SOAH DOCKET NO. 453-05-8848.M4
TWCC MDR NO. M4-05-6107-01

TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION FOR FREMONT INDEMNITY COMPANY	**§**	**BEFORE THE STATE OFFICE**
Petitioner	**§**	**OF**
V.	**§**	
TWELVE OAKS MEDICAL CENTER,	**§**	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

The Texas Property & Casualty Insurance Guaranty Association for Fremont Indemnity Company (Carrier) requested a hearing on a decision by the Medical Review Division (MRD) of the Texas Department of Insurance, Division of Workers' Compensation (Division),[1] granting additional reimbursement to Twelve Oaks Medical Center (Provider) for a hospital stay provided to Claimant, an injured worker. Carrier argued that reimbursement for this admission should be based on the per-diem reimbursement methodology and cost plus 10 percent for implantables as provided in the 1997 Acute Care Inpatient Hospital Fee Guideline (1997ACIHFG).[2] The Administrative Law Judge (ALJ) finds the Stop-Loss Exception should be followed in this proceeding, but because Provider did not contest the MMD findings and decision, its reimbursement should be limited to the amount ordered by the MRD. Carrier is ordered to pay additional reimbursement in the amount of $25,214.57, plus any applicable interest.

[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] 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.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

The MRD issued its decision on June 24, 2005. Petitioner filed a timely and sufficient request for hearing. Notice of the hearing was appropriately issued to the parties, and the hearing convened and closed on February 12, 2008. This case was joined with other Stop-Loss cases for reasons of efficiency.[3]

II. DISCUSSION

A. Factual Overview

The basic facts were uncontested. 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 $48,582.79 based on Provider's usual and customary charges for the inpatient stay and surgical procedure. To date, Carrier has paid $6,744.46.

B. Issues

1. Summary of Positions and ALJ's Decision

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

[3] 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.

	MRD	Provider	Carrier	ALJ
Charges	$42,612.04[4]	$48,582.79	$42,612.04[5]	**$48,582.79**
75% Stop Loss Methodology	stop loss	x 75%	per diem	**x 75%**
Reimbursement Amount	$31,959.03	$36,437.09[6]	$6,744.46	**$36,437.09**
Less Payment	($6,744.46)	($6,744.46)	($6,744.46)	**($6,744.46)**
Balance Due Provider	$25,214.57	$29,724.80	$0.00	**$25,214.57**[7]

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."[8] The following legal issues in this case were decided by a SOAH En Banc Panel[9] (En Banc Panel), and those determinations are incorporated herein. Legal arguments related to these issues will not be addressed, other than in the

[4] The MRD determined that the Stop-Loss Exception applied on the basis of its finding that the services were unusually extensive. However, it ordered payment of $8,197.20 for implantables at 200 percent of cost, rather than Provider's $14,167.95 charge, to arrive at $42,612.04 in total charges. It multiplied that amount by 75 percent to arrive at total reimbursement of $31,959.03. After subtracting Carrier's previous payment of $6,744.46, it ordered additional reimbursement of $25,214.57.

[5] Carrier calculated a per diem amount of $2,236.00 based on a two-day hospital stay and paid $4,508.46 for implantables at cost plus 10 percent. Carrier argued further that Provider should be limited to the amount ordered by the MRD, if the Stop-Loss Methodology is applied, because Provider did not appeal the MRD decision.

[6] Provider applied the Stop-Loss Methodology to total audited charges of $48,582.79 times 75 percent.

[7] The ALJ agrees with Carrier that because Provider did not contest the MRD decision, including its determination that implantables should be paid at 200 percent of cost, it is limited to the amount ordered by the MRD.

[8] 28 TAC § 134.401(c)(6).

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

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 reimbursement 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 reimbursement 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 reimbursement 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 reimbursement 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.[10]

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.[11] Provider is required to charge its usual and customary charges, and Carrier failed to prove any of the charges assessed were not Provider's usual charges for that particular item 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.

[10] 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.

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

III. FINDINGS OF FACT

1. Claimant sustained a compensable injury in the course and scope of his employment; his employer had coverage with the Texas Property & Casualty Insurance Guaranty Association for Fremont Indemnity Company (Carrier).

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

3. Provider submitted itemized billing totaling $48,582.79 for the services provided to Claimant for the treatment in issue.

4. Provider's bill included charges in the amount of $14,167.95 for surgical implantables used to treat Claimant.

5. The $48,582.79 billed was Provider's usual and customary charges for these items and treatments.

6. Carrier has issued payments of $6,744.46 to Provider for the services in question.

7. Carrier denied further reimbursement to Provider.

8. Provider requested Dispute Resolution Services from the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) on charges totaling $48,582.79.

9. 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.

10. Based on its finding that the Stop-Loss Methodology applied, that Carrier should pay implantables at 200 percent of cost, and that Carrier had paid $6,744.46, the MRD issued its Findings and Decision, holding that Carrier owed an additional $25,214.57.

11. Carrier timely filed a request for a contested case hearing on the MRD's decision.

12. Provider did not request a contested case decision on the MRD's decision.

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

14. On February 12, 2008, Administrative Law Judge James W. Norman 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 and the record closed on February 12, 2008.

15. Provider's total audited charges under § 134.401(c)(6)(A)(v) are $48,582.79, which allows Provider to obtain reimbursement under the Division's Stop-Loss Methodology.

16. Under the Stop-Loss Methodology, Provider is entitled to total reimbursement of $36,437.09.

17. Because Provider did not contest the MRD decision, it is limited to $25,214.57, the amount ordered by the 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. 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. Carrier 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 Reimbursement 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 Reimbursement 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 Reimbursement Methodology applies.

10. Carriers' audit rights are not limited by 28 TAC § 134.401(c)(6)(A)(v) when the Stop-Loss Reimbursement 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 Reimbursement 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 Reimbursement 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 The MRD decisions issued prior to February 17, 2005.

16. The Staff Report has no legal effect in this case.

17. Because Provider did not appeal, its total reimbursement is limited to the amount ordered by the MRD. 28 TAC § 148.3(a).

18. Applying the Stop-Loss Methodology in this case and considering that Provider did not contest the MRD decision, Provider is entitled to total reimbursement of $31,959.03.

19. As specified in the above Findings of Fact, Carrier has already reimbursed Provider $6,744.46 of this amount.

20. Based on the foregoing findings of fact and conclusions of law, Carrier owes Provider an additional reimbursement of $25,214.57, plus any applicable interest.

ORDER

It is hereby **ORDERED** that The University of Texas System reimburse Vista Medical Center Hospital the additional sum of $25,214.57, plus any applicable interest, for services provided to Claimant.

SIGNED February 20, 2008.

JAMES W. NORMAN
ADMINISTRATIVE LAW JUDGES
STATE OFFICE OF ADMINISTRATIVE HEARINGS