank that supports the AWP rate of 0.90933 for Hydrocodone/APAP 10/650 tablets, NDC 00591050305, effective for dates February 21, 2011 through November 28, 2011.
- The respondent provided documentation that the insurance carrier asserts is from Red-Book giving the AWP rate of 0.07778 for APAP/Hydrocodone Bitartrate 650 MG-10 MG, NDC 00591050305, and effective October 1, 2008.

The division finds that the requestor supported that the AWP rate of 0.90933 was effective for the dates of service in question. Therefore, reimbursement is calculated below:

Calculations based on 28 Texas Administrative Code §134.503, effective from January 1, 2011 through June 29, 2011, 35 TexReg 11775

Date Dispensed	Prescription Medication	Calculation per 134.503(c)(3)(A)	134.503 (c)(3)(B)	Lesser of 134.503 (c)(3)(A) & (B)	Carrier Paid	Balance Due
2/21/11	Hydrocodone/APAP 10/650	$(0.90933 \times 90 \times 1.25) + \$4.00 = \$106.30$	\$106.30	\$106.30	\$12.75	\$93.55
3/21/11	Hydrocodone/APAP 10/650	$(0.90933 \times 90 \times 1.25) + \$4.00 = \$106.30$	\$106.30	\$106.30	\$12.75	\$93.55
4/18/11	Hydrocodone/APAP 10/650	$(0.90933 \times 90 \times 1.25) + \$4.00 = \$106.30$	\$106.30	\$106.30	\$12.75	\$93.55
5/17/11	Hydrocodone/APAP 10/650	$(0.90933 \times 90 \times 1.25) + \$4.00 = \$106.30$	\$106.30	\$106.30	\$12.75	\$93.55
6/13/11	Hydrocodone/APAP 10/650	$(0.90933 \times 90 \times 1.25) + \$4.00 = \$106.30$	\$106.30	\$106.30	\$12.75	\$93.55

Calculations based on 28 Texas Administrative Code §134.503, effective March 14, 2004, 29 TexReg 2346

Date Dispensed	Prescription Medication	Calculation per 134.503(a)(2)	134.503 (a)(1)	Lesser of 134.503 (a)(1) & (2)	Carrier Paid	Balance Due
7/11/11	Hydrocodone/APAP 10/650	$(0.90933 \times 90 \times 1.25) + \$4.00 = \$106.30$	\$106.30	\$106.30	\$12.75	\$93.55
8/8/11	Hydrocodone/APAP 10/650	$(0.90933 \times 90 \times 1.25) + \$4.00 = \$106.30$	\$106.28	\$106.28	\$12.75	\$93.53
9/3/11	Hydrocodone/APAP 10/650	$(0.90933 \times 90 \times 1.25) + \$4.00 = \$106.30$	\$106.28	\$106.28	\$12.75	\$93.53
10/3/11	Hydrocodone/APAP 10/650	$(0.90933 \times 90 \times 1.25) + \$4.00 = \$106.30$	\$106.28	\$106.28	\$12.75	\$93.53

Date Dispensed	Prescription Medication	Calculation per 134.503(c)(1)	134.503 (c)(2)	Lesser of 134.503 (c)(1) & (2)	Carrier Paid	Balance Due
11/28/11	Hydrocodone/APAP 10/650	(0.90933 x 90 x 1.25) + \$4.00 = \$106.30	\$106.28	\$106.28	\$12.75	\$93.53

The total reimbursement amount for the disputed services is \$1062.92. The insurance carrier paid \$127.50. An additional reimbursement of \$935.42 is recommended.

**Conclusion**

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$935.42.

***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$935.42 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

**Authorized Signature**

	Laurie Garnes	June 29, 2016
Signature	Medical Fee Dispute Resolution Officer	Date

***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MFDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of this *Medical Fee Dispute Resolution Findings and Decision*, together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**