SOAH DOCKET NO. 454-11-9324.M4
MDR NO. M4-07-1504-01

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 hospital outpatient procedures (HOP) performed at Vista's facility for an injured worker. The services were provided on December 16, 2005. The services consisted of a rotator cuff repair, billed under CPT code 23412 and removal of an implant, ankle, billed under CPT Code 20680.

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. 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).[1] On July 14, 2011, the Division issued its Medical Fee Dispute Resolution Findings and Decision (MRD Decision), denying Vista additional reimbursement.

[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.

Vista timely requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the MRD determination. 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 created by the Act covers all medically necessary health care.[2] 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.[3] 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.[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

[2] Tex. Lab. 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. Lab. Code § 413.011(d).

[5] Tex. Lab. Code § 413.011(d).

increased security of payment afforded by the Act also must be considered.[6]

Prior to March 2008, the Division did not have a fee guideline for HOP services.[7] 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.[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 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.[9]

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.[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

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[6] Tex. Lab. Code § 413.011(d).

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

determine fair and reasonable reimbursement.[11]

B. Evidence and Argument

For the December 16, 2005 services, Vista billed Zurich $31,741.75. Zurich reimbursed Vista $5,562.20. In its request for medical dispute resolution at the MRD, Vista sought additional reimbursement of $16,907.67. 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. For the December 16, 2005 services, that average was $2,898.96, which is less than the amount already paid. In its post-trial brief, Vista stated it was not requesting any additional reimbursement for the December 16, 2005 services.[12]

Vista cited two recent Division decisions involving Renaissance Hospital in support of the methodology it advocated at the hearing.[13] Zurich argued that Vista was prohibited by law and precedent from raising its new basis for recovery, that Vista did not prove that methodology met the "fair and reasonable" standard, and that the two Renaissance cases were wrongly decided.[14]

The ALJs do not address those arguments in this case, because Vista's own evidence shows it is not entitled to additional reimbursement for the December 16, 2005 services.

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[11] 28 TAC § 133.304(i)(1) (eff. July 15, 2000); 28 TAC § 134.1(e) (eff. May 2, 2006).

[12] Vista's Post-Trial Brief, page 3 and Attachment B.

[13] *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.

[14] 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.

C. Conclusion

Vista failed to establish that it is entitled to additional reimbursement for the services in question. Therefore, no additional reimbursement should be ordered.

II. FINDINGS OF FACT

1. Vista Medical Center Hospital (Vista) challenges the denial of additional reimbursement by Zurich American Insurance Company (Zurich) for hospital outpatient procedures (HOP) performed at Vista's facility for an injured worker.

2. The services at issue were provided on December 16, 2005.

3. The services consisted consisted of a rotator cuff repair, billed under CPT code 23412 and removal of an implant, ankle, billed under CPT Code 20680.

4. For the December 16, 2005 services, Vista billed Zurich $31,741.75. Zurich reimbursed Vista $5,562.20.

5. For the December 16, 2005 services, in its request for medical dispute resolution at the MRD, Vista sought additional reimbursement of $16,907.67. In the alternative, Vista contended that at a minimum, 70 percent of its billed charges constituted fair and reasonable reimbursement.

6. On July 14, 2011, the Division issued its Medical Fee Dispute Resolution Findings and Decision (MRD Decision), denying Vista additional reimbursement for the December 16, 2005 services.

7. Vista timely requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the MRD Decision.

8. 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.

9. 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 December 16, 2005 services, that average was $2,898.96, which is less than the amount already paid. In its post-trial brief, Vista stated it was not requesting any additional reimbursement for the December 16, 2005 services.

10. The evidence does not show 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

SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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