SOAH DOCKET NO. 453-05-9025.M5
TWCC MRD NO. M5-05-2400-01

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

DECISION AND ORDER

Ace Insurance Company of Texas (Carrier) requested a hearing on a decision by the Medical Review Division (MRD) of the Texas Department of Insurance, Division of Workers' Compensation (Division)[1] awarding additional reimbursement to Vista Medical Center Hospital (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 followed in this proceeding and Carrier is ordered to pay an additional reimbursement of $71,318.77 plus any applicable interest.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

The MRD issued its decision on July 18, 2005. Petitioner filed a timely and sufficient request for hearing. Notice of the hearing was appropriately issued to the parties. The hearing

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[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 April 8, 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 $228,044.50 for the inpatient stay and surgical procedure. To date, Carrier has paid $62,700.15.

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 the audited charges exceed the $40,000 Stop-Loss threshold. Carrier performed a desk audit suggesting the charges should be reduced by $157,762.28. However, Carrier has the burden of proof in this case and proved only a reduction of $49,352.61 as justified. The excluded amount concerns unbundling and failure to produce documentation in support of charges. The appropriate charges are accordingly reduced to

[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.

$178,691.89. Carrier failed to prove-up all other reductions it made. In summary, the parties' positions and ALJ's findings are as follows:

	MRD	Provider	Carrier	ALJ
Charges	$157,954.50	$228,044.50	$228,044.50	**$228,044.50**
Charges after Audit	**N/A**	N/A	$70,282.22	$178,691.89
Methodology Applied	stop-loss[8]	stop loss	unclear	**stop loss**
Reimbursement Amount	$118,465.87	$171,033.38	$62,700.15	**$134,018.92**
Less Payment	($62,700.15)	($62,700.15)	($62,700.15)	**($62,700.15.)**
Balance Due Provider	$55.765.72	$108,333.23	$0.00	**$71,318.77**

In summary, because Provider's audited charges were in excess of $40,000.00, the Stop-Loss Exception is applicable and 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 Ace Insurance Company of Texas (Carrier).

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

3. Provider submitted itemized billing totaling $228,044.50 for the services provided to Claimant for the treatment in issue.

4. Per audit reduction, the total charges should be reduced by $49,352.61.

5. Carrier issued payments of $62,700.15 to Provider for the services in question.

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

[8] MRD applied the Stop-Loss Exception but only had $157,954.50 in dispute before them.

7. 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.

8. MRD issued its Findings and Decision, holding that reimbursement of $118,465.87 was owed by Carrier.

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

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

11. On April 8, 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.

12. Provider's total audited charges are $178,691.89, which allows Provider to obtain reimbursement under the Stop-Loss methodology.

13. Under the Stop Loss methodology, Provider is entitled to total reimbursement of $134,018.92. Because Carrier has paid $62,700.15, Provider is entitled to an additional reimbursement of $71,318.77.

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. Carrier 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.

11. The Stop-Loss Methodology applies to this case.

12. Provider is entitled to total reimbursement of $134,018.92.

13. As specified in the above Findings of Fact, Carrier has reimbursed Provider $62,700.15.

14. Based on the foregoing findings of fact and conclusions of law, Carrier owes Provider an additional reimbursement of $71,318.77.

ORDER

It is hereby **ORDERED** that Ace Insurance Company of Texas reimburse Vista Medical Center Hospital an additional $71,318.77, plus applicable interest, for services provided to Claimant.

SIGNED May 22, 2008.

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