SOAH DOCKET NO. 453-05-5843.M4
MDR NO. M4-05-1039-01

VISTA MEDICAL CENTER HOSPITAL, Petitioner	§	**BEFORE THE STATE OFFICE**
V.	§	**OF**
AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY, 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 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 be followed in this proceeding. Accordingly, American Manufacturers Mutual Insurance Company (Carrier) is ordered to pay additional reimbursement in the amount of $25,725.23, plus any applicable interest.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

The MRD issued its decision on March 23, 2005. Provider filed a timely and sufficient request for hearing. Notice of the hearing was appropriately issued to the parties.

[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.

The hearing convened and concluded on May 29, 2008.[3] Carrier failed to appear at the hearing although the file of the case shows that the notice of the hearing was sent to Carrier by orders dated January 7, 2008, and April 25, 2008.

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 $138,807.34 based on Provider's usual and customary charges for the inpatient stay and surgical procedure. To date, Carrier has paid $78,361.00.

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	$138,807.34	$138,807.34	$138,807.34	**$138,807.34**
Adjusted Charges		$138,807.34		**$138,781.64**[4]
Reimbursement Methodology	per diem[5]	x 75%[6]	unknown[7]	**x 75%**[8]
Reimbursement Amount	$21,136.40	$104,105.51	$78,361.00	**$104,086.23**
Less Payment	($45,643.00)	($78,361.00)	($78,361.00)	**($78,361.00)**
Balance Due Provider	$0.00	$25,744.51	$0.00	**$25,725.23**

[4] This adjustment is explained in footnote 8 below.

[5] MRD determined that the Stop-Loss Exception did not apply since the admission did not involve "unusually extensive services." It calculated per-diem reimbursement at $8,944.00 (8 days "$1,118.00 , $8,944.00). (It noted that Provider billed only $5,720.00.) It said Provider is entitled to additional reimbursement for implantables of $12,192.40, determined at cost plus ten percent. Based on Carrier's payment of what MRD found to be $45,643.00, it concluded that Provider was not entitled to additional reimbursement.

[6] Provider contended it is entitled to additional reimbursement of $25,744.51 based on total audited charges of $138,807.34 x 75%, $104,105.51 - Carrier's $78,361.00 payment, $25,744.513. Provider noted that Carrier used denial codes "F," "C," "N," and "U" in denying Provider's claims. It contended that denial code "C" was inappropriate because there is no evidence of a negotiated contract between Carrier and Provider. It asserted that because Carrier failed to request additional documentation within 14 days of its receipt of the medical bill, as required by 28 TAC § 133.301(d)(5), Carrier waived the "N" reason for denying the claim. It said denial code "U" was inappropriate because the services were preauthorized.

[7] Carrier denied all but $12,192.40 of Carrier's $48,932.00 charge for implantables based denial code "C," defined as "negotiated contract," but explained by Provider as "allowance based on invoice cost of implant(s) plus 10%." It denied a $9,200.00 charge for revenue code 361 based on denial code "N," defined as "not documented." Under denial code "U," defined as "unnecessary medical treatment guidelines" it denied a $5,980.00 charge, explained further as "amount billed appears to be an overcharge and/or excessive for services rendered" and a $35.40 charge, explained further as "patient convenience items are not allowed per state guidelines." (Provider Ex. 1 at 19-21.)

[8] Carrier's charges qualify for payment under the Stop-Loss Methodology, which requires payment at 75 percent of total audited charges. Carrier's denial of claims under the "F" denial code is inconsistent with the Stop-Loss Methodology, which requires payment at 75 percent of total audited charges. Its use of denial code "N" for revenue code 361, an autologous growth factor, was unpersuasive because that service was documented (Provider Ex. 1 at 45, 51-52.) Its denial under code "C" was unpersuasive based on its explanation that implantables are paid at cost plus 10 percent because that payment method is inconsistent with the Stop-Loss Exception. The ALJ could not identify the services corresponding to Provider's $5,980.00 charge. In any case, Carrier's reason for denial of that charge, as an overcharge or as excessive for services rendered, is inconsistent with the Stop-Loss Exception.

The $35.40 charge that Carrier denied as patient convenience items were adequately described. The ALJ was able to identify some of those items with relative certainty, including tooth paste, tooth brush, shampoo, a shoe cover, a property bag, and deodorant for total charges of $25.70. That amount should be deducted from Provider's total audited charges. The ALJ was not able to identify the rest of the patient convenience items. They should not be deducted based on rules requiring Carrier's reasons for denial to be adequately understandable. 28 TAC §§ 133.304(c) and 133.307(j)(2).

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."[9] The following legal issues in this case were decided by a SOAH En Banc Panel[10] (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.

1. 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.

2. 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.

3. 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).

4. 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.[11]

[9] 28 TAC § 134.401(c)(6).

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

[11] 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.

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.[12] Provider charged its usual and customary charges for the items and services provided.

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.

III. FINDINGS OF FACT

1. Claimant sustained a compensable injury in the course and scope of employment; the employer had coverage with American Manufacturers Mutual Insurance Company (Carrier).

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

3. Provider submitted itemized billing totaling $138,807.34 for services provided to Claimant.

4. The $138,807.34 billed was Provider's usual and customary charges for these items and treatments.

5. Carrier issued payments of $78,361.00 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 no additional reimbursement was owed Provider.

10. Provider 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.

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

12. On May 29, 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. Provider was present and represented by counsel. The Division did not participate in the hearing. The hearing concluded that day and the record closed on May 29, 2008.

13. Provider's total audited charges under § 134.401(c)(6)(A)(v), after appropriate reductions, are $138,781.64, which allows Provider to obtain reimbursement under the Division's Stop-Loss Methodology.

14. Under the Stop-Loss Methodology, Provider is entitled to total reimbursement of $104,086.23. After deduction of Carrier's prior payment of $78,361.00, Provider is entitled to additional reimbursement of $25,725.23, 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. 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 § 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 this case, Provider is entitled to total reimbursement of $104,086.23.

18. As specified in the above Findings of Fact, Carrier has already reimbursed Provider $78,361.00 of this amount.

19. Based on the foregoing findings of fact and conclusions of law, Carrier owes Provider an additional reimbursement of $25,725.23, plus any applicable interest.

ORDER

It is hereby **ORDERED** that American Manufacturers Mutual Insurance Company reimburse Vista Medical Center Hospital the additional sum of $25,725.23, plus any applicable interest, for services provided to Claimant.

SIGNED July 25, 2008.

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