

**SOAH DOCKET NO. 453-05-6588.M4
TWCC MDR NO. M4-03-A408-01**

VISTA MEDICAL CENTER HOSPITAL,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
NORTHERN 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 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. However, for the reasons stated below, the ALJ finds Northern Insurance Company (Carrier) owes no additional reimbursement.

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 March 16, 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. 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 \$191,819.76 based on Provider's usual and customary charges for the inpatient stay and surgical procedure. To date, Carrier has paid \$79,955.44.

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	\$82,586.04 ⁴	\$191,819.76 ⁵	\$82,586.04 ⁶	\$82,586.04⁷
Reimbursement Methodology	Stop-Loss	x 75%	Unknown	x 75%
Reimbursement Amount	\$61,939.53	\$133,000.88	\$79,955.44	\$61,939.53
Less Payment	(\$79,955.44)	(\$79,955.44)	(\$79,955.44)	(\$79,955.44)
Balance Due Provider	\$0.00	\$105,623.88	\$0.00	\$0.00

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

⁴ The MRD determined that the Stop-Loss Exception applied on the basis of its finding that the services were unusually extensive. It said it received an updated bill from Provider indicating the total amount billed was \$82,586.04 rather than the \$191,819.76 presently asserted by Provider. On the basis of \$82,586.04 in audited charges, it calculated the amount owed as \$61,939.53 (\$82,586.04 x 75%). Provider said Carrier had paid \$49,343.69. However, the MRD said Carrier submitted convincing evidence that it had paid \$79,955.34. On these bases, it concluded that Carrier did not owe additional reimbursement.

⁵ Provider contended it is entitled to payment in accordance with the Stop-Loss Methodology at 75 percent of its total audited charges of \$191,819.76. Provider's Ex. 2 showed Carrier as having paid \$79,955.34.

⁶ In accordance with the MRD ruling that total audited charges were \$82,586.04 and the fact it has paid \$79,955.34, Carrier contended it owes no additional reimbursement. Regarding the reduced amount for audited charges (from \$191,819.76 to \$82,586.04), Carrier said the evidence shows it did not preauthorize six days of the hospital stay, from September 15, 2002, through September 20, 2002.

⁷ The ALJ finds the evidence supports the MRD's determination. In a letter dated September 15, 2003, Provider reduced its total charges to \$82,586.04 and said Carrier owed \$61,939.53 based on the Stop-Loss application of 75 percent of that amount. Vista Ex. 1 at 30. Carrier's explanation of benefits shows it reduced the bill because services from September 15 through September 20 were not preauthorized. Vista Ex. 1 at 23. Provider's collection department showed it received \$79,955.44 in payments from Carrier. Vista Ex. 1 at 24, 30. Considering all the evidence, Provider failed to carry its burden of proving the MRD decision was erroneous. Based on evidence showing that Carrier paid \$79,955.44 but owed only \$61,939.53, the ALJ concludes that Carrier owes no additional reimbursement.

⁸ 28 TAC § 134.401(c)(6).

The following legal issues in this case were decided by a SOAH En Banc Panel⁹ (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 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).
4. 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 charged its usual and customary charges for that particular item or service.

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.

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.

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 his employment; his employer had coverage with Northern Insurance Company (Carrier).
2. Vista Medical Center Hospital (Provider) provided medical treatment to Claimant for the compensable injury.
3. Provider submitted itemized billing totaling \$191,819.76 for the services provided to Claimant for the treatment in issue.
4. The \$191,819.76 billed was Provider's usual and customary charge for these items and treatments.
5. Carrier has issued payments of \$79,955.44 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 \$191,819.76.
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 applied because Provider's services were usually extensive; total audited charges were \$82,586.04; and that Carrier has paid \$79,955.44, but owes \$61,939.53, 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 14, 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 14, 2007.

13. Provider's audited charges under § 134.401(c)(6)(A)(v) are \$82,586.04, which allows Provider to obtain reimbursement under the Divisions' Stop-Loss Methodology.
14. Under the Stop-Loss Methodology, Provider is entitled to total reimbursement of \$61,939.53. Based on Carrier's prior payment of \$79,955.44, Provider is entitled to no additional reimbursement.

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. Applying the Stop-Loss Methodology in this case, Provider is entitled to total reimbursement of \$61,939.53.
18. As specified in the above Findings of Fact, Carrier has already reimbursed Provider \$79,955.44 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 Northern Insurance Company owes not additional reimbursement to Vista Medical Center Hospital.

SIGNED April 8, 2008.

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