

**SOAH DOCKET NO. 454-11-5439.M4
MDR NO. M4-04-7829-01**

**SOAH DOCKET NO. 454-11-5943.M4
MDR NO. M4-04-B080-01**

**SOAH DOCKET NO. 454-11-6543.M4
MDR NO. M4-05-1348-01**

VISTA MEDICAL CENTER HOSPITAL,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
ZURICH AMERICAN	§	
INSURANCE COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Vista Medical Center Hospital (Vista) challenges the denial of additional reimbursement by Zurich American Insurance Company (Zurich) for three hospital outpatient procedures (HOP) performed at Vista’s facility on three separate occasions for the same injured worker. The services were provided on May 15, 2003,¹ October 22, 2003,² and February 5, 2004.³ The May 15, 2003, service consisted of a stellate ganglion block (injection) billed under CPT Code 64510. The October 22, 2003 service consisted of placement of temporary spinal cord stimulator leads percutaneously for a spinal cord stimulator trial, billed under CPT code 63650. The February 5, 2004 service consisted of placement of a permanent spinal cord stimulator generator and leads within the epidural space, billed under CPT Codes 63650 and 63685.

¹ SOAH Docket No. 454-11-5439.M4.

² SOAH Docket No. 454-11-6543.M4.

³ SOAH Docket No. 454-11-5943.M4.

The Administrative Law Judges (ALJs) find Vista failed to prove it was entitled to additional reimbursement for the procedures. Accordingly, Vista's request for additional reimbursement is denied.

JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no issues of notice or jurisdiction. Therefore, these matters are addressed in the Findings of Fact and Conclusions of Law without further discussion. For each date of service, Vista filed a request for medical fee dispute resolution with the Medical Review Division (MRD) of the Texas Department of Insurance, Division of Workers' Compensation (Division).⁴ On April 11, 2011, the Division issued its Medical Fee Dispute Resolution Findings and Decision (MRD Decision), denying Vista additional reimbursement for the May 15, 2003 service. On April 29, 2011, the Division issued its MRD Decision denying Vista additional reimbursement for the February 5, 2004 service. On May 12, 2011, the Division issued its MRD Decision denying Vista additional reimbursement for the October 22, 2003 service. Vista timely requested hearings before the State Office of Administrative Hearings (SOAH) to contest the MRD determinations. A hearing convened before ALJs Sharon Cloninger and Henry D. Card on May 22, 2012, at SOAH's facilities in Austin, Texas. Vista was represented by attorney Cristina Y. Hernandez. Zurich was represented by attorney Steven M. Tipton. The record closed on September 21, 2012, following the filing of post-hearing briefs.

I. DISCUSSION

A. Applicable Law

This case is governed by the Tex. Lab. Code (Labor Code) § 401.001*et seq.*, also known as the Texas Workers' Compensation Act (Act). The workers' compensation insurance program

⁴ 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.

created by the Act covers all medically necessary health care.⁵ Although amended several times, Section 413.011 of the Act generally directs the Division's Commissioner to establish medical policies and guidelines relating to fees charged or paid for medical services for employees who suffer compensable injuries, including guidelines relating to payment of fees for specific medical treatments or services.⁶ The Act has consistently required that the fee guidelines for medical services be fair and reasonable, ensure quality medical care, and achieve effective medical cost control.⁷ Moreover, the guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf.⁸ In setting such guidelines, the increased security of payment afforded by the Act also must be considered.⁹

Prior to March 2008, the Division did not have a fee guideline for HOP services.¹⁰ In reimbursing providers for services without a fee guideline, an insurance carrier is required to reimburse at a fair and reasonable rate, as described in Section 413.011(d) of the Act.¹¹ Until May 2006, "fair and reasonable reimbursement" was defined as follows:

Reimbursement that meets the standards set out in § 413.011 of the Texas Labor Code, and the lesser of a health care provider's usual and customary charge, or

⁵ Tex. Lab. Code § 401.011.

⁶ This section of the Act has been amended on several occasions as follows:

Acts 1993, 73rd Leg. ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.02, eff. Jun. 17, 2001; Acts 2003, 78th Leg., ch. 962, Sec. 1, 2, eff. Jun. 20, 2003.

Amended by:

Acts 2005, 79th Leg., ch. 265, Sec. 3.233, eff. Sept. 1, 2005.

Acts 2007, 80th Leg. R.S., ch. 1177, Sec. 2, eff. Sept. 1, 2007.

Acts 2007, 80th Leg., R.S. ch. 1177, Sec. 2, eff. Jan. 1, 2011.

⁷ Tex. Lab. Code § 413.011(d).

⁸ Tex. Lab. Code § 413.011(d).

⁹ Tex. Lab. Code § 413.011(d).

¹⁰ Effective March 1, 2008, the Division adopted a fee guideline for outpatient medical services. 28 Tex. Admin. Code (TAC) § 134.403. By its terms, that fee guideline applies only to outpatient medical services provided on or after March 1, 2008.

¹¹ 28 TAC § 134.1(f) from Oct. 7, 1991, until May 16, 2002, when it became 28 TAC § 134.1(c). On May 2, 2006, it became 28 TAC § 134.1(c)(3). In 2008 it was amended to become 28 TAC § 134.1(e)(3).

(A) the maximum allowable reimbursement, when one has been established in an applicable Commission fee guideline,

(B) the determination of a payment amount for medical treatment(s) and/or service(s) for which the Commission has established no maximum allowable reimbursement amount, or

(C) a negotiated contract amount.¹²

Effective May 2, 2006, the Division defined “fair and reasonable reimbursement” as reimbursement that:

- (1) is consistent with the criteria of Labor Code § 413.011;
- (2) ensures that similar procedures provided in similar circumstances receive similar reimbursement; and
- (3) is based on nationally recognized published studies, published Division medical dispute decisions, and values assigned for services involving similar work and resource commitments, if available.¹³

When the Division has not established a fee guideline for a particular procedure, service, or item, the Division’s rules require carriers to develop and consistently apply a methodology to determine fair and reasonable reimbursement.¹⁴

B. Evidence and Argument

For the May 15, 2003 service, Vista billed Zurich \$16,443.45. Zurich reimbursed Vista \$399.60. In its request for medical dispute resolution at the MRD, Vista sought additional reimbursement of \$14,929.20. In the alternative, Vista contended that at a minimum, 70 percent of its billed charges constituted fair and reasonable reimbursement. The MRD Decision found that Vista did not establish it was entitled to additional reimbursement.

For the October 22, 2003 service, Vista billed Zurich \$26,965.07. Zurich reimbursed Vista \$5,170.50. In its request for medical dispute resolution at the MRD, Vista sought additional reimbursement of \$21,794.57. In the alternative, Vista contended that at a minimum, 70 percent of

¹² 28 TAC § 133.1(8).

¹³ 28 TAC § 134.1(d)(1)-(3). Amended in 2008 to 28 TAC § 134.1(f)(1)-(3).

¹⁴ 28 TAC § 133.304(i)(1) (eff. July 15, 2000); 28 TAC § 134.1(e) (eff. May 2, 2006).

its billed charges constituted fair and reasonable reimbursement. The MRD Decision found that Vista did not establish it was entitled to additional reimbursement.

For the February 5, 2004 service, Vista billed Zurich \$18,660.20. Zurich reimbursed Vista \$1,706.25. In its request for medical dispute resolution at the MRD, Vista sought additional reimbursement of \$15,316.95. In the alternative, Vista contended that at a minimum, 70 percent of its billed charges constituted fair and reasonable reimbursement. The MRD Decision found that Vista did not establish it was entitled to additional reimbursement.

For the SOAH hearing, Vista altered its theory and requested lower reimbursements based on the average payments made to it in 2003, 2004, 2005, and 2007 from various workers' compensation carriers for the CPT Codes at issue.¹⁵ For the May 15, 2003, service, Vista requested an additional \$5,143.84, plus interest. For the October 22, 2003, service, Vista requested an additional \$2,932.57, plus interest. For the February 5, 2004, service, Vista requested an additional \$6,538.96, plus interest.

To support its position, Vista relied on two recent Division decisions involving Renaissance Hospital.¹⁶ In those cases, the Division found that the average payment by all insurance carriers in the Texas workers' compensation system during the same year and involving the same procedures that Renaissance provided was the best evidence in those cases of an amount that would achieve a fair and reasonable reimbursement.

Vista observed that Zurich did not present any testimony. Vista argued that the development and application of Zurich's payment methodology, in relation to the requisite "fair and reasonable" standard, was unknown. Vista asserted that Zurich did not present any evidence that the amount it reimbursed was fair and reasonable under the statutory standards.

¹⁵ Vista's Post-Trial Brief, page 3 and Attachment B.

¹⁶ *Renaissance Hospital v. Zurich American Insurance Company*, MR Nos. M4-08-2454-01 (Decision Sept. 15, 2011) and M4-08-0446-01 (Decision October 11, 2011); Vista Exs. 10 and 11.

Zurich argued that Vista was prohibited by law and precedent from raising its new basis for recovery. Zurich argued that, if that theory were considered, Vista failed to prove the methodology met the criteria of the Labor Code and the Division's rules. Zurich contended that Vista failed to show that reimbursements based on historical average payments were necessary for employees to gain access to outpatient services, failed to demonstrate cost control, and failed to show that those payments did not exceed amounts paid for persons of an equivalent standard of living. Zurich argued that Vista's methodology did not take into consideration the increased security of payment afforded by the Labor Code, was not consistent with the most current methodologies and models used by Medicare, and was not based on nationally recognized studies. Zurich added that Vista's use of a simple average was statistically and legally unsupported.

Zurich contended that the two Renaissance cases were wrongly decided.¹⁷ In addition, it pointed out that Vista's proposed methodology was not the same as that used in those cases.

C. Conclusion

Vista failed to establish how its proposed methodology and its requested additional reimbursement levels complied with the requirements of the Labor Code. Accordingly, Vista did not meet its burden of proof and is not entitled to additional reimbursement from Zurich for the services in question.

II. FINDINGS OF FACT

1. Vista Medical Center Hospital (Vista) challenges the denial of additional reimbursement by Zurich American Insurance Company (Zurich) for three hospital outpatient procedures (HOP) performed at Vista's facility on three separate occasions for the same injured worker.
2. The services at issue were provided on May 15, 2003, October 22, 2003, and February 5, 2004.

¹⁷ The ALJs offer no opinion and make no decision on whether the methodology used in the Renaissance cases is valid for determining fair and reasonable reimbursement.

3. The May 15, 2003 service consisted of a stellate ganglion block (injection) billed under CPT Code 64510.
4. The October 22, 2003 service consisted of placement of temporary spinal cord stimulator leads percutaneously for a spinal cord stimulator trial, billed under CPT code 63650.
5. The February 5, 2004 service consisted of placement of a permanent spinal cord stimulator generator and leads within the epidural space, billed under CPT Codes 63650 and 63685.
6. For the May 15, 2003 service, Vista billed Zurich \$16,443.45. Zurich reimbursed Vista \$399.60.
7. For the May 15, 2003 service, in its request for medical dispute resolution at the MRD, Vista sought additional reimbursement of \$14,929.20. In the alternative, Vista contended that at a minimum, 70 percent of its billed charges constituted fair and reasonable reimbursement.
8. On April 11, 2011, the Division issued its Medical Fee Dispute Resolution Findings and Decision (MRD Decision), denying Vista additional reimbursement for the May 15, 2003 service.
9. For the October 22, 2003 service, Vista billed Zurich \$26,965.07. Zurich reimbursed Vista \$5,170.50.
10. For the October 22, 2003 service, in its request for medical dispute resolution at the MRD, Vista sought additional reimbursement of \$21,794.57. In the alternative, Vista contended that at minimum, 70 percent of its billed charges constituted fair and reasonable reimbursement.
11. On May 12, 2011, the Division issued its MRD Decision denying Vista additional reimbursement for the October 22, 2003 service.
12. For the February 5, 2004 service, Vista billed Zurich \$18,660.20. Zurich reimbursed Vista \$1,706.25.
13. For the February 5, 2004 service, in its request for medical dispute resolution at the MRD, Vista sought additional reimbursement of \$15,316.95. In the alternative, Vista contended that at a minimum, 70 percent of its billed charges constituted fair and reasonable reimbursement.
14. On April 29, 2011, the Division issued its MRD Decision denying Vista additional reimbursement for the February 5, 2004 service.
15. Vista timely requested hearings before the State Office of Administrative Hearings (SOAH) to contest the MRD Decisions.
16. A hearing convened before Administrative Law Judges (ALJs) Sharon Cloninger and Henry D. Card on May 22, 2012, at SOAH's facilities in Austin, Texas. Vista was

represented by attorney Cristina Y. Hernandez. Zurich was represented by attorney Steven M. Tipton. The record closed on September 21, 2012, following the filing of post-hearing briefs.

17. For the SOAH hearing, Vista altered its theory and requested recovery based on the average payments made to Vista in 2003, 2004, 2005, and 2007 from various workers' compensation carriers for the CPT Codes at issue. For the May 15, 2003, service, Vista requested an additional \$5,143.84, plus interest. For the October 22, 2003, service, Vista requested an additional \$2,932.57, plus interest. For the February 5, 2004, service, Vista requested an additional \$6,538.96, plus interest.
18. The evidence does not show that Vista's proposed methodology and requested additional reimbursement levels were fair and reasonable and that Vista is entitled to additional reimbursement.

III. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to Tex. Lab. Code § 413.031 and Tex. Gov't Code ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with Tex. Gov't Code §§ 2001.051 and 2001.052.
3. The services provided to the Claimant were not covered by a fee guideline issued by the Division, and so were required to be billed and reimbursed at a fair and reasonable rate, within the meaning of Tex. Labor Code § 413.011.
4. Vista had the burden of proof in this proceeding by a preponderance of the evidence.
5. Vista did not prove the additional reimbursement it sought complied with the applicable criteria for reimbursement under the Texas Labor Code.
6. Vista failed to prove it is entitled to additional payment from Zurich for the services provided to the claimant.


ORDER

IT IS ORDERED that Zurich is not required to pay Vista any additional reimbursement for the services provided to the claimant.

SIGNED November 19, 2012.



SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS