SOAH DOCKET NO. 453-05-2804.M5
TWCC MDR NO. M5-04-3451-01

PACIFIC EMPLOYERS INSURANCE COMPANY,	§	**BEFORE THE STATE OFFICE**
Petitioner and Cross-Respondent	§	
V.	§	**OF**
	§	
	§	
VISTA MEDICAL CENTER HOSPITAL,	§	
Respondent and Cross-Petitioner	§	**ADMINISTRATIVE HEARINGS**
	§	

DECISION AND ORDER NUNC PRO TUNC[1]

Pacific Employers Insurance Company (Carrier) and Vista Medical Center Hospital (Provider) each requested a hearing on a decision by the Medical Review Division (MRD) of the Texas Department of Insurance, Division of Workers' Compensation (Division),[2] ordering additional reimbursement, but less than Provider requested, for a hospital stay provided to Claimant, an injured worker. Provider contended that reimbursement 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).[3] Carrier argued that payment should not be based on the Stop-Loss Exception, but asserted that if the Stop-Loss Exception is found to apply, the amount owed should be reduced for the reasons discussed below. The Administrative Law Judges (ALJs) find the Stop-Loss Exception should be followed and Carrier should be ordered to pay additional reimbursement of $42,954.42, plus any applicable interest.[4]

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[1] The original Decision and Order erroneously stated, on the first page, that Pacific Employers Insurance Company should be ordered to pay 42,937.36, plus any applicable interest. That amount is changed to $42,954.42 to reflect the correct the amount as ordered on the last page of the Decision and Order.

[2] 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.

[3] 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.

[4] ALJ Tommy L. Broyles presided at the hearing. ALJ James W. Norman reviewed the entire record and wrote this decision. ALJ Howard S. Seitzman has reviewed the decision. (It appears that an approximate nine to ten second portion of the hearing, dealing with testimony on duplicate charges, was not recorded. The ALJs believe this testimony would not change the ultimate recommendation.)

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

The MRD issued its decision on October 7, 2004.[5] Carrier and Provider both filed timely and sufficient requests for hearing. Notice of the hearing was appropriately issued to the parties. The hearing convened and concluded on November 15, 2007.[6] The record closed on that date.

II. DISCUSSION

A. Factual Overview

Claimant sustained a compensable injury and was admitted to Provider, where Claimant underwent treatment. After Claimant was discharged from the hospital, Provider submitted a bill to Carrier in the amount of $71,568.65 based on Provider's usual and customary charges for the inpatient stay and surgical procedure. To date, Carrier has paid $10,722.07.

B. Issues

1. Summary of Positions and ALJ's Decision

In summary, the parties' positions and ALJ's findings are as follows:

	MRD	Provider	Carrier	ALJ
Charges	$71,568.65	$71,568.65	$71,568.65	**$71,568.65**
Reimbursement	modified Stop-Loss[7]	x 75%	per diem	**x 75%**

[5] MRD issued an earlier decision on April 30, 2004, that it withdrew on June 8, 2004.

[6] 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.

[7] MRD determined that the Stop-Loss Exception applied, but reduced the payable amount because (1) Provider did not submit records to challenge Carrier's positions that implantables should be paid at cost plus 10 percent; (2) ICU/CCU charges should be reduced as unnecessary per an INTRACORP nurse review; and (3) certain amounts billed were an overcharge, excessive charge, unreasonable charge, duplicate charge, or "unbundled." MRD reduced the amount

	MRD	Provider	Carrier	ALJ
Methodology				
Reimbursement Amount	$35,192.78	$53,676.49	$10,722.07[8]	**$53,676.49[9]**
Less Payment	($5,979.80)	($5,979.80)	($10,722.07)	**($10,722.07)**
Balance Due	$29,212.98	$47,979.80	$0.00	**$42,954.42**

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."[10] The following legal issues in this

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payable to $46,923.71, multiplied that amount times 75 percent, and subtracted $5,979.80 as already paid.

[8] Carrier based its payment on implantables at cost plus 10 percent, an amount for impatient services, and an ICU stay. Ex. P-1 at 46. The parties disagreed over the amount actually paid. MRD said Carrier paid $5,979.80 based on Carrier's initial explanation of benefits (EOB). However, a Carrier witness testified that Carrier's records show $10,722.07 in payments. This showing $10,722.07 as the amount Carrier actually paid is most persuasive.

[9] Carrier's witness testified that Provider submitted $5,835.86 in duplicate charges, $2,185.23 for an extra day in the hospital that was not preauthorized, and $2,600.00 for an ICU stay that was not preauthorized. Carrier contended it should not be required to pay for these charges (and unbundling charges) and that the ICU charge should be reduced to $715.00 for a non-ICU stay. The ALJs were not persuaded by Carrier's contentions. Provider charged only three hospital days and Carrier approved an ICU charge. Ex. V-1 at 2, 12, 16. Further, an insurer's reasons for denying claims are limited to reasons stated before a medical dispute resolution request. 28 TAC § 133.307(j)(2) (in effect at time of dispute). Carrier did not deny any of the claims because of an extra day's stay, an ICU stay, or unbundling.

In its second EOB, Carrier used duplicate-bill denial code "D" to reduce implantable charges to cost plus 10 percent. Ex. P-1 at 46. None of the charges that Carrier identified at the hearing as duplicates relate to implantables. Thus, Carrier's denial reasons for duplicate charges do not comply with the above-described 28 TAC § 133.307(j)(2). (Carrier's peer review doctor, Alan Strizak, M.D., opined that the records document "excessive and unreasonable charges and/or duplication of charges for [a number of items]." Ex. V-1 at 31. Dr. Strizak's opinion is unspecific on the issue of duplicate charges.)

Carrier cited testimony from Provider witness Rita Morales, whose job is to supervise the issuance of Provider's bills, as demonstrating that Provider did not prove it billed its usual and customary charges. However, although the evidence showed that Ms. Morales may not be aware of how Carrier determines its implantables charges, she is aware of what Provider's usual and customary charges are and that it charged those amounts in this case.

Per the En Banc Panel decision, the ALJs were unpersuaded by MRD's decisions that implantables should be reduced to cost plus 10 percent. They were unpersuaded that preauthorized services may be denied as unnecessary. In view of the Stop-Loss requirement that providers be paid 75 percent of total audited charges above $40,000.00, they were unpersuaded by MRD's findings concerning unreasonable and excessive charges and overcharges.

[10] 28 TAC § 134.401(c)(6).

case were decided by a SOAH En Banc Panel[11] (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)(6) 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 § 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.[12]

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.[13] Provider charged its usual and customary charges for the particular items or service.

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

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

[12] 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.

[13] Letter from ALJ Catherine C. Egan dated February 23, 2007.

III. FINDINGS OF FACT

1. An injured worker (Claimant) sustained a compensable injury in the course and scope of his employment; his employer had coverage with Pacific Employers Insurance Company (Carrier).

2. Vista Medical Center Hospital (Provider) provided medical treatment to Claimant for the compensable injury.

3. Provider submitted itemized billing totaling $71,568.65 for the services provided to Claimant for the treatment in issue.

4. The $71,568.65 billed was Provider's usual and customary charges for these items and treatments.

5. Carrier has issued payments of $10,722.07 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 holding that the Stop-Loss Exception applied, but reduced the payable amount because (a) Provider did not submit records to challenge Carrier's positions that implantables should be paid at cost plus 10 percent; (b) ICU/CCU charges should be reduced as unnecessary per an INTRACORP nurse review; and (c) certain amounts billed were an overcharge, excessive charge, unreasonable charge, duplicate charge, or "unbundled.

10. Carrier and Provider each timely filed a request for a contested case hearing on the MRD's decision.

11. All parties were provided not less than 10-days notice of hearing and of their rights under the applicable rules and statutes.

12. On November 15, 2007, Administrative Law Judge 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 on November 15, 2007, and the record closed the same day.

13. Carrier contended that any amount it owes should be reduced for certain duplicate charges and an extra day in the hospital and ICU stay that were not preauthorized.

14. The matters Carrier asserted in Finding of Fact No. 13 are reasons for denial of a claim that were not asserted by Carrier before a request for medical dispute resolution.

15. Provider charged for a three-day hospital admission, including the ICU stay.

16. Carrier preauthorized a three-day hospital admission and approved and paid the ICU charge.

17. Provider's total audited charges under § 134.401(c)(6)(A)(v) are $71,568.65, which allows Provider to obtain reimbursement under the Division's Stop-Loss Methodology.

18. Under the Stop-Loss Methodology, Provider is entitled to total reimbursement of $53,676.49. After deduction of Carrier's prior payment of $10,722.07, Provider is entitled to additional reimbursement of $42,937.36, plus any applicable interest, under the Stop-Loss Methodology.

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. Provider timely requested a hearing, as specified in 28 TEX. ADMIN. CODE (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. Petitioner 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)(4) 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 for this case.

17. If a specified health care treatment or service is preauthorized, that treatment or service is not subject to retrospective review of the medical necessity of the treatment or service. TEX. LAB. CODE ANN. § 413.014.

18. Applying the Stop-Loss Methodology in this case, Provider is entitled to total reimbursement of $53,676.49.

19. As specified in the above Findings of Fact, Carrier has already reimbursed Provider $10,722.07 of this amount.

20. Based on the foregoing findings of fact and conclusions of law, Carrier owes Provider an additional reimbursement of $42,954.42, plus any applicable interest.

ORDER

It is hereby **ORDERED** that Pacific Employers Insurance Company reimburse Vista Medical Center Hospital the additional sum of $42,954.42, plus any applicable interest, for services provided to Claimant.

SIGNED January 22, 2008.

JAMES W. NORMAN
TOMMY L. BROYLES
HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGES
STATE OFFICE OF ADMINISTRATIVE HEARINGS