SOAH DOCKET NO. 453-04-5366.M4
TWCC NO. _____

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

DECISION AND ORDER

I. INTRODUCTION

The Medical Review Division (MRD) of the Texas Workers' Compensation Commission[1] (Commission) granted Vista Medical Center Hospital's (Vista's) request for additional reimbursement of $125,914.01 for services it provided to a workers' compensation claimant during an inpatient hospital admission on March 25 through April 2, 2002. MRD determined that TMIC improperly carved out the cost of implantables and used the *per diem* reimbursement method when Vista qualified for stop-loss reimbursement. The Administrative Law Judge (ALJ) finds that TMIC met its burden of proving the *per diem* method should be used for calculating Vista's reimbursement, and Vista is entitled to no additional reimbursement.

II. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

Attorneys Thomas B. Hudson, Jr., and Christopher H. Trickey represented TMIC, and attorney David F. Bragg represented Vista. The parties did not contest notice and jurisdiction.

This case was consolidated with Docket No. 453-03-2412.M4 for the purpose of resolving preliminary legal issues, and the order addressing those issues, Order No. 14 in Docket No. 453-04-2412.M4, was issued on November 22, 2005. Upon the parties' request, this case was abated from February 21, 2006, to April 4, 2007, when it was reinstated on the docket. Rather than having a

[1] Effective September 1, 2005, the functions of the Commission were transferred to the newly-created Division of Workers' Compensation at the Texas Department of Insurance.

contested case hearing, the parties elected to file written stipulations of fact and closing arguments. The parties attached documents to their stipulations, and those documents are admitted as Exhibit A. In addition, 36 numbered exhibits were admitted into evidence during the preliminary hearing. The record closed on July 9, 2007.

III. DISCUSSION

The claimant's surgery involved an anterior fusion from the posterior approach at vertebral levels L3-L4, L4-L5, and L5-S1. Vista charged $203,277.96 for its services, including $120,938 for implants. TMIC paid Vista a total of $24,592.90, which included $3,217.50 for the claimant's room charge, a reduced amount for pharmaceuticals and blood, and $17,873.90 for implants.[2] TMIC's auditor obtained the invoice Vista received for implants, and it showed the implant cost was $31,080.[3] However, when the auditor compared the implant invoice to the implantables listed in the operative report, he determined that the surgeon used only items that cost $25,200.[4] TMIC argued the amount of Vista's markup was not fair and reasonable because Vista did not have to keep a large inventory of implantables on hand, and the hospital stored them for only a short time.

Jim E. Bryant, Vista's Chief Executive Officer, agreed that Vista received most implants on consignment.[5] The vendor took the implants, fusion cages, and pedicle screws to the facility no earlier than the night before the surgery, and the implants were kept in a sterile corridor.[6] Even so, Mr. Bryant asserted the markup was reasonable because Vista had higher *labor costs* than other hospitals. Non-profit hospitals generally have 3.0 to 3.2 and for-profit hospitals have 2.8 to 3.0 full-time employees per occupied bed. Vista had 5.0 or 6.0 employees per occupied bed because patient needs at Vista were higher.[7] In addition to labor costs, Mr. Bryant said Vista had non-labor costs for

[2] Ex. A, p. RD-129.

[3] The auditor noted that invoice was dated more than a year prior to this claimant's surgery, so it is not clear whether Vista provided TMIC with the proper invoice. Ex. A, p. TMIC 158.

[4] Ex. A, pp. TMIC 157-159, 164.

[5] Ex. 23, p. 25.

[6] *Id.*, pp. 26-27.

[7] *Id.*, pp. 56, 108.

sterilizers, boilers, steam lines, filters, air conditioning, and electrical expenses.[8] To cover these costs Vista not only marked up implantables four times, Vista marked up medical and surgical supplies 500 percent for items costing more than $100, and 700 percent for items costing less than $100.[9] Every item, no matter what the cost to Vista, was charged to insurers at a minimum of $3, Mr. Bryant said.[10]

For this claimant, Vista billed room and board charges at the rate of $650 per day for four days. Vista also billed $14,375 for "OR Services," $9,200 for "OR/Minor Services," $11,948.91 for anesthesia services, and $5,980 for the hour the claimant spent in a recovery room. According to Mr. Bryant, Vista billed operating and recovery room minutes to cover *total salaries* per year.[11] But for the year 2001, Mr. Bryant could not state what Vista's total charges as a percent of its total costs (charge-to-cost ratio) were.[12]

In a letter dated March 26, 2003, TMIC's medical expert, N.F. Tsourmas, M.D., said the claimant's hospitalization was routine and without complications. TMIC also cited evidence of the amounts charged for inpatient admissions in the same diagnosis-related group (DRG) at other Harris County hospitals. While Vista's charges in this case totaled $203,277.96, other Harris County hospitals charged an average of $58,789 for the same DRG (497).[13]

The parties stipulated that Vista's services were not unusually costly and extensive in comparison to the services normally rendered to patients having the same surgery but were unusually costly and extensive in comparison to services rendered for simpler surgeries, such as hernia repair. TMIC argued that Vista's charges exceeded the stop-loss threshold only because Vista inflated them.

Vista contended that once the stop-loss threshold of $40,000 is reached, the provider qualifies

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[8] *Id.*, p. 43.

[9] *Id.*, pp. 62, 221.

[10] *Id.*, p. 66.

[11] *Id.*, p. 137.

[12] *Id.*, p. 137.

[13] Ex. 7, attachment 3, figure 3.

for stop-loss reimbursement at 75 percent of the amount charged.[14] The provider need not meet any additional requirement. In addition, even if Vista is required to prove its services were unusually extensive and costly, a back surgery is among the most complex surgeries performed.

IV. ANALYSIS

The stop-loss method of reimbursement is allowed on a case-by-case basis for unusually extensive and costly services when a hospital's total audited charges exceed the $40,000 stop-loss threshold. Even though Vista's charges exceeded $40,000, the ALJ finds that TMIC met its burden of proof based on its audit and on the issues of whether Vista's services were unusually extensive and costly.

In Order No. 14 in Docket No. 453-03-2314.M4, the ALJ determined that a carrier may determine whether total audited charges exceed the stop-loss threshold with a line-by-line retrospective bill review for the items listed in Commission rule 28 TAC § 133.301 and other applicable rules, including considerations of compliance with the fee and treatment guidelines, duplicate billing, unbundling and upcoding, coding accuracy, lack of documentation, calculation errors, and unnecessary treatment.

TMIC's auditor appropriately reviewed Vista's charges and determined the charge for implantables was not supported because the surgeon used implantables that were billed to Vista at $25,200. As the auditor noted, Vista charged TMIC for items that were not used in the claimant's surgery. In addition, based on Mr. Bryant's testimony, it appears that Vista double charged for salary costs by marking up implantables and other supplies and also charging large amounts for use of the operating and recovery rooms. Thus, the record supports TMIC's assertion that Vista's charges exceeded the stop-loss threshold because of mark ups – not because its services were unusually extensive or costly.

Therefore, the ALJ finds that Vista should be reimbursed using the *per diem* method. The parties stipulated that, if the *per diem* payment method described in 28 TAC § 134.401 applies to this

[14] 28 TEX. ADMIN. CODE (TAC) § 134.401(b)(1)(H) and (c)(6)(A)(i).

admission, the correct amount of reimbursement is the amount TMIC has already paid Vista.

V. FINDINGS OF FACT

1. A workers' compensation claimant was injured on _____, while working for an employer who carried workers' compensation insurance with Texas Mutual Insurance Company (TMIC).

2. On March 25, 2002, the claimant was admitted to Vista Medical Center Hospital (Vista) and underwent back surgery on March 26, 2002, to treat her work-related injury

3. The claimant's surgery involved an anterior fusion from the posterior approach at vertebral levels L3-L4, L4-L5, and L5-S1 with related bilateral laminectomies and foraminotomies.

4. The claimant experienced minimal blood loss during surgery and tolerated the procedure well.

5. Nothing unexpected or unusual occurred during the surgery or subsequent hospitalization.

6. The claimant was discharged from Vista on April 2, 2002.

7. Vista charged $203,277.96 for its services, and TMIC reimbursed Vista a total of $24,592.90.

8. The actual cost of implantables Vista used during the surgery was $25,200, but Vista charged TMIC $120,938 for them.

9. Vista marked up implantables to cover what it said were higher labor costs.

10. Vista did not have to keep an large inventory of implantables on hand, and the hospital stored them for only a short time.

11. Vista billed $14,375 for "OR Services," $9,200 for "OR/Minor Services," $11,948.91 for anesthesia services, and $5,980 for the hour the claimant spent in a recovery room.

12. Vista used its operating and recovery charges to cover total salaries for the year and then marked up implantables and other supplies from 400 to 700 percent to cover facilities and equipment costs and, again, to cover salaries.

13. Every item, no matter what the cost to Vista, was charged to insurers at a minimum of $3.

14. There was no evidence of what Vista's total charges as a percent of its total costs (charge-to-cost ratio) were.

15. Vista's services were not unusually costly and extensive in comparison to the services normally rendered to patients having the same surgery.

16. On February 20, 2003, Vista filed a request with the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) asking that TMIC be ordered to reimbursed Vista 75 percent of the total amount billed, less the amount TMIC has paid.

17. In a decision dated March 23, 2004, MRD granted Vista's request for additional reimbursement of $125,914.01, and TMIC requested a contested case hearing before the State Office of Administrative Hearings (SOAH).

18. Notice of the hearing on the appeal, dated May 24, 2004, was sent to both parties. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

19. On September 9, 2004, this case was consolidated with Docket No. 453-03-2412.M4, for the purpose of resolving threshold legal issues.

20. Order No. 14 in Docket No. 453-03-2412.M4 was issued November 22, 2005. The order resolved legal issues pertaining to this case.

21. Based upon the parties' joint request, this docket was abated from February 21, 2006, to April 4, 2007, when the case was reinstated on the docket.

22. Rather than having a contested case hearing, the parties elected to file written stipulations of fact and closing arguments.

23. Attorneys Thomas B. Hudson, Jr., and Christopher H. Trickey represented TMIC, and attorney David F. Bragg represented Vista.

VI. CONCLUSIONS OF LAW

1. The Commission had, and the Division of Workers' Compensation at the Texas Department of Insurance has, jurisdiction over this matter pursuant to § 413.031 of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ch. 401 *et seq*. (Vernon's 2003).

2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003 (Vernon's 2003).

3. TMIC had the burden of proof in this case. 28 TEX. ADMIN. CODE (TAC) § 148.14.

4. TMIC met its burden of proving that Vista's services were not unusually extensive or costly.

5. Vista should be reimbursed using the *per diem* method. 28 TAC § 134.401(c).

6. TMIC has appropriately reimbursed Vista for the claimant's hospitalization. 28 TAC § 134.401(c).

ORDER

IT IS, THEREFORE, ORDERED that Texas Mutual Insurance Company's appeal is granted, and the insurer is not required to provide additional reimbursement to Vista Medical Center Hospital.

SIGNED September 7, 2007.

SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS