

**SOAH DOCKET NO. 453-05-1679.M4
MDR NO. M4-03-1858-01**

**LIBERTY MUTUAL FIRE INSURANCE § BEFORE THE STATE OFFICE
COMPANY, §
Petitioner §
V. § OF
§
VISTA MEDICAL CENTER HOSPITAL, §
Respondent § ADMINISTRATIVE HEARINGS**

JOINED WITH

**SOAH DOCKET NO. 453-05-3384.M4
MDR NO. M4-05-2051-01**

**VISTA MEDICAL CENTER HOSPITAL, § BEFORE THE STATE OFFICE
Petitioner §
V. § OF
§
LIBERTY MUTUAL FIRE INSURANCE §
COMPANY, §
Respondent § ADMINISTRATIVE HEARINGS**

AND

**SOAH DOCKET NO. 453-05-6908.M4
MDR NO. M4-03-9105-01**

**LIBERTY MUTUAL FIRE INSURANCE § BEFORE THE STATE OFFICE
COMPANY, §
Petitioner §
V. § OF
§
VISTA MEDICAL CENTER HOSPITAL, §
Respondent § ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Liberty Mutual Fire Insurance Company (Carrier) requested a hearing on an October 8, 2004 decision by the Medical Review Division (MRD) of the Texas Department of Insurance, Division of

Workers' Compensation (Division)¹ ordering additional reimbursement to Vista Medical Center Hospital (Provider) for a hospital stay provided to Claimant, an injured worker.² MRD apparently withdrew the October 8, 2004 decision on November 1, 2004, and issued a new decision dated November 22, 2004.³

Provider requested a hearing on the November 22, 2004 MRD decision denying additional reimbursement to Provider for a hospital stay provided to Claimant, an injured worker.⁴ In both dockets, Provider argued that reimbursement for this admission should be based on the Stop-Loss Exception to the per diem reimbursement methodology contained in the 1997 Acute Care Inpatient Hospital Fee Guideline (1997 ACIHFG).⁵

Both dockets involve the same Claimant, the same dates of service and the same facts.⁶ The only difference is that in Docket No. 453-05-1679.M4, MRD applied the Stop-Loss Exception while in Docket No. 453-05-3384.M4, MRD stated Provider was not entitled to additional reimbursement because it failed to show that its charges were usual and customary.⁷

In the third case, SOAH Docket No. 453-05-6908.M4, Carrier requested a hearing on an

¹ Effective September 1, 2005, the legislature dissolved the Texas Workers' Compensation Commission (Commission) and created the Division of Workers' Compensation within the Texas Department of Insurance. Act of June 1, 2005, 79th Leg., R.S., ch. 265, § 8.001, 2005 Tex. Gen. Laws 469, 607. This Decision and Order refers to the Commission and its successor collectively as the Division.

² SOAH Docket No. 453-05-1679.M4.

³ The Division failed to file a proper dismissal motion in SOAH Docket No. 453-05-1679.M4. The MRD decision of November 22, 2004, was filed at SOAH under a new docket number, SOAH Docket No. 453-05-3384.M4.

⁴ SOAH Docket No. 453-05-3384.M4.

⁵ The 1997 ACIHFG established a general reimbursement scheme for all inpatient services provided by an acute care hospital for medical and/or surgical admissions using a service-related standard per diem amount. Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the Stop-Loss Threshold as described in paragraph (6) of 28 TEX. ADMIN. CODE (TAC) § 134.401(c). This independent reimbursement mechanism, the Stop-Loss Method or Stop-Loss Methodology, is sometimes referred to as the Stop-Loss Exception or the Stop-Loss Rule.

⁶ The dates of service are from December 8, 2001, through December 13, 2001.

⁷ It is not clear whether MRD found that Provider failed to show the billed charges were Provider's usual and customary charges or whether Provider failed to show why its billed charges differed from the "fee schedule or usual and customary values as established by Ingenix."

April 28, 2005 decision by MRD ordering additional reimbursement to Provider for a hospital stay provided to Claimant. This case involves the same Claimant and the same parties, but a different date of service.⁸

With the agreement of the parties, the Administrative Law Judges (ALJs) have joined the cases for decision. The ALJs find the Stop-Loss Exception should be followed in this joined proceeding. Accordingly, in SOAH Docket Nos. 453-05-1679.M4 and 453-05-3384.M4, Carrier is ordered to pay additional reimbursement in the amount of \$26,365.28, plus any applicable interest. In SOAH Docket No. 453-05-6908.M4, Carrier is ordered to pay additional reimbursement in the amount of \$14,539.99, plus any applicable interest.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

In SOAH Docket Nos. 453-05-1679.M4 and 453-05-6908.M4, Carrier filed a timely and sufficient request for hearing. In SOAH Docket No. 453-05-3384.M4, Provider filed a timely and sufficient request for hearing. Notice of hearing in each of the three dockets was appropriately issued to the parties. The hearing on the merits for the three dockets were joined by agreement and convened and concluded on February 12, 2008.⁹ At the request of the parties, the records remained open until February 22, 2008, to allow the parties to investigate whether cross-requests for contested case hearings had been filed.

II. DISCUSSION

A. Factual Overview

⁸ The dates of service are from August 28, 2002, through September 9, 2002.

⁹ Beginning in 2003, the Division began referring a significant number of ACIHFG cases to SOAH. Between 2003 and August 31, 2005, approximately 885 ACIHFG cases were referred to SOAH for contested case hearings on issues including the Stop-Loss Exception, audits, and the reimbursement of implantables. In order to efficiently and economically manage this growing number of cases, SOAH in late 2004 and early 2005 began to join the cases into a Stop-Loss Docket, and the cases were abated. By the close of the 2005 regular legislative session, SOAH realized a finite, but still unknown, number of Stop-Loss cases would be referred to SOAH by the Division through August 31, 2005.

The basic facts were uncontested. Claimant sustained a compensable injury and was admitted to Provider, where Claimant underwent treatment. In SOAH Docket Nos. 453-05-1679.M4 and 453-05-3384.M4, after Claimant was discharged from the hospital, Provider submitted a bill to Carrier in the amount of \$135,256.91, based on Provider’s usual and customary charges for the inpatient stay and surgical procedure. To date, Carrier has paid \$75,077.40.

In SOAH Docket No. 453-05-6908.M4, after Claimant was discharged from the hospital, Provider submitted a bill to Carrier in the amount of \$270,342.50, based on Provider’s usual and customary charges for the inpatient stay and surgical procedure. To date, Carrier has paid \$117,040.92.

B. Issues

1. Summary of Positions and ALJs’ Decision

In summary, the parties’ positions and ALJs’ findings are as follows in SOAH Docket Nos. 453-05-1679.M4 and 453-05-3384.M4:

	MRD¹⁰	MRD¹¹	Provider	Carrier	ALJs
Charges	\$135,256.91	\$135,256.91	\$135,256.91	\$135,256.91	\$135,256.91
Reimbursement	x 75% ¹²	Not Stated ¹³	x 75%	unknown ¹⁴	x 75%¹⁵

¹⁰ SOAH Docket Nos. 453-05-1679.M4.

¹¹ SOAH Docket Nos. 453-05-3384.M4.

¹² In Docket No. 453-05-1679.M4, MRD determined that the Stop-Loss Exception did apply since the Provider billed its usual and customary charges and the post-audit charges exceeded \$40,000.00. Using the Stop-Loss Exception, MRD calculated \$101,442.68 total reimbursement (\$135,256.91 x 75%). After subtracting an amount paid to date of \$75,077.70, MRD determined a balance of \$26,364.98 was due Provider. MRD’s computation contains a \$0.30 mathematical error.

¹³ In Docket No. 453-05-3384.M4, MRD did not apply the Stop-Loss Exception and ordered no additional reimbursement.

¹⁴ Carrier reimbursed Provider \$59,719.75 for the 5-day hospitalization and \$15,357.65 for implantables. Carrier noted the \$63,344.000 charged for implantables exceeded the usual and customary values established by Ingenix. Carrier reduced the charges for services and implantables to an unspecified “Fee Schedule Allowance.”

¹⁵ The Stop-Loss Exception applies because Provider’s post-audit usual and customary charges exceed \$40,000.

Methodology					
Reimbursement Amount	\$101,442.68	Not Stated ¹⁶	\$101,442.68	\$75,077.40	\$101,442.68
Less Payment	(\$75,077.40)	(\$75,077.40)	(\$75,077.40)	(\$75,077.40)	(\$75,077.40)
Balance Due Provider	\$26,364.98	\$0.00 ¹⁷	\$26,365.28	\$0.00	\$26,365.28

In summary, the parties' positions and ALJs' findings are as follows in SOAH Docket No. 453-05-6908.M4:

	MRD	Provider	Carrier	ALJs
Charges	\$270,342.50	\$270,342.50	\$270,342.50	\$270,342.50
Post-Audit Charges	\$175,441.22 ¹⁸	\$270,342.50	\$139,091.22 ¹⁹	\$268,280.22²⁰
Reimbursement Methodology	modified Stop-Loss ²¹	x 75%	modified Stop-Loss ²²	x 75%

¹⁶ In its November 22, 2004 Amended Decision, MRD acknowledged the total amount billed and audited exceeds the \$40,000.00 minimum Stop-Loss Threshold.

¹⁷ MRD stated that although Provider billed \$63,344.00 for implantables, Carrier paid \$15,357.65 for implantables because the charge for implantables exceeded the usual and customary values as established by Ingenix. Based upon this statement by Carrier, MRD concluded the Provider "failed to support that charges billed were usual and customary."

¹⁸ MRD noted that Carrier questioned the \$165,539.00 charge for implantables and paid only \$39,985.00 "based on a cost plus 10% approach." MRD stated "the key issue is what amount would represent the usual and customary charges for these implantables in determining the total audited charges." MRD also stated that Provider did not provide any documentation on the actual cost of the implantables or how the Provider's charges were derived. MRD then stated that "based on a review of numerous medical disputes and our experience, the average markup for implantables in many hospitals is 200%." MRD then "derived" a \$36,350.00 cost basis for the implantables by dividing Carrier's \$39,985.00 reimbursement by 110%. MRD calculated a \$72,700.00 usual and customary charge for the implantables by multiplying the derived implantable cost of \$36,350.00 by the implied factor of 200%. After determining that Provider "did not submit persuasive documentation to challenge" Carrier's audit, MRD stated the audited charges, excluding implantables, equaled \$102,741.22. MRD added its computed implantables charge of \$72,700.00 to the \$102,741.22 for other audited charges and calculated total audited charges of \$175,441.22.

¹⁹ Derived cost basis implantable charges of \$36,350.00 and post-audit other charges of \$102,741.22.

²⁰ Because Provider did not request a hearing to contest MRD's adverse finding as to the \$2,062.28 audit reduction in non-implantable charges, the ALJs reduce the total charges by that amount.

²¹ While MRD held that the Stop-Loss Exception applied because the admission involved "unusually extensive services," MRD did not utilize the hospital's usual and customary charges as required by rule.

Reimbursement Amount	\$131,580.01 ²³	\$202,756.88	\$117,040.92	\$201,210.17
Less Payment	(\$117,040.92)	(\$117,040.92)	(\$117,040.92)	(\$117,040.92)
Balance Due Provider	\$14,539.99 ²⁴	\$85,715.96	\$0.00	\$14,539.99²⁵

2. Background

When a hospital's total audited bill is greater than \$40,000, the Division's Stop-Loss Exception applies, and the hospital is reimbursed at 75% of its total audited bill. The purpose of the Stop-Loss Methodology is "to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker."²⁶ The following legal issues in this case were decided by a SOAH En Banc Panel²⁷ (En Banc Panel), and those determinations are incorporated herein. Legal arguments related to these issues will not be addressed, other than in the Conclusions of Law.

3. The ALJs conclude that a hospital's post-audit usual and customary charges for items listed in 28 TAC § 134.401(c)(4) are the audited charges used to calculate whether the Stop-Loss Threshold has been met for a workers' compensation admission. The ALJs decline to adopt the Carriers' argument to use the carve-out reimbursement amounts in § 134.401(c)(4) as audited charges, and they decline to adopt the Division's argument to use a fair-and-reasonable amount as determined by a carrier in its bill review as audited charges.
4. The ALJs find that when the Stop-Loss Methodology applies to a workers' compensation hospitalization, all eligible items, including items listed in

²² After excluding implantables and reducing the remaining billed charges by \$2,062.28 per its audit, Carrier paid the balance at 75 percent. Carrier re-priced the implantables at its usual and customary "per the geographical area" and reimbursed Provider \$39,985.00 for implantables at cost plus 10 percent.

²³ MRD calculated the reimbursement amount as \$131,580.91 (\$175,441.22 total audited charges x 75%).

²⁴ The \$14,539.99 balance due Provider was calculated by subtracting the \$117,040.92 reimbursement already paid from the total reimbursement due of \$131,580.91.

²⁵ Because Provider did not request a contested case hearing, any recovery in this case is limited to the additional reimbursement ordered by MRD.

²⁶ 28 TAC § 134.401(c)(6).

²⁷ En Banc Panel Order in Consolidated Stop-Loss Legal Issues Docket, SOAH Docket No. 453-03-1487.M4 (Lead Docket), issued January 12, 2007.

§ 134.401(c)(4), are reimbursed at 75% of their post-audit amount. Items listed in § 134.401(c)(4) are not reimbursed at the carve out amounts provided in that section when the Stop-Loss Methodology is applied.

5. The ALJs conclude that any reasons for denial of a claim or defenses not asserted by a Carrier before a request for medical dispute resolution may not be considered, whether or not they arise out of an audit. The ALJs also conclude that Carriers' audit rights are not limited by § 134.401(c)(6)(A)(v) when the Stop-Loss Methodology applies. In such cases, carriers may audit in accordance with § 134.401(b)(2)(c).
6. The ALJs find that a hospital establishes eligibility for applying the Stop-Loss Methodology under § 134.401(c)(4) when total eligible amounts exceed the Stop-Loss Threshold of \$40,000. There is no additional requirement for a hospital to establish that any or all of the services were unusually costly or unusually extensive.²⁸

Finally, in reply to a request for clarification, the En Banc Panel found that when referring to a hospital's usual and customary charges, the rules are referring to the hospital's own usual and customary charges and not to charges that are an average or median of other hospitals' charges.²⁹ Provider charged its usual and customary charges for the particular items or service.

In summary, the ALJs conclude that the Stop-Loss Threshold was met in this case and that the amounts in dispute should be calculated accordingly.

III. FINDINGS OF FACT

1. Claimant sustained a compensable injury in the course and scope of his employment; his employer had coverage with Liberty Mutual Fire Insurance Company (Carrier).
2. Vista Medical Center Hospital (Provider) provided medical treatment to Claimant for the compensable injury on two dates of service.
3. For the dates of service from December 8, 2001, through December 13, 2001, Provider submitted itemized billing totaling \$135,256.91 for the services provided to Claimant for the treatment in issue.

²⁸ Because of a typographical error, the En Banc Panel's decision incorrectly cites § 134.401(c)(4) rather than § 134.401(c)(6) as the applicable rule.

²⁹ Letter from ALJ Catherine C. Egan dated February 23, 2007.

4. The \$135,256.91 billed was Provider's usual and customary charges for these items and treatments.
5. Carrier has issued payments of \$75,077.40 to Provider for the services in question.
6. Carrier denied further reimbursement to Provider.
7. Provider requested Dispute Resolution Services from the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission).
8. Effective September 1, 2005, the legislature dissolved the Commission and created the Division of Workers' Compensation within the Texas Department of Insurance. The Commission and its successor are collectively referred to as the Division.
9. MRD issued its Findings and Decision in Docket No. 453-05-1679.M4 on October 8, 2004, holding that further reimbursement was owed by Carrier. MRD issued its Findings and Decision in Docket No. 453-05-3384.M4 on November 22, 2004, holding that no additional reimbursement was owed by Carrier.
10. Carrier timely filed a request for a contested case hearing on the MRD's October 8, 2004 decision. Provider timely filed a request for a contested case hearing on the MRD's November 22, 2004 decision.
11. Although MRD withdrew its October 8, 2004 Findings and Decision on November 1, 2004, MRD never filed a proper motion to dismiss the case.
12. Because SOAH Docket Nos. 453-05-1679.M4 and 453-05-3384.M4 involved the same Claimant, dates of service, and facts, the parties agreed to join the cases for hearing and decision.
13. In SOAH Docket Nos. 453-05-1679.M4 and 453-05-3384.M4, Provider's total audited charges under § 134.401(c)(6)(A)(v) are \$135,256.91, which allows Provider to obtain reimbursement under the Division's Stop-Loss Methodology.
14. In SOAH Docket Nos. 453-05-1679.M4 and 453-05-3384.M4, under the Stop-Loss Methodology, Provider is entitled to total reimbursement of \$101,442.68. After deduction of Carrier's prior payment of \$75,077.40, Provider is entitled to additional reimbursement of \$26,365.28, plus any applicable interest, under the Stop-Loss Methodology.
15. For the dates of service from August 28, 2002, through September 9, 2002, Provider submitted itemized billing totaling \$270,342.50 for the services provided to Claimant for the treatment in issue.
16. The \$270,342.50 billed was Provider's usual and customary charges for these items and treatments.

17. Carrier has issued payments of \$117,040.92 to Provider for the services in question.
18. Carrier denied further reimbursement to Provider.
19. Provider requested Dispute Resolution Services MRD.
20. MRD issued its Findings and Decision in SOAH Docket No. 453-05-6908.M4 on April 28, 2005, holding that further reimbursement was owed by Carrier.
21. Carrier timely filed a request for a contested case hearing on the MRD's April 28, 2005 decision. Provider did not request a contested case hearing on MRD's April 28, 2005 decision.
22. Because SOAH Docket No. 453-05-6908.M4 involved the same Claimant as SOAH Docket Nos. 453-05-1679.M4 and 453-05-3384.M4, the parties agreed to join the cases for hearing and decision.
23. All parties were provided not less than 10-days notice of hearing and of their rights under the applicable rules and statutes.
24. On February 12, 2008, Administrative Law Judges Howard S. Seitzman and Tommy L. Broyles convened a hearing on the merits at the hearing facilities of the State Office of Administrative Hearings (SOAH) in Austin, Texas. Carrier and Provider were present and represented by counsel. The Division did not participate in the hearing. The hearing concluded that day but the records remained open until February 22, 2008.
25. In SOAH Docket No. 453-05-6908.M4 Provider's total audited charges under § 134.401(c)(6)(A)(v) are \$268,280.22, which allows Provider to obtain reimbursement under the Division's Stop-Loss Methodology.
26. Under the Stop-Loss Methodology, Provider is entitled to total reimbursement of \$201,210.17. After deduction of Carrier's prior payment of \$117,040.92, Provider is entitled to additional reimbursement of \$84,169.25, plus any applicable interest, under the Stop-Loss Methodology. However, because Provider did not request a hearing to contest the April 28, 2005 MRD decision, Provider's is entitled to recover only the additional reimbursement of \$14,539.99 ordered by MRD.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. In SOAH Docket No. 453-05-1679.M4, Carrier timely filed a request for a contested case hearing on the MRD's October 8, 2004 decision as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3. In SOAH Docket No. 453-05-3384.M4, Provider timely filed a request for a

contested case hearing on the MRD's November 22, 2004 decision, as specified in 28 TAC § 148.3. In SOAH Docket No. 453-05-6908.M4, Carrier timely filed a request for a contested case hearing on the MRD's April 28, 2005 decision as specified in 28 TAC § 148.3.

3. Proper and timely notice of the hearing was provided to the parties in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. The party seeking relief had the burden of proof in this proceeding pursuant to 28 TAC § 148.21(h) and (i).
5. All eligible items, including the items listed in 28 TAC § 131.401(c)(4), are included in the calculation of the \$40,000 Stop-Loss Threshold.
6. In calculating whether the Stop-Loss Threshold has been met, all eligible items are included at the hospital's usual and customary charges in the absence of an applicable MARS or a specific contract.
7. The carve-out reimbursement amounts contained in 28 TAC § 134.401(c)(4) are not used to calculate whether the Stop-Loss Threshold has been met.
8. When the Stop-Loss Methodology applies to a workers' compensation admission, all eligible items, including items listed in 28 TAC § 134.401(c)(4), are reimbursed at 75% of their post-audit amount.
9. Under the Stop-Loss Methodology, items listed in 28 TAC § 134.401(c)(4) are not reimbursed at the carve-out amounts provided in that section when the Stop-Loss Methodology applies.
10. Carriers' audit rights are not limited by 28 TAC § 134.401(c)(6)(A)(v) when the Stop-Loss Methodology applies. In such cases, carriers may audit in accordance with 28 TAC § 134.401(b)(2)(C).
11. Pursuant to 28 TAC § 133.307(j)(2), any defense or reason for denial of a claim not asserted by a carrier before a request for medical dispute resolution may not be considered at the hearing before SOAH, whether or not it arises out of an audit.
12. A hospital, Provider in this case, establishes eligibility for applying the Stop-Loss Methodology under 28 TAC § 134.401(c)(6) when total eligible charges exceed the Stop-Loss Threshold of \$40,000. There is no additional requirement for a hospital to separately establish that any or all of the services were unusually costly or unusually extensive.
13. The Stop-Loss Methodology applies to this case.
14. The February 17, 2005 Staff Report (Staff Report) by MRD Director Allen C. McDonald, Jr., is not consistent with the Stop-Loss Rule, 28 TAC § 134.401(c)(6), and is not consistent with the Division's prior interpretation of the rule that the \$40,000 Stop-Loss Threshold alone triggered the application of the Stop-Loss Methodology.

15. The Staff Report is not consistent with the Stop-Loss Rule, the preambles to the Stop-Loss Rule published in the *Texas Register*, or MRD decisions issued prior to February 17, 2005.
16. The Staff Report has no legal effect in this case.
17. Applying the Stop-Loss Methodology in SOAH Docket Nos. 453-05-1679.M4 and 453-05-3384.M4, Provider is entitled to total reimbursement of \$101,442.68.
18. As specified in the above Findings of Fact, Carrier has already reimbursed Provider \$75,077.40 of this amount.
19. Based on the foregoing findings of fact and conclusions of law, in SOAH Docket Nos. 453-05-1679.M4 and 453-05-3384.M4 Carrier owes Provider an additional reimbursement of \$26,365.28, plus any applicable interest.
20. Applying the Stop-Loss Methodology in SOAH Docket No. 453-05-6908.M4, Provider is entitled to total reimbursement of \$201,210.17.
21. As specified in the above Findings of Fact, Carrier has already reimbursed Provider \$117,040.92 of this amount.
22. Because Provider did not request a contested case hearing in SOAH Docket No. 453-05-6908.M4, its recovery is limited to the \$14,539.99 additional reimbursement ordered by MRD.
23. Based on the foregoing findings of fact and conclusions of law, in SOAH Docket Nos. 453-05-1679.M4, 453-05-3384.M4, and 453-05-6908.M4, Carrier owes Provider total additional reimbursement of \$40,905.27, plus any applicable interest.

ORDER

It is hereby **ORDERED** that Liberty Mutual Fire Insurance Company reimburse Vista Medical Center Hospital the additional sum of \$40,905.27, plus any applicable interest, for services provided to Claimant.

SIGNED March 18, 2008.

**HOWARD S. SEITZMAN
TOMMY L. BROYLES
ADMINISTRATIVE LAW JUDGES
STATE OFFICE OF ADMINISTRATIVE HEARINGS**