

MEDICAL CONTESTED CASE HEARING NO 11158
M4-10-1463-01

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

ISSUES

A contested case hearing was held on June 6, 2011 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the Medical Fee Dispute Resolution Findings and Decision (MFDRFD) that (Healthcare Provider), Petitioner, is not entitled to reimbursement for the compensable injury of (Date of Injury) in the total amount of \$385.56 for 120 units of Hydrocodone/APAP 10/650 TAB dispensed to the Claimant, (Claimant), on May 22, 2008, June 20, 2008 August 16, 2008, September 16, 2008, October 13, 2008, November 8, 2008 and December 5, 2008?

PARTIES PRESENT

Petitioner, (Healthcare Provider), appeared and was represented by HK, attorney. Respondent, Texas Mutual Insurance Company, Carrier, appeared and was represented by BJ, attorney. Claimant did not appear and his attendance was excused.

BACKGROUND INFORMATION

The parties stipulated that the medication for which additional reimbursement was sought in this case was dispensed as part of the medical care reasonably required for Claimant's compensable injury of (Date of Injury). The sole issue in dispute at this hearing concerns whether (Healthcare Provider) (Healthcare Provider) is entitled to additional reimbursement in the total amount of \$385.56 for the dispensed medication at issue. At the heart of this dispute is the question of whether (Healthcare Provider) has met its burden to establish its usual and customary (U&C) charge for the Hydrocodone medication at issue.

The following table serves to outline the overall dispute between (Healthcare Provider) and Carrier in this case:

Table 1

Date(s) of Service (DOS)	Medication / No. of Units for each DOS	(Healthcare Provider) Charge to Carrier for each DOS	Carrier Reimbursement to (Healthcare Provider) for each DOS	Amount in Dispute
5/22/08, 6/20/08, 8/16/08, 9/16/08, 10/13/08, 11/8/08, 12/5/08	Hydrocodone/ APAP 10/650 TAB / 120 Units	\$140.40	\$85.32	\$385.56 (\$55.08 x 7)

The evidence presented in the hearing indicated that the reimbursement that the Carrier provided to (Healthcare Provider) was based on Carrier's calculation of a reasonable and customary fee for the medications.

After its request for reconsideration of the reimbursement amounts was denied by Carrier, (Healthcare Provider) sought relief through the Division's Medical Fee Dispute Resolution (MFDR) section in order to obtain additional reimbursement totaling \$385.56 for the dispensed Hydrocodone from Carrier. On December 28, 2010, the Division's MFDR Officer issued a decision, an MFDRFD, holding that (Healthcare Provider) was not entitled to the additional reimbursement at issue from Carrier. The MFDRFD indicates that the Division was not provided with sufficient evidence to substantiate (Healthcare Provider)'s U&C charge for the Hydrocodone in question. On that basis, the MFDR Officer concluded that the maximum allowable reimbursement (MAR) defined in Division Rule 134.503(a) cannot be established. Following the adverse decision from MFDR, (Healthcare Provider) requested a medical contested case hearing (MCCH) to resolve this fee dispute.

An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. (Texas Labor Code §408.021). The term "health care" includes a prescription drug, medicine, or other remedy. (Texas Labor Code §401.011(19)(E)). The commissioner of the Division of Workers' Compensation is directed by statute to adopt a fee schedule for pharmacy and pharmaceutical services that will provide reimbursement rates that are fair and reasonable; assure adequate access to medications and services for injured workers; and minimize costs to employees and insurance carriers. (Texas Labor Code §408.028(f)). Insurance carriers must reimburse for pharmacy benefits and services using the fee schedule or at rates negotiated by contract. (Texas Labor Code §408.028(g)). The commissioner has adopted reimbursement methodology to establish the MAR for prescription drugs in Rule 134.503.

Pursuant to Rule 134.503, the MAR for prescription drugs is the lesser of the provider's U&C charge for the same or similar service or a fee established by formulas based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical reimbursement system such as Redbook or First DataBank Inc. in effect on the day the prescription drug was dispensed. For generic drugs, the formula is AWP per unit multiplied by the number of units multiplied by 1.25, plus a \$4.00 dispensing fee. *See* Rule 134.503(a)(2)(A). The evidence presented at the hearing revealed that the Hydrocodone medication at issue is a generic drug. The parties also stipulated that there is no contract between (Healthcare Provider) and Carrier, so Rule 134.503(a)(3) does not apply to the facts of this case.

On December 11, 2003, RR, the Executive Director of the Texas Workers' Compensation Commission, issued Advisory 2003-21 to address the determination of a pharmacy's U&C charge for prescription drugs. In part, the Advisory states:

The Commission's pharmacy prescription pricing rule is based, in part, on several important provisions concerning health care provider charges. First, fee guidelines are based, in part, on a provision that payment may not be 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 (Texas Labor Code Section 413.011(d)). Also, "[a] health care provider commits an offense if the person knowingly charges an insurance carrier an amount greater than that normally charged for similar treatment to a payor outside the workers' compensation system, except for mandated or negotiated charges" (Texas Labor Code §413.043(a)).

Parties requesting medical dispute resolution should ensure that they abide by the statute and rule references outlined above. The Commission's Medical Dispute Resolution Section has indicated that parties filing a dispute have the burden of proof to support their position for advocating additional reimbursement. The burden of proof includes production of sufficient evidence to support that the reimbursement requested is in accordance with the factors listed in §413.011(b) of the Texas Workers' Compensation Act.

(Healthcare Provider) has the burden to establish its entitlement to the additional reimbursement it seeks. In support of its argument that it is entitled to the reimbursement at issue, (Healthcare Provider)'s Pharmacist in Charge, Mr. H, provided an affidavit that was admitted into evidence in the hearing. Mr. H's April 29, 2011 affidavit indicates that (Healthcare Provider) makes no distinction between AWP and its U&C charges to avoid any discrepancy. (Healthcare Provider) also furnished literature and pricing information from Rx30, a professional billing and pricing hardware and software program that (Healthcare Provider) utilizes. The evidence presented in the hearing included an e-mail from Ms. P, an employee of Rx30, who indicated that Rx30 does

not calculate AWP itself, but, rather, it frequently obtains average wholesale pricing information for medications from First DataBank, Inc., a nationally recognized pharmaceutical reimbursement system. Ms. P's e-mail indicated that AWP's may vary if sources other than First DataBank, Inc. are used.

Concerning Hydrocodone/APAP 10/650 TAB, (Healthcare Provider) presented a document with Rx30 letterhead indicating that the AWP for this medication on the dates at issue was 0.9093. As illustrated in the table on p. 2, above, the amount (Healthcare Provider) charged Carrier for 120 units of the medication was \$140.40.

The following indicates the calculation of MAR pursuant to Rule 134.503(a)(2)(A) for this medication for 120 units:

$$\begin{aligned} \$0.9093 \text{ (AWP)} \times 120 \text{ (# of units)} &= \$109.116 \text{ (rounded up to } \$109.12); \$109.12 \\ \times 1.25 &= \$136.40 \end{aligned}$$

$$\$136.40 + \$4.00 \text{ (dispensing fee)} = \$140.40$$

Following a careful review of the evidence presented, (Healthcare Provider) established by a preponderance of the evidence that it is entitled to additional reimbursement in the amount of \$385.56. The dispensing records from (Healthcare Provider) for this medication for the period from May 22, 2008 through December 5, 2008 were persuasive in establishing that its U&C charge for 120 units of the drug was \$140.40 during the period at issue. The evidence was sufficient for (Healthcare Provider) to establish its U&C charge for the Hydrocodone/APAP 10/650 TAB, and that such U&C was equal to the amount elicited from the Rule 134.503(a)(2)(A) formula calculation.

The Division's Medical Fee Dispute Resolution Officer determined that (Healthcare Provider) was not entitled to reimbursement for the Hydrocodone/APAP 10/650 dispensed to Claimant on the dates listed above. The preponderance of the evidence is contrary to the decision of the Medical Fee Dispute Resolution Officer. (Healthcare Provider) provided sufficient evidence to establish that its U&C charge for the Hydrocodone/APAP 10/650 TAB was in accordance with the fee schedule charge computed in accordance with Rule 134.503(a)(2) on the dates it was dispensed, and (Healthcare Provider) is entitled to reimbursement.

Though the evidence revealed that (Healthcare Provider) does offer a discount to customers who pay for their medications in cash, the evidence also indicated that the percentage of such customers is an extremely small one, significantly less than 1% of (Healthcare Provider)'s business.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

FINDINGS OF FACT

1. The parties stipulated as follows:
 - A. The Texas Department of Insurance, Division of Workers' Compensation has jurisdiction over this matter, and venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. Claimant sustained a compensable injury on (Date of Injury).
 - C. The medication for which reimbursement was sought in this case was dispensed as part of the medical care for the compensable injury of (Date of Injury).
 - D. (Healthcare Provider) has no negotiated or contractual pharmacy fee agreement with Texas Mutual Insurance Co. payable pursuant to Rule 134.503(a)(3).
2. On (Date of Injury), Claimant was the employee of (Employer), Employer.
3. Respondent delivered to Petitioner a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
4. On May 22, 2008, June 20, 2008, August 16, 2008, September 16, 2008, October 13, 2008, November 8, 2008 and December 5, 2008, (Healthcare Provider) dispensed 120 units of Hydrocodone/APAP 10/650 tablets to Claimant for his compensable injury of (Date of Injury); (Healthcare Provider) billed Carrier a total of \$982.80 for this medication on these dates of service.
5. Hydrocodone/APAP 10/650 TAB is a generic drug.
6. (Healthcare Provider) established the AWP of the prescription drug at issue in this case on the dispensing dates in dispute by providing information from Rx30, a professional billing and pricing hardware and software program. Rx30 obtained this data from a nationally recognized pharmaceutical reimbursement system (First DataBank, Inc.).
7. For the Hydrocodone/APAP 10/650 TAB, the AWP on the dates of service in dispute (May 22, 2008, June 20, 2008, August 16, 2008, September 16, 2008, October 13, 2008, November 8, 2008 and December 5, 2008) was .9093 pursuant to the data furnished by Rx30.
8. (Healthcare Provider)'s U&C charge for 120 Units of Hydrocodone/APAP 10/650 TAB on May 22, 2008, June 20, 2008, August 16, 2008, September 16, 2008, October 13, 2008, November 8, 2008 and December 5, 2008 was \$140.40.
9. For the 120 Units of Hydrocodone/APAP 10/650 TAB dispensed on May 22, 2008, June 20, 2008, August 16, 2008, September 16, 2008, October 13, 2008, November 8, 2008 and December 5, 2008, Carrier reimbursed (Healthcare Provider) a total of \$597.24 (\$85.32 x 7).

The MAR for 120 units of Hydrocodone/APAP 10/650 TAB dispensed on May 22, 2008, June 20, 2008, August 16, 2008, September 16, 2008, October 13, 2008, November 8, 2008 and December 5, 2008 was \$140.40, which is equal to the amount elicited from the 134.503(a)(2)(A) formula calculation.

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. The preponderance of the evidence is contrary to the MFDRFD that (Healthcare Provider) is not entitled to reimbursement in the amount of \$385.56 for Hydrocodone/APAP 10/650 TAB (120 Units) dispensed on May 22, 2008, June 20, 2008, August 16, 2008, September 16, 2008, October 13, 2008, November 8, 2008 and December 5, 2008 for the compensable injury of (Date of Injury).

DECISION

(Healthcare Provider) is entitled to \$385.56 for Hydrocodone/APAP 10/650 TAB (120 Units) dispensed on May 22, 2008, June 20, 2008, August 16, 2008, September 16, 2008, October 13, 2008, November 8, 2008 and December 5, 2008 for the compensable injury of (Date of Injury).

ORDER

Carrier is liable for the additional reimbursement at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RON WRIGHT, PRESIDENT
TEXAS MUTUAL INSURANCE COMPANY
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723**

Signed this 17th day of May, 2011.

Patrice Fleming-Squirewell
Hearing Officer