

**SOAH DOCKET NO. 454-12-0478.M4
MDR NO. M4-08-0633-01**

**SOAH DOCKET NO. 454-12-1272.M4
MDR NO. M4-08-0864-01**

**SOAH DOCKET NO. 454-12-2539.M4
MDR NO. M4-08-2853-01**

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 performed at Vista’s facility for the same injured worker on three occasions. The services were provided on April 12, 2007;¹ April 26, 2007;² and June 7, 2007.³ The April 12, 2007 service consisted of a lumbar epidural steroid injection with local anesthetic and steroids, billed under CPT Code 62311. The April 26, 2007, and June 7, 2007 services consisted of left L4-5 transforaminal steroid injections with local anesthetic and steroids, billed under CPT Code 64483. The Administrative Law Judges (ALJs) find that Vista did not prove it is entitled to additional reimbursement for the procedures. Accordingly, Vista’s request for additional reimbursement is denied.

¹ SOAH Docket No. 454-12-0478.M4.

² SOAH Docket No. 454-12-1272.M4.

³ SOAH Docket No. 454-12-2539.M4.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no issues of notice or jurisdiction. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law at the end of this Decision and Order without further discussion here.

After Vista and Zurich disagreed about the amount of reimbursement for the procedures, Vista filed a request for medical fee dispute resolution for each date of service with the Medical Review Division (MRD) of the Texas Department of Insurance, Division of Workers' Compensation (Division).⁴ On July 29, 2011, the Division issued its Medical Fee Dispute Resolution Findings and Decision (MRD Decision), denying Vista any additional reimbursement for the April 12, 2007 procedure.⁵ On July 28, 2011, the Division issued its MRD Decision denying Vista any additional reimbursement for the April 26, 2007 procedure.⁶ On August 15, 2011, the Division issued its MRD Decision denying Vista any additional reimbursement for the June 7, 2007 procedure.⁷ Vista timely requested hearings before the State Office of Administrative Hearings (SOAH) to contest the MRD Decisions.

A hearing convened before ALJs Henry D. Card and Sharon Cloninger on May 22, 2012, at SOAH's hearing 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.

II. DISCUSSION

A. Applicable Law

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. Laws 469, 607. This Decision and Order refers to the Commission and its successor collectively as the Division.

⁵ Vista Exhibit 6 and Zurich Exhibit 2.

⁶ Vista Exhibit 6 and Zurich Exhibit 2.

⁷ Vista Exhibit 6 and Zurich Exhibit 2.

This case is governed by Texas 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.⁸ 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.⁹ 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.¹⁰ 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.¹¹ In setting such guidelines, the increased security of payment afforded by the Act also must be considered.¹²

Prior to March 1, 2008, the Division did not have a fee guideline for medical services provided in an outpatient acute care hospital such as Vista.¹³ 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.¹⁴ Until May 2006, "fair and reasonable reimbursement" was defined as follows:

⁸ Tex. Lab. Code § 401.011.

⁹ 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.

¹⁰ Tex. Lab. Code § 413.011(d).

¹¹ Tex. Lab. Code § 413.011(d).

¹² Tex. Lab. Code § 413.011(d).

¹³ 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.

¹⁴ 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,

Reimbursement that meets the standards set out in Section 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.¹⁵

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

- (1) is consistent with the criteria of [Texas] 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.¹⁶

When the Division has not established a fee guideline for a particular procedure, service, or item, the Division's rules require carriers such as Zurich to develop and consistently apply a methodology to determine fair and reasonable reimbursement.¹⁷

B. Evidence and Argument

For the April 12, 2007 date of service, Vista billed Zurich \$14,449.65.¹⁸ Zurich reimbursed Vista \$1,856.24 for those services.¹⁹ In its request for medical dispute resolution at the MRD, Vista sought additional reimbursement of \$7,541.52. In the alternative, Vista contended that at a minimum, 70 percent of its billed charges constituted fair and reasonable

it became 28 TAC § 134.1(c)(3). In 2008, it was amended to become 28 TAC § 134.1(e)(3).

¹⁵ 28 TAC § 133.1(8).

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

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

¹⁸ Zurich Exhibit 1.

¹⁹ Zurich Exhibit 1.

reimbursement.²⁰ The MRD Decision states that Vista did not establish the amount it requested was fair and reasonable.

For the April 26, 2007 date of service, Vista billed Zurich \$14,561.35.²¹ Zurich reimbursed Vista \$1,152.27 for those services.²² In its request for medical dispute resolution at the MRD, Vista sought additional reimbursement of \$8,328.59. As before, in the alternative, Vista contended that at a minimum, 70 percent of its billed charges constituted fair and reasonable reimbursement.²³ The MRD Decision states that Vista did not establish the amount it requested was fair and reasonable.

For the June 7, 2007 date of service, Vista billed Zurich \$17,378.20.²⁴ Zurich reimbursed Vista \$849.15 for those services.²⁵ In its request for medical dispute resolution at the MRD, Vista sought additional reimbursement of \$10,603.50. Again, in the alternative, Vista contended that at a minimum, 70 percent of its billed charges constituted fair and reasonable reimbursement.²⁶ The MRD Decision found that Vista did not establish the amount it requested was fair and reasonable.

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, in line with the analysis made in the Renaissance Hospital cases²⁷ and in reliance on the Texas Department of Insurance's Advisory 2003-09, a March 2005 MDR Newsletter, and Commissioner's Bulletin #B-0009-07,²⁸ plus

²⁰ Vista Exhibit 6 and Zurich Exhibit 2.

²¹ Zurich Exhibit 1.

²² Zurich Exhibit 1.

²³ Vista Exhibit 6 and Zurich Exhibit 2.

²⁴ Zurich Exhibit 1.

²⁵ Zurich Exhibit 1.

²⁶ Vista Exhibit 6 and Zurich Exhibit 2.

²⁷ *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).

²⁸ Vista Post-Trial Brief at 3 and Attachment B. *See also* Vista Exhibits 7, 8, and 9.

interest. For the April 12, 2007 date of service, Vista seeks additional reimbursement of \$2,408.27, plus interest, asserting that this amount for CPT Code 62311 is a fair and reasonable reimbursement.²⁹ For the April 26, 2007 date of service, Vista requested an additional \$3,302.62, plus interest.³⁰ For the June 7, 2007, Vista requested an additional \$3,790.48, plus interest.³¹

In support of 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. Zurich took issue with the two Renaissance cases.³² Zurich also pointed out that Vista's proposed methodology was not the same as that used in those cases.³³

Vista observed that Zurich did not present any testimony at the SOAH hearing. Although Zurich offered evidence showing the amount it reimbursed Vista, Vista asserted that Zurich did not present sufficient evidence that the amount it reimbursed Vista was fair and reasonable under the statutory standards.³⁴

Zurich argued that Vista was prohibited by law and precedent from raising its new basis for recovery.³⁵ If the new theory were considered, however, Zurich argued that Vista failed to prove that methodology met the criteria of the Texas Labor Code and the Division's rules. Zurich contended that Vista failed to show that allowances based on historical average payments were necessary for employees to gain access to outpatient services, failed to demonstrate cost

²⁹ Vista Post-Trial Brief at Attachment B at 1.

³⁰ Vista Post-Trial Brief at Attachment B at 1.

³¹ Vista Post-Trial Brief at Attachment B at 1.

³² The ALJs offer no opinion and makes no decision on whether the methodology used in the Renaissance cases is valid for determining fair and reasonable reimbursement.

³³ Zurich's Rebuttal Closing Argument at 1 through 5.

³⁴ Vista Post-Trial Brief at 3.

³⁵ Zurich's Closing Argument at 5 through 8.

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 Texas Labor Code, was not consistent with the most current methodologies and models used by Medicare, and was not based on nationally recognized studies.³⁶ Zurich contended that Vista's use of a simple average was statistically and legally unsupportable.

C. Conclusion

Vista failed to establish how its proposed methodology and its requested additional reimbursement levels comply with the requirements of the Texas 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.

III. 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 performed at Vista's facility for the same injured worker.
2. The services at issue were provided on April 12, 2007; on April 26, 2007; and on June 7, 2007.
3. The April 12, 2007 date of service consisted of a lumbar epidural steroid injection with local anesthetic and steroids, billed under CPT Code 62311.
4. The April 26, 2007 date of service consisted of a left L4-5 transforaminal steroid injection with local anesthetic and steroids, billed under CPT Code 64483.
5. The June 7, 2007 date of service consisted of a left L4-5 transforaminal steroid injection with local anesthetic and steroids, billed under CPT Code 64483.
6. For the April 12, 2007 date of service, Vista billed Zurich \$14,449.65. Zurich reimbursed Vista \$1,856.24 for that service.

³⁶ Zurich's Closing Argument at 9 through 16.

7. For the April 12, 2007 date of service, in its request for medical dispute resolution at Medical Review Division (MRD) of the Texas Department of Insurance, Division of Workers' Compensation (Division), Vista asked for \$7,541.52 in reimbursement, or in the alternative, a minimum of 70 percent of its billed charges.
8. On July 29, 2011, the Division issued its Medical Fee Dispute Resolution Findings and Decision (MRD Decision), denying Vista additional reimbursement for the April 12, 2007 date of service.
9. For the April 26, 2007 date of service, Vista billed Zurich \$14,561.35. Zurich reimbursed Vista \$1,337.01 for that service.
10. In its request for medical dispute resolution at the MRD for the April 26, 2007 date of service, Vista asked for \$8,328.59 in reimbursement, or in the alternative, a minimum of 70 percent of its billed charges.
11. On July 28, 2011, the Division issued its MRD Decision, denying Vista additional reimbursement for the April 26, 2007 date of service.
12. For the June 7, 2007 date of service, Vista billed Zurich \$17,378.20. Zurich reimbursed Vista \$849.15 for that service.
13. For the June 7, 2007 date of service, in its request for medical dispute resolution at the MRD, Vista asked for \$10,603.50 in reimbursement, or in the alternative, a minimum of 70 percent of its billed charges.
14. On August 15, 2011, the Division issued its MRD Decision, denying Vista additional reimbursement for the June 7, 2007 date of 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) Henry D. Card and Sharon Cloninger on May 22, 2012, at SOAH's hearing 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 April 12, 2007 date of service, Vista requested an additional \$2,408.27, plus interest. For the April 26, 2007 date of service, Vista requested an additional \$3,302.62, plus interest. For the June 7, 2007 date of service, Vista requested an additional \$3,790.48, 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.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. Tex. Lab. Code § 413.031 and Tex. Gov't Code ch. 2003.
2. Adequate and timely notice of the hearing was provided. 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 Texas 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 did not prove it is entitled to additional payment from Zurich for the services provided to the injured worker.

ORDER

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

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