

B. Applicable Law

TEX. LAB. CODE ' 413.011 of the Act requires the Commission to establish medical policies and guidelines relating to fees charged or paid for medical services. In accordance with this section, the Commission adopted Medical Fee Guidelines (MFGs) that specify amounts payable for particular billing codes. The 1996 MFG Durable Medical Equipment (DME) Ground Rules, which are applicable to this case, state in pertinent part:

VI. Rental/Purchase

...

D. The first month's rent applies to the purchase price if the rental was reimbursed.

IX. Billing

C. Invoices should be billed at the provider's usual and customary rate. Reimbursement shall be an amount pre-negotiated between the provider and carrier or if there is no pre-negotiated amount, the fair and reasonable rate. A fair and reasonable reimbursement shall be the same as the fees set for the AD codes in the 1991 Medical Fee Guideline.

As the 1996 MFG mentions, the 1991 MFG should be used to determine fair and reasonable reimbursement for D codes. The MFG does not list a reimbursement rate for an interferential stimulator, but the 1991 MFG lists rates for neuromuscular stimulators as follows:

<u>CODE</u>	<u>DESCRIPTION</u>	<u>PURCHASE</u>	<u>RENTAL</u>
D0550	Muscle stimulator	1050.00	150.00

C. Evidence and Arguments

SORM points out that no specific reimbursement code exists for an "interferential stimulator." SORM argues, however, that an interferential stimulator is essentially the same as a neuromuscular stimulator, and it reimbursed Provider at the prescribed rate for a neuromuscular stimulator. SORM called Ms. Jennifer Dawson as its witness. Ms. Dawson is a medical dispute and audit specialist at SORM. She oversees payments of medical bills by SORM and is familiar with the coding for DME. Ms. Dawson testified that an interferential stimulator functions the same as a neuromuscular stimulator except that it has a higher current or frequency for deeper muscle penetration. She stated that the dates of service in this case fall under the 1996 MFG, which in turn incorporates the 1991 MFG. Based on those guidelines, the purchase of a neuromuscular stimulator is reimbursed at \$1,050.00, less the first month's rent of \$150.00, for a net purchase price of \$900.00. These are the amounts SORM paid to Provider in this case. Ms. Dawson stated that Amerimed supported its claim before MRD with copies of higher payments made by other insurance carriers. However, she pointed out that those reimbursements involved carriers paying benefits in other states, not in Texas. In her view, the TWCC MFG controls reimbursement in this case, and SORM properly paid Provider for the interferential stimulator under the MFG.

As noted previously, Provider did not attend the hearing or present any evidence. However, SORM did offer into evidence the documents submitted to MRD, including Provider's documents. As noted by Ms. Dawson, these included examples of higher payments made by other carriers for interferential stimulators, but they involved injured workers and carriers from California, Idaho, Florida, and Wisconsin. They did not include payments involving any Texas carriers or injured employees from Texas.

D. ALJ's Analysis and Decision

The issue in this case is whether the interferential stimulator should be reimbursed at a rate significantly higher than a neuromuscular stimulator. Ms. Dawson testified that an interferential stimulator is essentially the same type of machine as a neuromuscular stimulator, and Provider offered no evidence to dispute this contention. Both a neuromuscular stimulator and an interferential stimulator are used to reduce pain following an injury. The only difference is the voltage or the electrical frequency of the stimulation. Although the machines are similar, Provider charged significantly more for an interferential stimulator.

The only support in the record for Provider's charges was evidence of higher payments made by other carriers. But as pointed out by SORM, those payments involved carriers and injured employees from other states, not from Texas. In contrast, the TWCC MFG controls in this case. Based on the evidence presented, the ALJ finds that the MFG for neuromuscular stimulators should apply to the interferential stimulator at issue in this case. Therefore, the ALJ orders that Provider is not entitled to any additional reimbursement for the interferential stimulator provided to Claimant

III. FINDINGS OF FACT

1. On ____, Claimant ____ suffered a work-related injury.
2. In the course of Claimant's rehabilitation, Respondent, Amerimed International Inc., provided Claimant with durable medical equipment, specifically an interferential stimulator.
3. The interferential stimulator was rented for two months and then purchased.
4. Respondent sought reimbursement for the interferential stimulator from SORM, which provided workers' compensation insurance coverage for Claimant's injury.
5. Petitioner reimbursed Respondent at the rate set for a neuromuscular stimulator.
6. Respondent made a timely request to the Texas Workers' Compensation Commission's Medical Review Division (MRD) for medical dispute resolution with respect to the requested reimbursement.
7. The MRD granted Respondent's request for additional reimbursement in a decision dated January 23, 2004.
8. SORM requested in a timely manner a hearing with the State Office of Administrative Hearings (SOAH), seeking review and reversal of the MRD decision.

9. The Commission mailed timely notice of the hearing's setting to the parties at their addresses. The notice of hearing listed the time, place, and nature of the hearing; included a statement of the legal authority and jurisdiction under which the hearing was to be held; referred to particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.
10. A hearing in this matter convened on September 17, 2004, at the SOAH hearing facilities in Austin, Texas. SORM participated in the hearing but Provider did not participate.
11. The Commission adopted the Medical Fee Guideline (MFG), which specifies amounts payable for particular billing codes.
12. There is no specific billing code or maximum allowable reimbursement (MAR) for an interferential stimulator.
13. The 1996 DME Ground Rules state that a fair and reasonable reimbursement is the same as the fees set for the "D" codes in the 1991 Medical Fee Guideline.
14. The 1991 DME Ground Rules list \$1,050.00, less one month's rent of \$150.00, as the reimbursement rate for the purchase of a neuromuscular stimulator.
15. Because an interferential stimulator is similar in function to a neuromuscular stimulator, it is reasonable to use the billing code and MAR for a neuromuscular stimulator in determining a fair and reasonable reimbursement fee for the interferential stimulator.
16. SORM properly reimbursed Respondent a total of \$1,050.00 less the first month's rent of \$150.00 for the interferential stimulator provided by Respondent to Claimant ____

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction over this matter pursuant to the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. § 413.031.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, TEX. GOV'T CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMIN. CODE § 133.305(g) and §§148.001-148.028.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Petitioner SORM bore the burden of proof in this case, pursuant to 28 TEX. ADMIN. CODE §148.21(h).

6. Based upon the Findings of Fact, the interferential stimulator was properly reimbursed at the rate established for neuromuscular stimulators.
7. Petitioner should not be required to reimburse Respondent additional money for the claims made the basis of this proceeding.

ORDER

IT IS THEREFORE, ORDERED that Petitioner, State Office of Risk Management, is not required to pay additional reimbursement to Amerimed International, Inc. for the interferential stimulator provided to Claimant ____

Signed October 5, 2004.

**THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**