SOAH DOCKET NO. 453-05-5399.M4
TWCC MDR NO. M4-04-5001-01

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

DECISION AND ORDER

Vista Medical Center Hospital (Provider) requested a hearing on a decision by the Medical Review Division (MRD) of the Texas Department of Insurance, Division of Workers' Compensation (Division)[1] denying additional reimbursement to Provider for a hospital stay provided to Claimant, an injured worker. 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).[2] The Administrative Law Judge (ALJ) finds the Stop-Loss Exception should not be followed in this proceeding, because the total audited amount due is less than $40,000. Accordingly, Fire & Casualty Insurance Company of Connecticut (Carrier) is not ordered to pay any additional reimbursement.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

The MRD issued its decision on March 10, 2005. Petitioner filed a timely and sufficient request for hearing. Notice of the hearing was appropriately issued to the parties. The hearing

[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.

convened and concluded on February 12, 2008.[3]

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 $59,755.01 for the inpatient stay and surgical procedure. To date, Carrier has paid $1,143.00.

B. Issues

1. 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."[4] The following legal issues in this case were decided by a SOAH En Banc Panel[5] (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.

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[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.

[4] 28 TAC § 134.401(c) (6).

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

a. 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.

b. 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.

c. 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).

d. The ALJs find that a hospital establishes eligibility for applying the Stop-Loss Methodology under § 134.401(c) (4)[6] 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.

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.[7]

2. Summary of Positions and ALJ's Decision

After a review of the evidence, the ALJ finds Provider failed to prove audited charges exceed the $40,000 Stop-Loss threshold. Provider billed for 12 implants at $18,284.00 but failed to provide invoices to support this billing when requested by Carrier. Moreover, invoices were not provided during the MRD review nor at the evidentiary hearing. This failure leads the ALJ to find the audited

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

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

reduction, as related to implantables, was appropriate.

Additional reductions in the amount of $20,092.65 were made in the audit for a total audit reduction of $38,376.65.[8] The ALJ finds that, of this total amount removed pursuant to the audit, $12,749.05 in reductions were made based on codes suggesting a lack of reasonable charges and/or necessity. This is an inappropriate justification for consideration in this proceeding. Accordingly, this amount is removed from the audited reduction, leaving the total amount decreased by audit as $25,627.60. With these changes, the appropriate charges amount to $34,127.41.[9]

Because Provider failed to prove its charges were in excess of $40,000.00, the Stop-Loss Exception is not applicable and the amounts in dispute should be calculated according to the standard per diem methodology. In summary, the parties' positions and ALJ's findings are as follows:

	MRD	**Provider**	**Carrier**	**ALJ**
Charges	$59,755.01	$59,755.01	$59,755.01	**$59,755.01**
Charges after audit	$21,378.36	$59,755.01	$21,378.36	**$34,127.41**
Methodology Applied	applied standard per diem rate [10]	stop loss x 75%	applied standard per diem rate	**applied standard per diem rate**
Reimbursement Amount	$1,118.00	$44,816.26	$1,143.00	**$1,143.00**[11]
Less Payment	($1,143.00)	($1,143.00)	($1,143.00)	**($1,143.00)**
Balance Due Provider	$0.00	$43,673.26	$0.00	**$0.00**

[8] Implantables at $18,284.00 + $20,092.65 in other reductions, $38,376.65.

[9] $59,755.01 - $25,627.60 , 34,127.41.

[10] MRD calculated the reimbursement on the per diem calculation of $1,118.00 (1 day "$1,118.00 per day). MRD determined that no documentation was submitted to support reimbursement for implantables. It was MRD's position and Carrier's contention that Provider is not entitled to additional reimbursement because the hospitalization did not require unusually extensive services.

[11] The parties agreed that Carrier had paid $1,143.00.

III. FINDINGS OF FACT

1. Claimant sustained a compensable injury in the course and scope of his employment; his employer had coverage with Fire & Casualty Insurance Company of Connecticut (Carrier).

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

3. Provider submitted itemized billing totaling $59,755.01 for the services provided to Claimant for the treatment in issue.

4. Provider's bill included charges in the amount of $18,284.00 for implantables to treat Claimant.

5. Carrier performed an audit of the bill, reducing the charges by $38,376.65 to a total charge of $21,378.36.

6. Carrier's audit improperly reduced charges by $12,749.05.

7. Total appropriate charges are $34,127.41.

8. Carrier has issued payments of $1,143.00 to Provider for the services in question.

9. Carrier denied further reimbursement to Provider.

10. Provider requested Dispute Resolution Services from the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission).

11. 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.

12. MRD issued its Findings and Decision, holding that no further reimbursement was owed by Carrier.

13. Provider timely filed a request for a contested case hearing on MRD's decision.

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

15. On February 12, 2008, 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 and the record closed on that same day.

16. Provider's total audited charges are $34,127.41, which requires Provider to obtain reimbursement under the standard per diem methodology.

17. Under the standard per diem methodology, Provider is entitled to total reimbursement of $1,143.00. After deduction of Carrier's prior payment of $1,143.00, Provider is entitled to no additional reimbursement.

IV. CONCLUSIONS OF LAW

1. SOAH 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. Provider 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 § 134.401(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 MAR 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. 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).

9. 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.

10. Provider 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 does not apply to this case.

14. When the threshold amount for application of the Stop-Loss Methodology is not met, the standard per diem rate applies.

17. Applying the standard per diem rate in this case, Provider is entitled to total reimbursement of $1,143.00.

18. As specified in the above Findings of Fact, Carrier has already reimbursed Provider $1,143.00 of this amount.

19. Based on the foregoing findings of fact and conclusions of law, Carrier owes Provider no additional reimbursement.

ORDER

It is hereby **ORDERED** that Fire & Casualty Insurance Company of Connecticut reimburse no additional amounts to Vista Medical Center Hospital for services provided to Claimant.

SIGNED April 2, 2008.

TOMMY L. BROYLES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS