SOAH DOCKET NO. 453-05-9181.M4
MDR NO. M4-03-4589-01

VISTA MEDICAL CENTER HOSPITAL,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
V.	§	**OF**
	§	
TPCIGA FOR UNITED PACIFIC	§	
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, TPCIGA[3] for United Pacific Insurance Company[4] (Carrier) is ordered to pay additional reimbursement in the amount of $49,567.70, plus any applicable interest.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

The MRD issued its decision on July 19, 2005. Provider filed a timely and sufficient request for hearing. Notice of the hearing was appropriately issued to the parties. The hearing convened

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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.

3 Texas Property and Casualty Insurance Guaranty Association.

4 Carrier is an "Impaired Insurer" under TEX. INS. CODE ANN. § 21.28-C.

and concluded on May 13, 2008.[5] The record closed that same day.

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 $129,213.49 based on Provider's usual and customary charges for the inpatient stay and surgical procedure. To date, Carrier has paid $47,264.42.

B. Issues

1. Summary of Positions and ALJ's Decision

In summary, the parties' positions and ALJ's findings are as follows:

	MRD	Provider	Carrier	ALJ

[5] 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.

Charges	$129,213.49	$129,213.49	$129,213.49[6]	**$129,213.49**
Post-Audit Charges	not stated	$129,213.49	$115,625.14[7]	**$129,105.49**[8]
	MRD	**Provider**	**Carrier**	**ALJ**

[6] Provider issued two bills. The bill for dates of service March 28, 2002, through March 31, 2002, totaled $125,680.53 and was dated April 4, 2002. By check dated July 12, 2002, Carrier paid $22,742.42. The July 12, 2002 payment by Carrier paid Stop-Loss on post-audit charges with the exception of implantables. By check dated November 13, 2002, Carrier paid $22,286.00 for implantables at cost plus 10%. The invoice for dates of service April 1 through 3, 2002, totaled $3,532.96 and was dated April 11, 2002. By check dated June 11, 2002, Carrier paid $2,236.00, the per diem rate for 2-days.

[7] Carrier's Explanation of Benefits (EOB) for the April 1-3, 2002 dates of service used denial codes "G" (Charge included in the reimbursement for the per diem according to the Acute Care-In Patient Fee Guidelines) and "M" (Reimbursement based upon 'Fair and Reasonable'). Carrier's EOB for the March 28-31, 2002 dates of service also used two denial codes. "F-M, G, R" (Line item bill review by CorVel, implants paid at inv. Plus 10%. Detailed audit report will be sent. Paid per inpatient hospital fee guidelines) was used on all charges except implantables. An "N" (In order to review this charge we need a copy of the invoice detailing the cost to the Provider.) denial code was used on implantables (revenue code 278). The "Summary of Adjusted Charges" prepared by CorVel using its MedCheck Select is the detailed audit report. CorVel's audit only reviewed the charges for the March 28-31, 2002 dates of service. The audit report is a four-page document; the last page being a summary. The CorVel audit uses three numerical codes to deny or reduce charges: (1) Numeric code 1 indicates the billed charge exceeds the usual and customary charge for the item or service according to the geographic area; (2) Numeric code 3 indicates the item or service was unbundled from a basic charge; and (3) Numeric code 7 indicates the item or service is customarily included as a part of routine pharmacy service.

[8] Reduction for usual and customary to the geographic area is not a valid reduction under the Stop-Loss Exception. The numeric code 1 audit reductions were improper under the Stop-Loss Exception. Reimbursement of implantables at cost plus 10% does not comply with the Stop-Loss Exception. Use of the "N" denial code to obtain cost invoices for implantables is not a proper use of the denial code under the Stop-Loss Exception. With respect to the numeric code 3 audit reductions, Provider argued: (1) that the "G" denial code was used globally in the EOB and was not specific to any charge; and (2) that the numeric 3 code failed to specify the "basic" charge and did not put Provider on notice as to the specific service the charge was allegedly unbundled from. 28 TAC § 133.304(c) requires that EOB provide a sufficient explanation to allow Provider to understand the reasons for the Carrier's actions. The rule specifically states that a "generic statement that simply states a conclusion…does not satisfy the requirements of this section." The ALJ finds the numeric code 3 audit reductions do not comply with specificity requirements of 28 TAC § 133.304(c) and does not reduce those billed charges. With respect to the numeric code 7 audit reductions, Provider presented no argument or evidence other than the "G" denial code was used globally in the EOB and was not specific to any charge. The parties were required to file certain documents, including any audit results. Although the CorVel "Summary of Adjusted Charges" audit was submitted only by Carrier and does not appear in Provider's documents, Provider did not contend it had not received the audit results. As such, Provider was on notice as to the specific charge Carrier claimed was global to pharmacy service under numeric code 7. Provider bore the burden of proof and offered no evidence with respect to the numeric code reduction. The ALJ makes a reduction of $108.00 to billed charges for the audit reduction using numeric code 7.

Reimbursement Methodology	per diem[9]	x 75%	mixed per diem and modified Stop-Loss	**x 75%**[10]
Reimbursement Amount	not stated	$96,910.12	$47,264.42	**$96,829.12**
Less Payment	($47,264.42)	($47,264.42)	($47,264.42)	**(**$47,264.42**)**
Balance Due Provider	$0.00	$49,645.70	$0.00	**$49,567.70**

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."[11] The following legal issues in this case were decided by a SOAH En Banc Panel[12] (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

[9] MRD issued its initial decision on October 13, 2004, and determined the Stop-Loss Exception applied because total audited charges exceeded $40,000.00. MRD awarded $49,645.70 additional reimbursement. On October 29, 2004, MRD withdrew that decision. Some 10 months later on July 19, 2005, MRD issued an amended decision. In its amended decision MRD determined that the Stop-Loss Exception did not apply since the admission did not involve "unusually extensive services." MRD ordered reimbursement for the 4-day hospital stay based on the per diem methodology. MRD stated it could not determine the cost of implantables and recommended no additional reimbursement. The ALJ notes that it appears MRD miscalculated the length of stay in its July 2005 decision. In its withdrawn October 2004 decision the length of stay is March 28, 2002, through April 3, 2002. In Part II of its July 2005 decision MRD states the dates of service are from March 28, 2002, through April 3, 2002. The billed charges and EOBs both address dates of service from March 28, 2002, through April 3, 2002. Carrier did not raise a preauthorization issue as to dates of service. Despite these facts, MRD's July 2005 decision calculates per diem reimbursement on a 4-day length of stay.

[10] The Stop-Loss Threshold was met in this case and the reimbursement for the preauthorized hospitalization should be calculated according to the Stop-Loss Exception.

[11] 28 TAC § 134.401(c) (6).

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

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.[13]

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.[14] 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 TPCIGA for United Pacific Insurance Company (Carrier).

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

3. Provider submitted itemized billing totaling $129,213.49 for services provided to Claimant.
4. The $129,213.49 billed was Provider's usual and customary charges for these items and treatments.

[13] 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.

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

5. Carrier issued payments of $47,264.42 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.

12. On May 13, 2008, Administrative Law Judge Howard S. Seitzman 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 that day.

13. Provider's total audited charges under § 134.401(c) (6) (A) (v) are $129,105.49, 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 $96,829.12. After deduction of Carrier's prior payment of $47,264.42, Provider is entitled to additional reimbursement of $49,567.70, 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. In this proceeding, the party seeking relief from adverse findings of MRD had the burden of proof on those issues 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 $96,829.12.

18. As specified in the above Findings of Fact, Carrier has already reimbursed Provider $47,264.42 of this amount.

19. Based on the foregoing findings of fact and conclusions of law, Carrier owes Provider an additional reimbursement of $49,567.70, plus any applicable interest.

ORDER

It is hereby **ORDERED** that TPCIGA for United Pacific Insurance Company reimburse Vista Medical Center Hospital the additional sum of $49,567.70, plus any applicable interest, for services provided to Claimant. All relief not expressly granted herein is **DENIED**.

SIGNED June 19, 2008.

HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS