SOAH DOCKET NO. 454-11-5777.M4
DWC NO. _____

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

DECISION AND ORDER

Vista Medical Center Hospital (Vista) challenges the denial of additional reimbursement by Ace American Insurance Company (AAIC) for hospital outpatient (HOP) services provided to an injured worker on November 26, 2002. Vista billed AAIC $16,142.50 for various services, including an epidural steroid injection (ESI) fluoroscopy and lumbar discogram and related hospital services. AAIC reimbursed Vista $1,180.00.

Based on the evidence and arguments, the Administrative Law Judge (ALJ) finds that Vista failed to prove it is entitled to additional reimbursement for services rendered. Accordingly, Vista's request for additional reimbursement is denied.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Vista filed a request for medical fee dispute resolution with the Texas Department of Insurance, Division of Workers' Compensation (Division).[1] On March 21, 2011, the Division issued its Medical Fee Dispute Resolution Findings and Decision (MRD Decision). Vista timely requested a hearing before the State Office of Administrative Hearings (SOAH) to contest MRD's determination.

[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.

On April 24, 2012, ALJ Penny A. Wilkov conducted a hearing in this case at the State Office of Administrative Hearings, Austin, Texas. Attorney Cristina Y. Hernandez represented Vista. Attorney Nicholas Canaday, III represented AAIC. The record closed on August 3, 2012, following the filing of post-hearing briefs. No party challenged jurisdiction or notice.

II. DISCUSSION

A. Applicable Law

This case is governed by the Tex. Lab. Code Ann. (Labor Code) § 401.001*et seq*, also known as the Texas Workers' Compensation Act (Act). The workers' compensation insurance scheme created by the Act covers all medically necessary health care.[2] Although amended on several occasions, 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.[3] The Act has consistently required that the fee guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control.[4] 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.[5] In setting such guidelines, the increased security of payment afforded by the Act also must be considered.[6]

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[2] Labor Code § 401.011.

[3] 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.

[4] Tex. Labor Code Ann. § 413.011(d).

[5] Tex. Labor Code Ann. § 413.011(d).

[6] Tex. Labor Code Ann. § 413.011(d).

In 2007, when the ESI was performed, there was no fee guideline applicable to HOP services.[7] In reimbursing Vista for services without a fee guideline in place, an insurance carrier is required to reimburse for those services at a fair and reasonable rate, as described in Section 413.011(d) of the Act.[8] 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 Vista's usual and customary charge, or
>
> (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.[9]

Effective May 2, 2006, the Division required that "fair and reasonable reimbursement" meet the following requirements:

> (1) be consistent with the criteria of Labor Code § 413.011;
>
> (2) ensure that similar procedures provided in similar circumstances receive similar reimbursement; and
>
> (3) be based on nationally recognized published studies, published Division medical dispute decisions, and values assigned for services involving similar work and resource commitments, if available.[10]

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.

B. Evidence and Argument

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[7] 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.

[8] 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).

[9] 28 TAC § 133.1(8).

[10] 28 TAC § 134.1(d)(1)-(3).

In its request for reimbursement presented to AAIC, Vista requested $16,142.50 for services it provided to the injured worker. AAIC reimbursed Vista $1,180.00 for those services. Vista sought additional reimbursement of $15,024.50 in its request for medical fee dispute resolution filed with MRD. At MRD, Vista asserted that 70% of its billed charges constituted fair and reasonable reimbursement. The MRD Decision found that Vista did not establish the amount it requested was fair and reasonable.[11]

At SOAH, Vista adjusted its request and sought recovery based on an average of 49 payments it received from multiple payers for a similar procedure provided during 2002 under CPT Code 62311.[12] In support, Vista offered the testimony of Jacquelyn Pham, Director of Business Financial Services at Doctors Practice Management, the agency in charge of billing and collections for Vista. Ms. Pham's testimony and the evidence reflects the following: [13]

- In 2002, there were 49 Vista admissions under CPT code 62311. The average reimbursement from all workers' compensation (WC) carriers for a similar procedure provided by Vista was $7,487.74;

- Vista filed a fee dispute with the Division in 21 cases of the 49 admissions under CPT code 62311 in 2002. The remaining 28 undisputed reimbursements were paid at an average of $10,156.46 by all WC carriers for this procedure; and

- Based on the averages stated above, Vista seeks reimbursement within the range of $7,487.74-$10,156.46, but maintains that the higher amount is applicable because the disputed cases would unfairly skew the average payments downward.

To support its position, Vista relied on two recent Division decisions involving Renaissance Hospital.[14] 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 of an amount that would achieve a fair and reasonable reimbursement.

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[11] AAIC Ex. 6.

[12] Vista Ex. 11. Although there exists a dispute between the parties regarding the correct CPT Code in this exhibit, the discrepancy does not affect the outcome of this case. Accordingly, the ALJ will reference CPT Code 62311, as provided in Vista's exhibit.

[13] Tr. at 30.

[14] MFDR Tracking Nos. M4-08-2454-01 and MR-08-0446-01.

In the present dispute, however, Vista conceded that it did not perform the same analysis employed in the Renaissance cases. Instead, it arrived at its reimbursement methodology by averaging all payments it received rather than averaging payments to all providers.[15] Vista argued that it was unable to collect all the data in a timely manner.[16]

In response to Vista's reliance on the Renaissance cases for its theory of recovery, AAIC argued that the Renaissance methodology was based on an average of most HOP facilities and industry-wide data, rather than just Vista's data as in the present case. Further, the Renaissance decisions relied solely upon average payment calculations to order additional reimbursement without explaining how each payment was fair, reasonable, and in compliance with statutory requirements.

Thus, AAIC argued, Vista's theory of recovery asserted before SOAH was unreasonable because Vista offered no evidence that the payments it received for the ESI fluoroscopy and lumbar discogram during 2002 were based on the criteria for fair and reasonable reimbursement established in the Act and under Division's rules. AAIC further asserted that Vista's use of its limited, unsubstantiated historical payment data not only failed to establish a fair and reasonable rate, it also failed to demonstrate cost control. AAIC contended that Vista provided no statistical validation for use of its own historical payment database and that the use of Vista's reimbursement data alone is inherently biased and offers no comparisons to other Texas hospitals.

C. Analysis and Conclusion

The ALJ finds that Vista's theory of recovery was not consistent with the Division's decisions in the two Renaissance cases.[17] Furthermore, Vista failed to establish how its proposed reimbursement level of $7,487.74 to $10,156.46 under CPT Code 62311 complied with criteria

[15] Tr. at 30.

[16] Vista Ex. 11.

[17] The ALJ offers no opinion and makes no decision on whether the methodology used in the Renaissance cases is valid for determining fair and reasonable reimbursement.

contained in the Act and rules for fair and reasonable reimbursement. Accordingly, Vista did not meet its burden of proof and did not prove it is entitled to additional reimbursement from AAIC for the services in question.

The evidence in the record is insufficient for the ALJ to determine a fair and reasonable reimbursement for the services rendered by Vista in this case.

III. FINDINGS OF FACT

1. On November 26, 2002, Vista provided HOP services, including an ESI fluoroscopy and lumbar discogram and related hospital services to a workers' compensation claimant.

2. AAIC was the responsible workers' compensation insurer for the claimant.

3. Vista billed AAIC $16,142.50 for the HOP services.

4. AAIC reimbursed Vista $1,180.00 for the HOP services.

5. At the time Vista provided the services, there was no fee guideline in place for HOP services.

6. Vista requested additional reimbursement for the services in dispute.

7. AAIC denied Vista's request for additional reimbursement.

8. Vista timely filed a request for medical fee dispute resolution with the Division.

9. On March 21, 2011, MRD issued its Medical Fee Dispute Resolution Findings and Decision and found that no additional reimbursement was owed to Vista.

10. Vista timely requested a hearing at SOAH to contest the MRD Decision.

11. A Notice of Hearing informed the parties of the date, time, and location of the hearing, the matters to be considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.

12. A hearing convened before ALJ Penny A. Wilkov on April 24, 2012, at SOAH's facilities in Austin, Texas. Vista was represented by attorney Christina Hernandez. AAIC was represented by attorney Nicholas Canaday, III. The record closed on August 3, 2012, following the filing of post-hearing briefs.

13. During 2002, Vista received 49 payments from multiple carriers and other payers for various injection procedures. These payments averaged $7,487.74.

14. If Vista includes only the 28 payments made by workers' compensation carriers in 2002 that are not being disputed, then the average payment is $10,156.46.

15. Vista failed to prove that using an average range of payments of $7,487.74 to $10,156.46 constituted fair and reasonable reimbursement based upon the applicable criteria.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings 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. Lab. Code § 413.011.

4. Vista failed to prove the reimbursement it requested was fair and reasonable.

5. Vista failed to prove it is entitled to additional payment from AAIC for the services provided to the claimant.

ORDER

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

SIGNED September 21, 2012.

PENNY A. WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS