SOAH DOCKET NO. 453-05-9801.M4
MDR NO. M4-05-8926-01

VISTA HOSPITAL OF DALLAS,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
V.	§	**OF**
	§	
OLD REPUBLIC INSURANCE	§	
COMPANY,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Vista Hospital of Dallas (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, Old Republic Insurance Company (Carrier) is ordered to pay additional reimbursement in the amount of $95,238.17, plus any applicable interest.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

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

The hearing convened and concluded on May 13, 2008.[3] The record closed that same day.

[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] Beginning in 2003, the Division began referring a significant number of ACIHFG cases to SOAH. Between

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 $207,170.39 based on Provider's usual and customary charges for the inpatient stay and surgical procedure. To date, Carrier has paid $59,979.87.

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
Charges	$207,170.39	$207,170.39	$207,170.39	**$207,170.39**

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.

Post-Audit Charges	not stated	$207,170.39	$150,413.89[4]	**$206,957.39**[5]
Reimbursement Methodology	per diem[6]	x 75%	modified Stop-Loss	**x 75%**[7]
	MRD	**Provider**	**Carrier**	**ALJ**
Reimbursement Amount	$30,069.55	$155,377.79	$59,979.87	**$155,218.04**
Less Payment	($59,979.87)	($59,979.87)	($59,979.87)	**($59,979.87)**
Balance Due Provider	$0.00	$95,397.92	$0.00	**$95,238.17**

2. Background

When a hospital's total audited bill is greater than $40,000, the Division's Stop-Loss

[4] Carrier's Explanation of Benefits (EOB) used denial code "F-G-M" ("Reimbursement is based upon a fair and reasonable line by line audit by zip code and application of Stop Loss Methodology") for all charges except implantables. For implantables, Carrier used an "F" denial code (Submitted invoices reflect the application of a total maximum Stop Loss percentage based upon state per diem guidelines"). The "Summary of Adjusted Charges" prepared by CorVel using its MedCheck Select is the line-by-line audit report. The audit report is a five-page document; the last page being a summary. The CorVel audit uses six 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; (3) Numeric code 7 indicates the item or service is customarily included as a part of routine pharmacy service; (4) Numeric code 8 indicates the item or service is customarily included as a part of routine laboratory service; (5) Numeric code 13 indicates a charge with a potential error needing further documentation for reimbursement; and (6) Numeric code 41 indicates an item or service that appears unrelated to a work injury.

[5] 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. With respect to the numeric code 3 audit reductions, Provider argued 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. The ALJ finds the numeric code 3 audit reductions do not comply with specificity requirements of 28 TAC § 133.304(c). Because Carrier's explanation does not allow Provider to understand the reason for denial, the ALJ does not reduce those billed charges. The numeric code 7 and 8 reductions were specific and were not addressed by Provider's evidence. The ALJ reduces Provider's charges by $213.00 for numeric code 7 and 8 audit reductions. Carrier made a numeric code 13 reduction for the "Symphony 2 FS-60." The "Symphony 2 FS-60" is documented in the operative report and there is an invoice for that item. Provider Ex. 1, pp. 33 and 39; Carrier Ex. 1, pp. 17 and 68. Without further specificity in the numeric denial code, the documentation provided meets the documentation request. The ALJ makes no reduction in charges for numeric code 13. Carrier grouped four billed charges under the heading "convenience items." Three of the items had a numeric code 41 denial and one item had a numeric code 3 denial. Based on the evidence in the record, the ALJ can find no discernible difference in those four "convenience items" or an explanation as to why numeric code 41 was used as opposed to numeric code 3. Because there is no explanation for the use of numeric code 41 and because numeric code 3 was improper, he ALJ declines to make a reduction in billed charges for the three items with a numeric code 41 designator.

[6] MRD determined that the Stop-Loss Exception did not apply since the admission did not involve "unusually extensive services." MRD calculated $4,472.00 reimbursement for the 4-day hospital stay based on the per diem methodology. MRD also calculated $25,597.55 reimbursement for implantables at cost plus 10%.

[7] The Stop-Loss Threshold was met in this case and the reimbursement for the preauthorized 4-day hospitalization should be calculated according to the Stop-Loss Methodology.

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

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[8] 28 TAC § 134.401(c)(6).

[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.

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 Old Republic Insurance Company (Carrier).

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

3. Provider submitted itemized billing totaling $207,170.39 for services provided to Claimant.

4. The $207,170.39 billed was Provider's usual and customary charges for these items and treatments.

5. Carrier issued payments of $59,979.87 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 $206,957.39, 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 $155,218.04. After deduction of Carrier's prior payment of $59,979.87, Provider is entitled to additional reimbursement of $95,238.17, 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 $155,218.04.

18. As specified in the above Findings of Fact, Carrier has already reimbursed Provider $59,979.87 of this amount.

19. Based on the foregoing findings of fact and conclusions of law, Carrier owes Provider an additional reimbursement of $95,238.17, plus any applicable interest.

ORDER

It is hereby **ORDERED** that Old Republic Insurance Company reimburse Vista Hospital of Dallas the additional sum of $95,238.17, 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