SOAH DOCKET NOS.
453-03-0577.M4 – MDR Tracking No. M4-02-1754-01
453-03-0580.M4 – MDR Tracking No. M4-02-3384-01
453-05-0560.M4 – MDR Tracking No. M4-03-7575-01

VISTA HEALTHCARE, INC.,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
v.	§	**OF**
	§	
AMERICAN HOME ASSURANCE	§	
COMPANY	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

I. INTRODUCTION

Vista Healthcare, Inc. (Vista) requested a hearing to contest decisions by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) denying additional payment for ambulatory surgical center (ASC) services.[1] Vista operated ASCs in Texas, and provided surgical services to patients not requiring in-patient hospitalization. As related to these dockets, Vista billed American Home Assurance Company (Carrier) for services provided to three Claimants.[2] Carrier reimbursed less than the billed amount and Vista requested medical dispute resolution before MRD. MRD subsequently declined to order any additional payment for the services because Vista did not demonstrate that the billed amount was fair and reasonable. After considering all of the evidence and arguments, the Administrative Law Judge (ALJ) concludes that Vista failed to show that it is entitled to additional reimbursement.

In light of common legal and factual issues, these dockets were joined with other cases for hearing. On June 25, 2007, ALJ Catherine C. Egan held a consolidated contested case hearing that included these three dockets at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Vista appeared

[1] Effective September 1, 2005, the functions of the Commission were transferred to the newly-created Division of Workers' Compensation of the Texas Department of Insurance. This case arose before that transfer of authority, but only recently went to hearing because of related ongoing litigation that had a bearing on the handling of ambulatory surgical center cases.

[2] Because these cases were heard together, and the issues are similar, the ALJ issues this single decision in the three dockets involved.

through its attorneys, Cristina Hernandez and Eric Carter. Carrier appeared through its attorney, Tracey L. Tobin. The record closed on July 23, 2007, following the submission of written closing arguments.

II. APPLICABLE LAW

The Texas Workers' Compensation Act (the Act) is found at TEX. LAB. CODE ANN. § 401.001, *et seq.* Under the Act, workers' compensation insurance covers all medically necessary health care, including all reasonable medical aid, examinations, treatments, diagnoses, evaluations, and services reasonably required by the nature of the compensable injury and reasonably intended to cure or relieve the effects naturally resulting from a compensable injury.[3] Section 413.011 of the Act provides that the Commission by rule shall establish medical policies and guidelines relating to fees charged or paid for medical services for employees who suffer compensable injuries, including guidelines relating to payment of fees for specific medical treatments or services. That section further provides that guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control.[4] Moreover, the guidelines may not provide for payment of a fee 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. In setting such guidelines, the increased security of payment afforded by the Act must be considered.

However, during all time periods relevant to these cases, the Commission had not established any payment guidelines for ASC services. In such a situation, an insurance carrier is required to reimburse the services at fair and reasonable rates as described in Section 413.011(d) of the Act.[5] Fair and reasonable is defined as:

> Reimbursement that meets the standards set out in § 413.011 of the Texas Labor Code, and the lesser of a health care provider's usual and customary charge, or
>
> > (A) the maximum allowable reimbursement, when one has been established in an applicable Commission fee guideline,

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[3] TEX. LAB. CODE ANN. § 401.011(19) and (31). Unless otherwise noted, all cites to statutes and rules are to those in effect in 2001—during the relevant time periods in issue in this case.

[4] § 413.011(d) of the Act.

[5] 28 TEX. ADMIN. CODE (TAC) § 134.1(f).

> (B) the determination of a payment amount for medical treatment(s) and/or service(s) for which the Commission has established no maximum allowable reimbursement amount, or
> (C) a negotiated contract amount.[6]

Therefore, when the Commission has not established a fee guideline for a particular procedure, service, or item, the reimbursement amount is to be determined using the same factors used by the Commission in setting fee guidelines. The appropriate "fair and reasonable" reimbursement is the lowest one that ensures the quality of medical care and accounts for the factors used by the Commission in setting fee guidelines.

As the party requesting a hearing before SOAH, Vista has the burden of proving by a preponderance of the evidence[7] that the payment amounts being sought are fair and reasonable in compliance with the Act in order to prevail.[8]

III. DISCUSSION AND ANALYSIS

In the three dockets involved in this case, the claimants sustained a work-related injury. The compensability of the injuries is not in dispute. The claimants all received care at a Vista ASC facility. The physicians' charges are not in dispute in this proceeding; nor is there a dispute about the treatments given. Rather, what is in dispute is the amount billed separately by Vista for its facility charges associated with the procedures performed by the treating physicians.

In these dockets, Vista billed Carrier its usual and customary charges associated with the surgery performed. Carrier reimbursed a portion of the amount billed, an amount greater than the maximum allowable reimbursement (MAR) under the hospital fee guideline for a hospital billing for similar services. The amounts charged and paid are set forth in the table below. Although Vista initially sought reimbursement for 100 percent of its billed charges, Vista now seeks additional reimbursement that would provide it a total reimbursement equal to 70 percent of its billed charges.

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[6] 28 TAC § 133.1(a)(8).

[7] 28 TAC § 148.14(a) (eff. June 9, 2005). The prior rules regarding burden of proof, located at 28 TAC § 148.21(h) and (i), also assigned the burden of proof to the appealing party.

[8] 28 TAC § 133.307(g)(3)(D).

Cause No.	Surgery	Date of Service	Total Charged*	Amt. Paid*
453-03-0577.M4	Cervical Epidural Steroid Injections	01-19-01	$5,670.08	$3,855.66
453-03-0580.M4	Knee Arthroscopy	05-24-01	$21,092.13	$10,511.51
453-05-0560.M4	Shoulder Arthroscopy	07-25-02	$18,997.64	$8,342.39

* The amounts shown are taken from the MRD findings.

To support its request for additional reimbursements, Vista offered into evidence a summary of its 2001 billing history. This billing history summary included the amounts Vista billed and the percentages paid by various carriers, Medicare, Medicaid, and private entities. The amounts billed for the same or similar services varied greatly and the percentages paid ranged from four percent to 170 percent. Objections to the evidence were sustained and the evidence was excluded. Vista's only witness, Jean Wincher,[9] opined that because, on average, Vista received reimbursement for 70 percent of its billed charges, then reimbursement of 70 percent of its billed charges is fair and reasonable. Ms. Wincher conceded that the billed amounts for the same or similar services varied greatly at times and that the percentages paid ranged from very low amounts to over 100 percent.

A percentage of the amount Vista received in reimbursement for its services does not establish a fair and reasonable reimbursement rate. Billed charges and historical reimbursement rates that are inconsistent for similar procedures, particularly for a single facility, do not show compliance with the factors identified in Section 413.011 of the Act for determining a fair and reasonable reimbursement.[10] In addition, Vista's only witness could not verify that Vista considered any of the statutory factors in determining a fair and reasonable reimbursement rate.

[9] Ms. Wincher is the vice-president of billing services for Doctors Practice Management, and is in charge of Vista's admissions, billings, and collections.

[10] In fact, the Commission has previously rejected a "percentage of billed charges" methodology for determining fair and reasonable reimbursement amounts because it does not comply with the statutory directive of cost control.

Vista also maintains that it billed Carrier its usual and customary fees for the services delivered. That is not the issue. The issue is whether the reimbursement Vista seeks is fair and reasonable under the Act. The amount Vista billed, and the 70 percent Vista now seeks, exceeds the amount of reimbursement a hospital could recover for the same procedures performed in the hospital for a one-day stay and treatment ($1,118.00). Vista offered no reasonable explanation for this difference. Therefore, because Vista has failed to show that its charges (or even 70% of its charges) represent a fair and reasonable reimbursement under the applicable legal guidelines, the ALJ concludes that Vista is not entitled to any additional reimbursement. In support of this determination, the ALJ makes the following findings of fact and conclusions of law.[11]

IV. FINDINGS OF FACT

1. Vista HealthCare, Inc. (Vista) operated ambulatory surgical centers (ASCs) in Texas, and provided surgical services to patients not requiring in-patient hospitalization.

2. Each of the claimants involved in the three dockets addressed by this order received care at a Vista ASC facility for their compensable, work-related injuries.

3. The claimants each received a different surgical procedure.

4. American Home Assurance Company (Carrier) is the insurance carrier responsible for the workers' compensation insurance benefits administered to each of the claimants.

5. Vista billed Carrier its usual and customary charges for the services provided to each of the three claimants, based on the surgery performed and services provided, as follows:

·	453-03-0577.M4	1-19-01	$ 5,670.08
·	453-03-0580.M4	5-24-01	$21,092.13
·	453-05-0560.M4	7-25-02	$18,997.64

6. Carrier reimbursed portions of the amount billed for each claimant, specifically:

·	453-03-0577.M4	$ 3,855.66
·	453-03-0580.M4	$10,511.51
·	453-05-0560.M4	$ 8,342.39

[11] The findings and conclusions apply to each of the dockets involved. Because the outcome of this case does not rest on any claimant-specific circumstances, the ALJ makes no specific findings related to the individual claimants or their injuries.

7. The amounts paid by Carrier to Vista for these claimants is greater than the maximum allowable reimbursement (MAR) under the hospital fee guideline for a hospital billing for similar services for a single day.

8. Vista sought additional reimbursement and submitted to the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) a request for fee dispute resolution in the three dockets.

9. MRD issued its Findings and Decision in each of the three dockets, ordering no additional reimbursement by Carrier.

10. Vista requested a hearing in each docket, and the Commission issued a timely notice of hearing and referred the cases to the State Office of Administrative Hearings (SOAH) for assignment of an Administrative Law Judge (ALJ) to hear the disputes.

11. All parties received adequate notice of not less than 10 days of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

12. On June 25, 2007, SOAH ALJ Catherine C. Egan held a contested case hearing concerning the referenced dockets at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Carrier appeared at the hearing through its attorney, Tracey Tobin. Vista appeared through its attorneys, Cristina Hernandez and Eric Carter. The record closed on July 23, 2007, following the filing of written closing arguments.

13. The reimbursements that Vista has received from different insurance carriers for the same services in issue in this proceeding varied significantly.

14. The amount Vista billed and the amount Vista now seeks in reimbursement for each of the surgical procedures exceed the amount of reimbursement a hospital would have received for the same procedures performed in the hospital, $1,118.00 for a one-day stay and treatment, including operating room, recovery room, medications, and supplies.

V. CONCLUSIONS OF LAW

15. The Texas Workers' Compensation Commission (Commission)(now the Division of Workers' Compensation of the Texas Department of Insurance) has jurisdiction over this matter pursuant to the Texas Workers' Compensation Act. TEX. LAB. CODE ANN. § 413.031.

16. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073 and 413.031 and TEX. GOV'T CODE ANN. ch. 2003.

17. In each case in issue in this proceeding, the request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE (TAC) § 148.3.

18. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

19. Petitioner had the burden of proof in this proceeding pursuant to 28 TAC § 148.21(h) and (i), now § 148. 14(a).

20. Workers' compensation insurance covers all medically necessary health care, which includes all reasonable medical aid, examinations, treatments, diagnoses, evaluations, and services reasonably required by the nature of the compensable injury, and reasonably intended to cure or relieve the effects naturally resulting from a compensable injury. It includes procedures designed to promote recovery or to enhance the injured worker's ability to get or keep employment. TEX. LAB. CODE ANN. § 401.011(19) and (31).

21. At the time Vista provided the ASC service to Claimants, the Commission had not adopted an ASC Fee Guideline.

22. Reimbursement for services not identified in an established fee guideline shall be reimbursed at *fair and reasonable* rates as described in the Texas Workers' Compensation Act, Section 8.21(b), until such time that specific guidelines are established by the commission. 28 TAC § 134.1(f) (Emphasis added).

23. Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee 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. The commission shall consider the increased security of payment afforded by this subtitle in establishing fee guidelines. TEX. LAB. CODE ANN. § 413.011.

24. A "usual and customary" charge may be the same as a "fair and reasonable" reimbursement amount only if there is evidence that the factors set out in § 413.011 of the Act are satisfied; that is, that the amount achieves effective medical cost control, taking into account payments made to others with an equivalent standard of living, and considering the increased security of payment. 28 TAC § 133.1(a)(8).

25. Vista failed to show that its usual and customary billed charges, or even 70 percent of its billed charges (the amount sought in this proceeding), are fair and reasonable.

26. Vista has failed to show by a preponderance of the evidence that it is entitled to additional reimbursement for the services in issue in this proceeding.

ORDER

THEREFORE IT IS ORDERED that Vista HealthCare, Inc. is not entitled to any additional reimbursement from American Home Insurance Company for the services in issue in these three dockets.

SIGNED September 21, 2007.

CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS