

**SOAH DOCKET NO. 454-11-7994.M4
DWC NO. M4-06-1357-01**

and

**SOAH DOCKET NO. 454-11-8013.M4
DWC NO. M4-06-8013-01¹**

VISTA MEDICAL CENTER HOSPITAL,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
AMERICAN CASUALTY COMPANY OF	§	
READING, PA,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Vista Medical Center Hospital (Vista) challenges the denial of additional reimbursement by American Casualty Company of Reading, PA (American Casualty) for two hospital outpatient procedures (HOP) performed at Vista’s facility. On November 29, 2004,² and January 17, 2005,³ the injured worker underwent a lumbar transforaminal epidural steroid injection (ESI), billed under CPT Code 64483. The Administrative Law Judge (ALJ) finds that Vista failed to prove it was entitled to additional reimbursement. Accordingly, Vista’s requests for additional reimbursement for the services provided on November 29, 2004, and January 17, 2005, are denied.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Jurisdiction and notice were not contested and are addressed in the Findings of Fact and Conclusions of Law without further discussion. Vista filed requests for medical fee dispute resolution with the Medical Review Division (MRD) of the Texas Department of Insurance, Division

¹ To avoid duplicity, the ALJ is issuing one Decision and Order addressing both cases because the patient, provider, carrier, and services were the same in both cases, and the two cases were heard together at SOAH.

² SOAH Docket No. 454-11-8013.M4.

³ SOAH Docket No. 454-11-7994.M4.

of Workers' Compensation (Division).⁴ On May 27, 2011, the Division issued its Medical Fee Dispute Resolution Findings and Decision (MRD Decision) denying Vista additional reimbursement for the November 29, 2004 services. On June 17, 2011, the Division issued its MRD Decision denying Vista additional reimbursement for the January 17, 2005 services. Vista timely requested a hearing for both MRD Decisions before the State Office of Administrative Hearings (SOAH) to contest MRD's determinations. A hearing convened before ALJ Catherine Egan on May 10, 2012, at SOAH's facilities in Austin, Texas. Attorney Cristina Hernandez represented Vista. Attorney James Loughlin represented American Casualty. The record closed on September 24, 2012, following the filing of post-hearing briefs.

II. 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 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

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.

⁵ Labor 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 Labor Code § 413.011(d).

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 1, 2008, the Division did not have a fee guideline applicable to 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

(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

⁸ Labor Code § 413.011(d).

⁹ Labor 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 March 2008 it was amended to become 28 TAC § 134.1(e)(3).

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).

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. Discussion

In its request for reimbursement presented to American Casualty, Vista asked for \$17,092.55 for the services it provided to the injured worker on November 29, 2004. American Casualty reimbursed Vista \$900.00 for the November 29, 2004 services. In its request for medical dispute resolution at the MRD, Vista sought additional reimbursement of \$15,130.55.¹⁵ At MRD, Vista contended that 70% of its billed charges constituted fair and reasonable reimbursement. The MRD Decision found that Vista failed to support its request for additional reimbursement and that no additional reimbursement was owed to Vista.

For the January 17, 2005 services, Vista billed American Casualty \$13,691.55. American Casualty reimbursed Vista \$900 for the January 17, 2005 services. In its request for medical dispute resolution at the MRD, Vista sought additional reimbursement of \$11,729.55.¹⁶ At MRD, Vista contended that 70% of its billed charges constituted fair and reasonable reimbursement. The MRD Decision found that Vista failed to support its request for additional reimbursement and that no additional reimbursement was owed to Vista.

For the SOAH hearing, Vista altered its theory and requested recovery based on the average of payments it received from multiple payers for the services it provided under each of the CPT codes that were not subject to a fee dispute.¹⁷ Vista asserts that it would be unfair and skewed to including the payments that are subject to a fee dispute in its calculations because it is disputing

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

¹⁵ CPT Code 76000-59 was billed at \$1,150.00 but had a MAR of \$88.00. Therefore, Vista only sought \$88.00 at MRD.

¹⁶ CPT Code 76000-59 was billed at \$1,150.00 but had a MAR of \$88.00. Therefore, Vista only sought \$88.00 at MRD.

¹⁷ Vista presented various iterations. The base iteration included all payers. The most refined iteration excluded non-workers' compensation payments, workers' compensation payments still in dispute resolution, and Medicare payments. Medicare payments were excluded because the Division has indicated that the base Medicare payment is not fair and reasonable reimbursement under the Texas regulatory standards for workers' compensation.

those payments. In the alternative, Vista seeks the average payment made by all workers' compensation carriers for the services billed in line with the analysis in the Renaissance cases and in reliance on Commissioner's Bulletin #B-0009-07¹⁸ and a March 2005 MDR Newsletter.¹⁹ Vista seeks additional reimbursement within a range of the two averages, plus interest.²⁰ Vista seeks additional reimbursement of approximately \$2,398.93 for the November 29, 2004 ESI services, and \$1,974.00 for the January 17, 2005 ESI services. Vista asserted that for CPT Code 64483 services these amounts constitute fair and reasonable reimbursements.

To support its position, Vista relied on two recent Division decisions involving Renaissance Hospital. 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 also argued that American Casualty did not present any evidence that its methodology produced a fair and reasonable reimbursement under the statutory standards. Although American Casualty offered evidence showing the amount it reimbursed Vista, Vista asserted that American Casualty did not present sufficient evidence that the amount it reimbursed Vista was fair and reasonable under the statutory standards.

American Casualty argued that Vista's theory of recovery asserted at the SOAH hearing was flawed because Vista offered no evidence that the payments it received for the ESI during 2004 and 2005 were based on the criteria for fair and reasonable reimbursement established in the Act and the Division's rules. American Casualty further asserted that there is a significant difference between Vista's average payments and those approved by the MRD in the Renaissance cases. American Casualty pointed out 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. American Casualty contended that Vista provided no evidence on how it calculates its usual and customary

¹⁸ Vista Ex. 9.

¹⁹ Vista Ex. 8.

²⁰ Vista Ex. 13.

billing numbers. Furthermore, American Casualty opined that Vista's evidence on its statistical validation for use of its own historical payment database and that the use of Vista's own reimbursement data is lacking and therefore inherently biased.

Although American Casualty did not offer sufficient evidence to show that its methodology was fair and reasonable under the statutory standards, it noted that \$2,236.00 is 200% of \$1,118. According to American Casualty, \$1,118 is the maximum a hospital could have been reimbursed under the fee guideline for an inpatient stay.

Vista's theory of recovery was not consistent with the Division's decisions in the two Renaissance cases.²¹ Furthermore, Vista failed to establish how its proposed reimbursements for CPT Codes 64483 complied with criteria contained in the Act and rules for fair and reasonable reimbursement. Accordingly, Vista did not meet its burden of proof. Furthermore, 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.

C. Conclusion

Vista did not prove it is entitled to additional reimbursement from American Casualty for the ESI procedures in question.

III. FINDINGS OF FACT

1. On November 29, 2004, and January 17, 2005, Vista provided hospital outpatient procedure (HOP) services for administration of epidural steroid injections (ESIs), billed under CPT Code 64483, to a workers' compensation injured worker.
2. American Casualty was the responsible workers' compensation insurer for the injured worker.
3. Vista billed \$17,092.55.75 for the ESI services provided on November 29, 2004, and \$13,691.55 for the ESI services provided on January 17, 2005.
4. American Casualty reimbursed Vista \$900.00 for the ESI services provided on November 29, 2004, and \$900.00 for the ESI services provided on January 17, 2005.

²¹ 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.

5. Vista requested additional reimbursement for the services provided on November 29, 2004 and January 17, 2005.
6. American Casualty denied Vista's request for additional reimbursement for these services.
7. Vista timely filed requests for medical fee dispute resolution with Medical Review Division (MRD) of the Texas Department of Insurance, Division of Workers' Compensation (Division).
8. At the time Vista provided the services, there was no fee guideline in place for HOP services.
9. At the MRD, Vista requested \$15,130.55 additional reimbursement for the November 29, 2004 services in dispute and \$11,729.55 for the January 17, 2005 services in dispute.
10. On May 27, 2011, the Division issued its Medical Fee Dispute Resolution Findings and Decision (MRD Decision), denying Vista additional reimbursement for the November 29, 2004 services.
11. On June 17, 2011, the Division issued its MRD Decision denying Vista additional reimbursement for the January 17, 2005 services.
12. Vista timely requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the MRD Decisions.
13. 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.
14. A hearing convened before Administrative Law Judge (ALJ) Catherine C. Egan on May 10, 2012, at SOAH's facilities in Austin, Texas. Attorney Christina Hernandez represented Vista. Attorney James Loughlin represented American Casualty. The record closed on September 24, 2012, when the parties filed their closing briefs.
15. At the SOAH hearing, Vista sought the average payment made to it by all workers' compensation carriers for the services billed.
16. At the SOAH hearing, Vista requested additional reimbursement of \$2,398.93 for the ESI services provided on November 29, 2004, and \$1,974.00 for the ESI services provided on January 17, 2005, both billed under CPT Code 64483.
17. Vista failed to prove that the amount of \$2,398.93 and \$1,974.00 constituted fair and reasonable reimbursements based upon the applicable criteria.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and

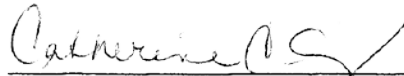
order, pursuant to Tex. Lab. Code § 413.031 and Tex. Gov't Code ch. 2003.

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 injured worker 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 fair and reasonable reimbursement.
6. Vista failed to prove it is entitled to additional payment from American Casualty for the services provided to the injured worker.

ORDER

IT IS ORDERED that American Casualty is not required to pay Vista any additional reimbursement for the services provided to the injured worker on November 29, 2004, and January 17, 2005.

SIGNED November 20, 2012.



CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS