



Texas Department of Insurance, Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1609

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

PART I: GENERAL INFORMATION

Requestor's Name and Address:

MEDI-PLUS PHARMACY
PO BOX 546
BARKER TX 77413-0546

MFDR Tracking #: M410-2228-01

DWC Claim #:

Injured Employee:

Date of Injury:

Respondent Name and Representative Box:

TEXAS MUTUAL INSURANCE CO
Rep Box 54

Employer Name:

Insurance Carrier #:

PART II: REQUESTOR'S POSITION SUMMARY AND PRINCIPAL DOCUMENTATION

Requestor's Position Summary: "...According to Texas Administrative Code (Rule 134.503), the maximum allowable reimbursement (MAR) for prescription drugs shall be the lesser of the provider's usual and customary charge for the same or similar services... However, Texas Mutual Insurance Company's calculations are different from this formula. We have not negotiated nor contracted with Texas Mutual's Pharmacy Benefit Manager, ScripNet, Inc. We, as a provider (pharmacy), are following TDI TAC Rule (134.503) to dispense drugs... We have received denied EOB from Texas Mutual Insurance Company after requesting reconsideration for additional reimbursement that they had paid us less than what DWC fee guideline recommended. "Our pharmacy applied TDI TAC Rule (134.503) formula for reimbursement". But they denied for using Code-517, Labor code sec 413.043 and Texas Administrative Code 134.502. These sections do not have Pharmaceutical Reimbursement Methodology formula..."

Principal Documentation:

1. DWC 60 package
2. Total amount sought - \$1,149.82
3. EOB's (DWC-62s)
4. DWC-66

PART III: RESPONDENT'S POSITION SUMMARY AND PRINCIPAL DOCUMENTATION

Respondent's Position Summary: "In the absence of any information from Medi-Plus Pharmacy, the best evidence of the U&C amount of reimbursement is evidence of what the pharmacy is reimbursed from payors outside the workers' compensation system. Texas Mutual's data from its Pharmacy Benefits Manager (ScripNet) further supports Texas Mutual's payment by establishing that the U&C reimbursement for the medications at issue are *below* AWP. Approximately 90% of the dollars and 80% of the individual prescriptions by Texas Mutual are subject to the ScripNet network. More than 2,000 pharmacies statewide participate in that ScripNet network, and all have agreed to take less than AWP for their prescriptions. This high rate of participation in the ScripNet network strongly suggests that the actual U&C price for prescription medication is much less than the AWP+ prices in the Pharmacy Guideline. Moreover, evidence obtained in litigation from a major pharmacy corroborates Texas Mutual's data... The affidavit shows that the average charge for brand name drugs is approximately 14% *below* AWP. The average charge for generic drugs is approximately 50% *below* AWP. Medi-Plus Pharmacy, however, seeks to collect AWP *plus* 9% for brand name drugs and AWP *plus* 25% for generic drugs. The amount Texas Mutual paid was its best estimate of the U&C charges for these drugs to persons outside the workers' compensation system. In the reconsideration process, Medi-Plus Pharmacy did not supply any information as to the prices charged for this drug or any information establishing that Texas Mutual's payment was below the actual U&C... Using the best information available to it, Texas Mutual has established an educated estimate for the pharmacy's U&C charges to customers outside the workers' compensation system and paid Medi-Plus Pharmacy those amounts because such amounts were lower than the formula amount in Rule 134.503(A). Texas Mutual recognizes that the pharmacy's actual U&C charge may be different (higher or lower) than Texas Mutual's estimated value. However, Medi-Plus Pharmacy has never provided any information to substantiate that the amount it charged Texas Mutual was in fact the U&C price for the drug at issue despite Texas Mutual's best evidence that it was not...."

PART IV: SUMMARY OF FINDINGS

Eligible Dates of Service (DOS)	Pharmaceuticals in Dispute	Denial Codes	Amount in Dispute	Amount Ordered
11/18/08, 03/12/09, 04/09/09, 05/07/09, 06/04/09, 07/02/09, 07/30/09	ZALEPLON 10 MG CAPSULE (30 UNITS)	217, 517, W1, W4, 891	\$397.04	\$0.00
11/18/08, 03/12/09, 04/09/09, 05/07/09, 06/04/09, 07/02/09, 07/30/09	DIAZEPAM 5 MG TABLET (60 UNITS)	217, 517, W1, W4, 891	\$38.35	\$0.00
11/18/08, 03/12/09, 04/09/09, 05/07/09, 06/04/09, 07/02/09, 07/30/09	HYDROCOD/APAP 10/650 TAB (210 UNITS & 150 UNITS)	217, 517, W1, W4, 891	\$535.62	\$0.00
11/18/08, 03/12/09, 04/09/09, 05/07/09, 06/04/09, 07/02/09, 07/30/09	MORPHINE SULFATE 60 MG TAB SA (60 UNITS)	217, 517, W1, W4, 891	\$178.31	\$0.00
Total /Due:				\$0.00

PART V: REVIEW OF SUMMARY, METHODOLOGY AND EXPLANATION

Texas Labor Code § 413.011(a) – (d), titled *Reimbursement Policies and Guidelines*, and 28 Tex. Admin. Code (TAC) §134.503 adopted to be effective January 3, 2002; amended to be effective March 14, 2004, set out the reimbursement guidelines for pharmaceutical services. This dispute was filed in the form and manner as prescribed by 28 TAC §133.307 and is eligible for Medical Dispute Resolution.

Payments for prescriptions dispensed to the claimant on dates of service 11/18/08, 03/12/09, 04/09/09, 05/07/09, 06/04/09, 07/02/09 and 07/30/09 were reduced with payment exception codes:

- “217 – Based on payer reasonable and customary fees. No maximum allowable defined by legislated fee arrangement.”
- “517 – Paid at est. U&C based on research, Labor Code Sec 413.043, and 2002 PFG, 29 Tex: Admin Code 134.502 to electronic bill...”
- “W4 – No additional reimbursement allowed after review of appeal/reconsideration”
- “891 – The insurance company is reducing or denying payment after reconsideration”.

Medi-Plus Pharmacy is the Health Care Provider:

- Texas Labor Code §401.011(22) defines "health care provider" as a health care facility or health care practitioner.
- Texas Labor Code §401.011 (19) (E) defines “health care” to include a prescription drug, medicine, or other remedy.
- Texas Labor Code §401.011 (20) defines “health care facility” as a hospital, emergency clinic, outpatient clinic, or other facility providing health care.
- Texas Labor Code §401.011 (21) defines “health care practitioner” as an individual who is licensed to provide or render and provides or renders health care; or a non-licensed individual who provides or renders health care under the direction or supervision of a doctor.

Establishing Medi-Plus Pharmacy Usual and Customary Charge:

The usual and customary charge for individual pharmaceuticals is established by the provider (pharmacy or pharmacist).

- Relative to dates of service 11/18/08, 03/12/09, 04/09/09, 05/07/09, 06/04/09, 07/02/09 and 07/30/09 on the table of disputed services, the following apply:
 - 28 TAC §133.20 (d) states in pertinent part that “the health care provider that provided the health care shall submit its own bill...”
 - 28 TAC §133.20(e) (1) states “a medical bill must be submitted for an amount that does not exceed the health care provider’s usual and customary charge for the health care provided in accordance with Labor Code §§413.011 and 415.005.”

Medi-Plus Pharmacy provided explanation of benefits and other documents which contained numerous examples of amounts billed to workers’ compensation carriers other than the respondent. The documents provided information on amounts billed for various pharmaceuticals on various dates of service. In its review of this listing, the division noted amounts billed for pharmaceuticals that were the same or similar to those in dispute, and whether the dates of service were reasonable contemporary to the dates of service in dispute. The division finds that Medi-Plus Pharmacy did not provide documentation sufficient to substantiate that the amounts billed for ZALEPLON 10 MG CAPSULE (30 UNITS), DIAZEPAM 5 MG TABLET (60 UNITS), HYDROCOD/APAP 10/650 TAB (210 UNITS & 150 UNITS) and MORPHINE SULFATE 60 MG TAB SA (60 UNITS) represent Medi-Plus Pharmacy’s usual and customary charge for ZALEPLON 10 MG CAPSULE (30 UNITS), DIAZEPAM 5 MG TABLET (60 UNITS), HYDROCOD/APAP 10/650 TAB (210 UNITS) and MORPHINE SULFATE 60 MG TAB SA (60 UNITS) for the dates of service in dispute.

Reimbursement

28 TAC §134.503(a)(1) – (3): The maximum allowable reimbursement (MAR) for prescription drugs shall be the lesser of:

- (1) The provider's usual and customary charge for the same or similar service;
- (2) The fees established by the following formulas based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical reimbursement system (e.g. Redbook, First Data Bank Services) in effect on the day the prescription drug is dispensed.
 - (A) Generic drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \4.00 dispensing fee = MAR;
 - (B) Brand name drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \4.00 dispensing fee = MAR;
 - (C) A compounding fee of \$15 per compound shall be added for compound drugs; or
- (3) a negotiated or contract amount.

Conclusion

Because Medi-Plus Pharmacy failed to sufficiently substantiate that the amount billed for ZALEPLON 10 MG CAPSULE (30 UNITS), DIAZEPAM 5 MG TABLET (60 UNITS), HYDROCOD/APAP 10/650 TAB (210 UNITS & 150 UNITS) and MORPHINE SULFATE 60 MG TAB SA (60 UNITS) represents its usual and customary charge for ZALEPLON 10 MG CAPSULE (30 UNITS), DIAZEPAM 5 MG TABLET (60 UNITS), HYDROCOD/APAP 10/650 TAB (210 UNITS & 150 UNITS) and MORPHINE SULFATE 60 MG TAB SA (60 UNITS) the MAR cannot be established. The Division concludes that Medi-Plus Pharmacy has failed to establish that it is due additional reimbursement in the amount of \$1,149.82. As a result, the amount ordered is \$0.00.

PART VI: GENERAL PAYMENT POLICIES/REFERENCES

Texas Labor Code § 401.011	28 TAC §133.305	28 TAC §133.20	28 TAC §134.503
Texas Labor Code § 413.011	28 TAC §133.307	28 TAC §134.1	

PART VII: DIVISION ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

Medical Fee Dispute Resolution Officer

01/13/11

Date

PART VIII: YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **20** (twenty) days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. **Please include a copy of the Medical Fee Dispute Resolution Findings and Decision** together with other required information specified in 28 TAC § 148.3(c).

Under Texas Labor Code §413.0311, your appeal will be handled by a Division hearing under Title 28 Texas Administrative Code Chapter 142 Rules if the total amount sought does not exceed \$2,000. If the total amount sought exceeds \$2,000, a hearing will be conducted by the State Office of Administrative Hearings under Texas Labor Code §413.031.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.