SOAH DOCKET NO. 453-05-6538.M4
TWCC MDR NO. M4-03-3818-01

VISTA MEDICAL CENTER HOSPITAL, Petitioner	§	**BEFORE THE STATE OFFICE**
V.	§	**OF**
THE UNIVERSITY OF TEXAS SYSTEM, 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 (1997ACIHFG).[2] The Administrative Law Judge (ALJ) finds the Stop-Loss Exception should be followed in this proceeding. The University of Texas System (Carrier) is ordered to pay additional reimbursement in the amount of $42,079.49, plus any applicable interest.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

The MRD issued its decision on April 11, 2005. Provider 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 26, 2008.

[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.

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 she underwent treatment. After Claimant was discharged from the hospital, Provider submitted a bill to Carrier in the amount of $81,011.61 based on Provider's usual and customary charges for the inpatient stay and surgical procedure. To date, Carrier has paid $4,472.00.

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	$81,011.61	$80,991.85[4]	$38,729.04[5]	**$62,068.65[6]**
Reimbursement Methodology Me M Me	per diem	x 75%	Stop Loss	**x 75%**

[4] At the hearing, Provider agreed to reduce its charges by $19.76 for personal items. That reduction is reflected in the ALJ's reduced total charge amount.

[5] Carrier reduced Provider's bill based on testimony from and an audit by Mary Carroll, audit director for Medical Business Management Services, Inc., an entity that reviews worker's compensation bills for insurers. On several bases, Ms. Carroll contended that Provider's bill should be reduced to $38,729.04, which is less than the $40,000.00 Stop-Loss Threshold. First, she said Provider should not be reimbursed for an $18,513.00 charge for implantables, involving posterior spinal instrumentation, because that procedure was not preauthorized–surgery was preauthorized for removal of hardware and exploration of fusion only. Carrier Ex. 1 at 000038 and Ex. 3. Second, Ms. Carroll testified that most of the procedures listed in Provider's bill were global to the $1,118.00 per diem rate provided in the ACIHFG. See Carrier Ex. 1 at 000038 and Ex. 2 at 202-209. Third, in addition to the previously-discussed $19.76, Carrier reduced Provider's bill for other personal items. Carrier Ex. 2 at 202-209. And fourth, Ms. Carroll reduced the charge for a walker to a rental fee of $50.00, based on four days use at $12.50 per day, rather than the $345.00 purchase price charged by Provider (Carrier Ex. 2 at 204) because she could not find a prescription for the walker or an invoice showing that it was purchased. She used payment exception code "M–No Mar" for this reduction based on her contention that $345.00 was not fair and reasonable.

[6] The ALJ reduced Provider's total audited charges by $18,513.00 for posterior spinal instrumentation because only hardware removal and exploration of fusion were preauthorized. Carrier Ex. 1 at 000021. There was no medical evidence that implantables were a necessary part of the surgical procedure or that they were implied in the approval.

The ALJ was persuaded that Provider should not recover for the items that Ms. Carroll reduced on the basis of unrelatedness. Even though the EOB used only the G and A payment exception codes, it appears that Provider was adequately informed of Carrier's reasons for denial. See Carrier Ex. 2 at 169-186. Provider has the burden of proof. It did not carry its burden of proving that those items should be paid. Provider's charges for these items should be reduced by $410.20.

The ALJ was unpersuaded by Ms. Carroll's testimony that Provider's charges should be reduced on the basis of the "G" code for unbundling as shown on its Explanation of Benefits (EOB). See Carrier Ex. 1 at 000038. Ms. Carroll explained that Carrier denied all items billed except for room and board because the items should have been included in the $1,118.00 per diem charge provided in the ACIHFG. However, the per-diem method does not apply when the Stop-Loss Methodology is used. In essence, Ms. Carroll used the per-diem charge to reduce Carrier's bill to less than $40,000.00 in order to apply the per-diem charge to calculate reimbursement. However, Rule 134.401(c)(6) provides, "[S]top-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker. This methodology shall be used in place of and not in addition to the per diem based reimbursement system."

The ALJ was unpersuaded that Provider's bill should be reduced for the walker. Ms. Carroll used an M code to reduce the bill and explained that the bill was not fair and reasonable. However, although the Stop-Loss Methodology is a separate method of reimbursement to establish fair and reasonable compensation, it does not permit each individual billed item to be separately audited for fair and reasonableness. See En Banc Panel Order at 9-10.

	MRD	Provider	Carrier	ALJ
Reimbursement Amount	$4,472.00[7]	$60,743.89	$4,472.00[8]	**$46,551.49**
Less Payment	($4,472.00)	($4,472.00)	($4,472.00)	**($4,472.00)**
Balance Due Provider	$0.00	$56,271.89	$0.00	**$42,079.49**

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.

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

[7] The MRD concluded that the Stop-Loss Methodology did not apply based on its finding that the services were not unusually extensive. It applied the per diem rate for four days of hospitalization at $1,118.00 per day to arrive at a total recommended reimbursement of $4,472.00. It concluded that Provider was not entitled to reimbursement for implantables because it did not obtain preauthorization for the posterior spinal instrumentation procedure.

[8] As indicated above, Carrier contended that the Stop-Loss Methodology should not apply based on its audit that reduced Provider's bill to less than $40,000.00. Carrier contended that the Stop-Loss Methodology should not apply for a second reason, that the services were not unusually extensive. On this basis, Carrier paid the per diem rate of $4,472.00 and denied additional payments for implantables based on its conclusion that they were not preauthorized.

[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.

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.[11]

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 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.

III. FINDINGS OF FACT

1. Claimant sustained a compensable injury in the course and scope of her employment; her employer had coverage with The University of Texas System (Carrier).

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

[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.

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

3. Provider submitted itemized billing totaling $81,011.61 for the services provided to Claimant for the treatment in issue.

4. The $81,011.61 billed was Provider's usual and customary charges for these items and treatments.

5. Carrier has issued payments of $4,472.00 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) on charges totaling $81,011.61.

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. Based on its finding that the Stop-Loss Exception did not apply because Provider's services were not unusually extensive and that Carrier had paid $4,472.00, the MRD found that Carrier owed no additional reimbursement.

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.

12. On February 26, 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 26, 2008.

13. Carrier denied payment of $18,513.00 for surgical implantables based on its conclusion that they were not preauthorized.

14. The implantables were not preauthorized.

15. Carrier reduced Provider's bill by a total of $429.96 based on a determination that the items were not related to Claimant's injury.

16. The evidence was insufficient to conclude that the $429.96 reduction for unrelated items should be paid.

17. A deduction from Provider's bill of the $18,513.00 charge for implantables plus the $429.96 reduction for unrelated items reduces Provider's total charges to $62,068.65, which is in excess of the $40,000.00 threshold for applying the Stop-Loss Methodology.

18. Carrier reduced charges for a walker to an amount that it considered to be a fair and reasonable.

19. Carrier denied charges for specific services rendered based on its conclusion that all such services were global to a $1,118.00 per diem allowance.

20. Under the Stop-Loss Methodology, Provider is entitled to total reimbursement of $46,551.49. After deduction of Carrier's prior payment of $4,472.00, Provider is entitled to additional reimbursement of $42,079.49 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 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 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. An insurance carrier is not liable for those specified treatments and services requiring preauthorization unless preauthorization is sought by the claimant or health care provider and either obtained from the insurance carrier or ordered by the commissioner. TEX. LAB. CODE ANN. § 413.014.

18. Under the Stop-Loss Methodology, it is inappropriate to reduce a provider's bill based on a conclusion that the charge was not fair and reasonable. 28 TAC § 134.401(c) (6); En Banc Panel Order at 9-10.

19. The Stop-Loss Methodology is to be used in place of and not in addition to the per diem based reimbursement system. 28 TAC § 134.401(c) (6).

20. Applying the Stop-Loss Methodology in this case, Provider is entitled to total reimbursement of $46,551.49.

21. As specified in the above Findings of Fact, Carrier has already reimbursed Provider $4,472.00 of this amount.

22. Based on the foregoing findings of fact and conclusions of law, Carrier owes Provider an additional reimbursement of $42,079.49, plus any applicable interest.

ORDER

It is hereby **ORDERED** that The University of Texas System reimburse Vista Medical Center Hospital the additional sum of $42,079.49, plus any applicable interest, for services provided to Claimant.

SIGNED March 17, 2008.

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