Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 2, 2014

CLAIM NO. 200888797

CHRISTOPHER MIRANDA PETITIONER

VS. **APPEAL FROM HON. EDWARD D. HAYS, ADMINISTRATIVE LAW JUDGE**

CENTIMARK/CINCINNATI FLOORING
and HON. EDWARD D. HAYS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

AND

CENTIMARK/CINCINNATI FLOORING PETITIONER

VS.

CHRISTOPHER MIRANDA
and HON. EDWARD D. HAYS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

STIVERS, Member. Christopher Miranda ("Miranda") and Centimark/Cincinnati Flooring ("Centimark") appeal from the October 11, 2013, opinion, award, and order and from the November 7, 2013, order ruling on both parties' petitions for reconsideration of Hon. Edward D. Hays, Administrative Law Judge ("ALJ").[1] In the October 11, 2013, opinion, award, and order, the ALJ determined Miranda should recover $181,124.44 from Centimark to be paid to John Lesniak ("Lesniak") for caregiver services rendered to Miranda.

The Form 101 alleges on January 3, 2008, Miranda sustained the following injuries as a result of a single car accident: "broken neck, total paralysis pursuant to KRS 342.0011(11)(c)(5), psychological, eyes."

In the March 23, 2011, Notice of Claim Denial, Centimark denied the claim for the following reason: "The defendant/employer disputes claim by plaintiff for costs and expenditures related to time provided by Mr. John Lesniak, the claimant's step-father." On March 23, 2011, Centimark filed a Special Answer in which it asserted as follows:

> 1. This claim is barred by the Statute of Limitations provision of KRS 342.670(2).

[1] Since Miranda's brief was filed first, we will first address his arguments on appeal.

> 2. Any benefit should be reduced by 15% pursuant to the Safety Penalty provision of KRS 342.165. At the time of the accident, plaintiff was not wearing a seat belt.

On May 2, 2011, Centimark filed a "Supplemental Notice of Claim Denial and Special Answer" in which it states the following:

> Following the employer's Special Answer and Form 111 filing, the plaintiff raised allegation of an alleged safety violation on the part of the defendant. The defendant hereby denies any alleged safety violation on the part of the defendant/employer.

On November 9, 2012, the ALJ signed a Form 110, Agreement as to Compensation and Order Approving Settlement entered into between Miranda and Centimark concerning the dispute over the costs of modifications to be made to Lesniak’s residence for the benefit of Miranda. The Form 110 indicates as follows:

> This Settlement Agreement addresses the sole issue of the home modifications which is present in this case. The parties have come to the following agreement, in regard to the plaintiff's request that modifications be made to the home in which he will come to reside in order to accommodate his medical needs arising out of the work injury.

The settlement reflects Miranda received $150,000 in resolution of the dispute over the necessary home modifications. The description of the occurrence leading to the injury is "motor vehicle accident" and the nature of the injury is "quadriplegia." The parties stipulated to total disability.

The July 17, 2013, Benefit Review Conference Order and Memorandum listed the following contested issue: "Compensability of non-in-home (past) attendant care provided by Mr. Lesniak; did Δ have to file form 112."

The parties executed another Form 110 Agreement as to Compensation and Order Approving Settlement signed by the ALJ on September 12, 2013. In this Form 110 Centimark agreed to pay Miranda income benefits of $417.69 per week "until the claimant reaches Social Security Retirement age per the statute, or the time at which benefits otherwise terminate pursuant to the Act, whichever first occurs."

The October 11, 2013, opinion, award, and order, contains the following "Introduction":

> The Plaintiff, Christopher Miranda, now age 35 years, filed an Application for Resolution of Injury Claim (Form 101) on February 21, 2011, seeking indemnity benefits and medical treatment for a work-related injury he sustained to his neck in a single car accident on January 3, 2008, while employed by Centimark/Cincinnati Flooring. Mr.

Miranda alleged he suffered a broken neck with total paralysis, psychological issues, and injuries to his eyes as a result of the accident.

On March 29, 2011, Plaintiff filed a Motion for Safety Penalty. Mr. Miranda reported that he was a passenger in a car driven by another employee, who intentionally failed to operate the motor vehicle in a safe and reasonable fashion. He asserts that he should be entitled to an increase of 30% due to a safety penalty. The motion was sustained and Plaintiff was allowed to pursue a safety penalty by order rendered April 7, 2011.

On August 10, 2011, the undersigned approved an agreed order wherein the parties agreed Plaintiff was totally disabled. They further agreed the claim should remain in litigation for resolution and/or a decision by the ALJ.

On June 20, 2012, Plaintiff filed a Motion to Submit on the Limited Issue of Home Modifications. The claim was set for a Formal Hearing on October 17, 2012. Prior to the hearing the parties negotiated a settlement on the issue of the home modifications. An Agreement as to Compensation (Form 110) on the sole issue of home modifications was filed and approved by the undersigned ALJ on November 9, 2012. However, this agreement did not address any other issues involved in the claim.

A Benefit Review Conference was conducted on July 17, 2013, and a Formal Hearing was subsequently conducted on August 1, 2013. At the Formal Hearing, the parties identified the only remaining issue to be resolved is compensability of non-in-home (past)

attendant care provided by Mr. John Lesniak, attendant care that was not provided in the home but rather was care provided while Mr. Miranda was in either hospitals or rehabilitation units of hospitals and was in addition to the institutional type of care provided by those places. The claim was taken under submission by Hearing Order on August 1, 2013.

Prior to the Formal Hearing on August 1, 2013, the parties entered into an Agreement as to Compensation (Form 110), wherein Defendant agreed to pay total disability income benefits until such time as Plaintiff reaches Social Security retirement age pursuant to the statute, or until the time at which benefits are otherwise terminated pursuant to the Act, whichever occurs first. The agreement was approved by the undersigned ALJ on September 12, 2013.

The ALJ summarized the evidence as follows:

This claim involves a catastrophic injury in which the Plaintiff, Christopher Miranda ("Chris" herein), has been rendered a quadriplegic. The parties resolved among themselves nearly all issues presented in the case, including an agreement for permanent total disability benefits. The sole remaining issue is the compensability of non-in-home (past) attendant care provided by Mr. Lesniak, attendant care that was not provided in the home, but rather was care provided while Mr. Miranda was in either hospitals or rehabilitation units of hospitals.

On January 3, 2008, the Plaintiff was riding as a passenger in the back seat of a motor vehicle in California when

the driver lost control and the vehicle overturned. As a result, Mr. Miranda sustained paralysis of all four extremities. The cervical injuries were so severe that Plaintiff remains paralyzed to this day. The Defendant-Employer and/or its Workers' Compensation Insurance carrier have expended nearly three million dollars for medical care and treatment alone. Extensive renovations have been made to Plaintiff's home that Mr. Miranda will inhabit by the time this Opinion is written.

Mr. John Lesniak ("John" herein) is Plaintiff's step-father, having been married to Plaintiff's mother, Karen Hephner, when Chris was approximately 6 years of age. John and Karen divorced in 1996 when Chris was 16 or 17 years of age and a high school student. John's close personal relationship with Chris did not end when John and Karen divorced. John continued to maintain a close relationship with Chris and was involved in Chris' life.

At the time of the motor vehicle accident of January 3, 2008 ("the accident"), Mr. Lesniak was remarried. He and his wife were living in Illinois working as a team driving over-the-road trucks. John and his wife were engaged in that line of work from 2004 to 2008.

John learned of Chris' accident while driving a truck somewhere in Texas. He immediately made arrangements to obtain a plane ticket to San Diego, CA where the hospital was located to which Chris was first transported. He was the first family member to arrive after the accident. Medical personnel needed someone to authorize the placement of a screen to prevent blood clots and John Lesniak, as the closest "family

member," affixed his signature authorizing the procedure. Soon thereafter, Chris' natural parents arrived at the hospital and took care of the day-to-day decisions regarding his treatment. John remained present, but initially in the background. John remained in San Diego for about two weeks and then returned to his home and his job. During that period of time, Chris' natural father communicated with John about the fact that Chris was despondent and no longer seemed to have a desire to live because of the severity of his condition. John flew back to California and remained for the next two weeks. Chris was soon transferred to Houston, Texas where he could be near his natural father. It was not long before John was called to Houston and was asked by Chris to take care of him. John agreed to do so and on March 14, 2008, John Lesniak was appointed power of attorney to represent Chris in all aspects of his life, including his medical care and attention. Mr. Lesniak remained in Texas from March 14, 2008, until sometime in May 2008. From March 14, 2008, John undertook day-to-day personal care and assistance for Chris. John made medical decisions regarding Chris' treatment, assisted in bathing Chris, and learned how to work with the special equipment that was in Chris' hospital room. The Houston facility taught John how to perform range of motion exercises. John assumed the responsibility of communications with the insurance carrier, the physicians, and the attorneys involved in the case. John was in charge of Chris' finances and was the person who was responsible for making medical decisions regarding Chris' treatment. During this several week period of time, John estimated that he spent ten to twelve hours every

day with Chris assisting him with exercises, bathing, and changing of gowns.

In May of 2008, the decision was made to transfer Chris to the Kessler Institute for Rehabilitation in West Orange, New Jersey.

At the Formal Hearing conducted herein on August 1, 2013, John Lesniak appeared as the only witness and testified to the following. As clarified at the commencement of the Hearing, the only issue under submission is the compensability of non-in-home (past) attendant care provided by Mr. Lesniak and did the Defendant have to file a Form 112? (TH p.4) Counsel for Defendant-Employer verified that the employer had incurred medical expenses of $2,927,393.98 to date.

Mr. Lesniak confirmed that he first heard about the accident when he was in Midland, Texas on a truck driving trip. He made immediate arrangements to fly to California and he arrived at the University of California Hospital in San Diego on the same day as the accident, January 3, 2008, at about 8:00 p.m. PST. No other family members had arrived by the time Mr. Lesniak arrived. Chris spent about two months in San Diego before being transferred to Houston, Texas for rehabilitation for the next couple of months.

By March 14, 2008, it had been decided by the family that Mr. Lesniak would be in charge of all of Chris' affairs, i.e., legal, medical, personal, financial, etc. and the power-of-attorney was executed on that date. Mr. Lesniak was taught by the hospital staff to bathe Chris, monitor the

special equipment in his room, understand the meaning of the lines going across the screen on the ventilator, how to engage Chris in range of motion movements, and to provide general care to Chris. Mr. Lesniak was in charge of making all financial arrangements, medical decisions, emergency decisions, and in fact emergencies did occur.

For some reason, Chris reported to Mr. Lesniak that he did not feel safe in Houston and the decision was made to transfer him to Kessler Rehabilitation in West Orange, New Jersey, in May of 2008. Mr. Lesniak described the first emergency as occurring in Houston when Chris was taken off the ventilator, even though he had a collapsed lung. After a pointed discussion with the treating physician, Mr. Lesniak persuaded the medical staff to place Chris back on the ventilator until his CO_2 percentages were normal again. Mr. Lesniak testified that he was required to be a "patient advocate" for Chris. (TH p.27) On a later occasion, an emergency arose when Chris was having problems swallowing. The hospital continued to give him solid food, but it was backing up in his esophagus instead of being swallowed. After arguing with hospital personnel and even taking the matter to the Ethics Committee at the hospital, the staff quit feeding Chris solid food until he could regain his ability to swallow.

Mr. Lesniak described his involvement as being much more than "a visitor" and he testified he was actively involved in every phase of Chris' medical treatment. He was taught to do such things as to care for the tracheostomy, bathing Chris, moving Chris in the bed, dressing him, digital stimulation to

remedy constipation, physical therapy, speech therapy, brushing his teeth, caring for his hair, and holding his head when he was being bathed or moved from bed to chair or from chair to bed.

Mr. Lesniak was communicating with other family members through the time he was with Chris, dealing with the caseworker, dealing with the insurance carrier, and hiring an attorney to handle legal matters with the insurance carrier. Chris remained in New Jersey for about 11 months. Mr. Lesniak was with him almost every day and he kept a daily diary, which has been introduced into evidence herein.

Mr. Lesniak cited several reasons for maintaining a daily diary. He stated he wanted to be able to keep track of all the medical procedures that occurred and to be able to accurately report to the other family members. He was worried that if something bad were to happen to Chris, he would have to answer to the family. The diary notes were kept contemporaneously and were done by computer. In the beginning, while Chris was in the intensive care unit in Texas, Mr. Lesniak's notes were handwritten in a notebook, but soon thereafter he obtained a computer and kept his notes contemporaneously on the computer.

In February 2009 while Chris was at Kessler, discussions were had with hospital staff regarding the importance of Chris' being able to return "home," not to a nursing home or to another facility, but to actually have a home, a house to go to. At the time, Mr. Lesniak was still residing in Illinois. On February 28, 2009, Mr. Lesniak purchased a house near Lancaster in Garrard County, Kentucky. On April 27,

2009, Chris was relocated to a facility in Mount Vernon, Rockcastle County, Kentucky, adjacent to Garrard County. “Sandy from Kessler” (TH p. 68) was the intake/outtake coordinator and she recommended the facility in Rockcastle County, Kentucky as being the closest place to Ashland, Kentucky that would accept a ventilator patient.

Chris remained in the Mount Vernon facility for the next three or four years and was there at the time the Formal Hearing was held in this case. However, he was scheduled to leave that facility and move into his new home in Garrard County prior to the present date. Mr. Lesniak remained by his side until March of 2010 when he had to go back over-the-road driving a truck to get caught up on some of his bills. He discussed this with Chris before leaving and told him he would be working from March 1, 2010, until August 1, 2010. During that five-month period, Mr. Lesniak did not provide day-to-day care for Chris and that is reflected in his diary. Mr. Lesniak returned on August 1, 2010, and recommenced his care and daily assistance of Mr. Miranda until Mr. Lesniak had to go back over-the-road again from March of 2011 until September 2011. Mr. Lesniak emphasized that even while he was driving over-the-road, he was maintaining daily communication with the hospital and frequently with the attorney. At the time of the Formal Hearing, Mr. Lesniak was still working with the Mount Vernon facility regarding Chris’ transition to his home in Garrard County.

The Defendant-Employer’s Workers' Compensation Insurance carrier paid the cost and expenses of making the home handicap-accessible and making

modifications that were required in order to provide Chris privacy and optimum usage of the home, as well as for Mr. Lesniak and his wife. The insurance carrier is to be commended for its cooperation and generosity in effecting the home repairs and modifications.

Mr. Lesniak testified as to the emotional bond that grew between him and Chris over the years since the accident. He believes this bond to be an important factor in Chris' survival and partial recovery. When questioned as to why he had made this commitment of his time and energy on behalf of Chris, Mr. Lesniak stated, "He asked me if I would take care of him and let him come live with me, and I said yes." (TH p.61) He emphasized the importance of keeping his promise to Chris, despite the cost to him financially and the commitment required of his wife and other members of his family. As of the time of the Formal Hearing, Chris had been at the Mount Vernon facility for about four and a half years. As indicated above, however, in September 2013 Chris was scheduled to move into his home.

Mr. Lesniak explained that he would turn Chris in bed to prevent bedsores, and that he rendered physical therapy by passively moving Chris' arms and legs.

Mr. Lesniak is requesting compensation of $181,124.44, based on an hourly rate of $17.50. The compensation he seeks represents five and a half years. Mr. Lesniak testified that initially he prepared and sent to the insurance carrier some Form 114s setting forth his expenses, mileage, etc. When those claims were rejected, Mr. Lesniak

discontinued filing Form 114s seeking reimbursements.

Under cross-examination, Mr. Lesniak testified that while Chris was in Houston, his father would come to the hospital and visit at night after he was off work. The longest that he ever stayed with Chris was five hours on a Saturday, and at other times it was for approximately an hour or an hour and a half during each visit. While Chris was in New Jersey, his sister would drive up to see him occasionally on a weekend and she would stay with him for about an hour. (TH pp.71-72) Mr. Lesniak estimated that Chris' mother had seen him approximately four times in the last four years. (TH p.72)

Mr. Lesniak's daily diary was submitted into evidence as Exhibit 1 to his testimony. Plaintiff's Exhibit 2 was introduced as representing Mr. Lesniak's expenses incurred, as well as his estimation of lost wages. Exhibit 3 was introduced as time Mr. Lesniak spent during each of the days shown in the diary (Exhibit 1) in daily activities on behalf of Chris.

MARY T. MORAJA, R.N.M.S.

The Plaintiff offered into evidence an evaluation performed by Mary Moraja, a case management specialist, who is self-employed as an independent case manager. It is noted that Ms. Moraja was the expert witness in the case of Speedway/Super America v. Elias, 285 S.W.3d 722 (Ky. 2009). Ms. Moraja performed a case study of Christopher Miranda's situation on June 16, 2011. Her report indicates that Mr. Lesniak was appointed power-of-attorney for Christopher Miranda and had acted as Plaintiff's advocate and caregiver

since that time. Ms. Moraja estimated that Mr. Lesniak's participation in Mr. Miranda's care would be at least equivalent to a 40-hour per week job. (Report p.1) Ms. Moraja indicates in her evaluation that the value of Mr. Lesniak's services was $17.50 per hour. That was based on an average of rates of Care Tenders at $15.50 per hour, Nurses Registry at $19.50 per hour, and Extra Care at $17.50 per hour. Ms. Moraja states in her report as follows:

"Mr. Lesniak's time as a caregiver would exceed the duties of a companion care staff member due to his skills at providing ventilator care in addition to the other ordinary duties required for that position. Mr. Lesniak has been taught how to manage the ventilator equipment and to assist with Mr. Miranda's overall physical care. He has demonstrated his knowledge in caring for Mr. Miranda by doing such activities as range of motion, following up on procedure scheduling and results, discussing his care with physicians, physical therapists and staff of the various facilities. He has learned about ventilator equipment maintenance, research technician to rehab facilities, monitored tube feedings and swallow tests. He has acted as a liaison between Mr. Miranda and the various staff members at all four medical facilities. He has been Mr. Miranda's advocate and confidante in many difficult matters including his ongoing depression. He has performed various personal care duties including dressing, bathing and digital bowel stimulation." (Report p.2)

Dr. Bela Patel, Medical Director of Critical Care at Memorial Herman Texas Medical Center in Houston, Texas,

submitted a letter dated July 9, 2008, in which he stated:

"This is a letter of certification that Mr. Christopher Miranda has been under my care from March 8, 2008, to May 28, 2008, where he was transferred via air ambulance to Kessler Institute Rehabilitation, NJ, for their Spinal Cord Injury Vent Rehab Program. Mr. Miranda had a very complicated hospitalization. Because of the level of his injuries, he was not only provided high level of critical care and medical management but also he was given psychological support and encouragement from the medical team, nursing staff and other disciplines.

This letter is also an attestation that the patient's step dad, Mr. John Lesniak, has been with Christopher daily for physical, mental, psychological and moral support. His full involvement on his care and his patience greatly helped on Christopher's transition to the next appropriate level of care."

Dr. Stacey L. Spencer, who works in the Department of Psychology and Neuropsychology at the Kessler Institute for Rehabilitation in West Orange, New Jersey, offered a letter dated July 3, 2008, in which he stated, in part, as follows:

"I am currently following Christopher Miranda who is a patient here on the spinal cord injury unit. As part of the treatment team, I facilitate in the patient's emotional well-being and adjustment while providing supportive counseling during his or her stay. I also work closely at times with patient's family members and have had the pleasure to meet and talk with Mr.

Miranda's stepfather, John Lesniak, while here at Kessler. It is my professional opinion that Mr. Miranda not only benefits from the continued company of his stepfather; he has come to rely upon his care and companionship while here.

Being that Mr. Miranda's family lives a good distance from the hospital, having someone within close proximity is especially important for his recovery and emotional wellness. Mr. Lesniak has left his job and wife to be closer to Christopher and notes extreme financial hardship as a result. Therefore, he would benefit from having financial assistance to pay for his accommodations so he is able to provide Christopher with the continued level of family support and assistance he requires at this time."

Dr. Spencer also submitted a letter dated December 11, 2008, in which he stated:

"Christopher Miranda is a patient of mine on the inpatient spinal cord injury unit. My role as his psychologist is to evaluate, treat and monitor his emotional well-being and adjustment while a patient at Kessler. In my opinion, it is necessary for his step-father, John Lesniak, to maintain his daily physical interactions with Chris. Being that his family lives so far in distance and it is a financial hardship for them to visit, having Mr. Lesniak's presence is crucial to his daily emotional state of mind and participation in various therapies.

I have observed increased anxiety and depression when Mr. Lesniak is unable for whatever reason to be present. This increased anxiety and depressive

> symptomatology highly interferes with Chris' ability to fully participate in the rehab process. Therefore in my opinion, it is critical that Mr. Lesniak be present and hands-on with Christopher while he is a patient at our facility."
>
> **Dr. MyLan Lam**, Clinical Chief of the Spinal Cord Injury Services at Kessler Institute for Rehabilitation, prepared a letter dated November 29, 2008, which was submitted into evidence, in which Dr. Lam stated as follows:
>
> "Mr. Christopher Miranda is currently an inpatient of mine at Kessler Institute for Rehabilitation. Christopher Miranda sustained a complete spinal cord injury, C1, ASIA A tetraplegia, and has been ventilator dependent for many months due to a motor vehicle accident. Due to his medical condition, Mr. Miranda is prone to severe depression. Without the daily presence of Mr. John Lesniak, who is Mr. Miranda's stepfather, Mr. Miranda would not be able to participate in any physical or occupational therapy sessions at Kessler (due to his severe depression). Therefore, it is medically necessary for Mr. Miranda to have Mr. Lesniak present at Kessler Institute for Rehabilitation on a daily basis."
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> The ALJ then set forth the following "Analysis, Findings of Fact and Conclusions of Law":
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> Based on a review of the record of this claim, including the summary and discussion of the evidence as set forth hereinabove, the ALJ does hereby make the following findings of fact and conclusions of law.

The facts of this case exemplify the spirit of cooperation, compassion, and generosity which the workers' compensation system seeks to attain and achieve in every case. The sacrifice and complete dedication shown by John Lesniak is unparalleled. The cooperation, compassion, and generosity demonstrated by the Defendant-Employer and the Workers' Compensation Insurance carrier are to be applauded. The tireless efforts and endless work performed by legal counsel for both parties reflect a strong desire to achieve a proper result while competently representing the interests of their respective clients.

During the past five plus years, the parties have resolved all issues that have arisen and have demonstrated what cooperation and reasonableness can achieve. By the time this Opinion is written, the Defendant-Employer’s Workers' Compensation Insurance carrier will have expended more than three million dollars to provide indemnity benefits as well as medical care and treatment for Mr. Miranda, including repairs, additions, and modifications to a house purchased by Mr. Lesniak that will provide a home for Chris. All of these things have been accomplished without having to seek intervention by the ALJ.

The final issue to be determined at this time is probably a case of first impression and the position of each party is valid and extremely well presented by the respective counsel.

KRS 342.020 provides in part as follows:

[T]he employer shall pay for the cure and relief from the effects of an

injury . . . the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability . . . .

KRS 342.0011(15) provides:

"Medical services" means medical, surgical, dental, hospital, nursing, and medical rehabilitation services, medicines, and fittings for artificial or prosthetic devices.

"It is clear that KRS 342.020(1) places responsibility on the employer for payment of medical and nursing services that promote cure and relief from the effects of the work-related injury." Bevins Coal Company v. Ramey, 947 S.W. 55 (Ky. 1997). The Kentucky Supreme Court states in Bevins, *supra*, at page 56, "In no manner does the statute qualify or limit the identity of the provider of medical and nursing services. Neither does it require the provider to have any designated credentials."

In Bevins, the wife of Hubert Ramey, whose injuries resulted in double leg amputation, the Court stated,

"Therefore, it logically follows that in-home attendant or nursing services performed by an injured worker's spouse (or other non-professional relative or friend) are compensable if the services are reasonable and necessary for the cure and/or relief from the effects of a work-related injury. What is required is that the services be medically necessary, performed competently, and provide cure and relief from the effects of the injury." (at p.59)

Whereas, the Bevins case clearly authorized compensation to a spouse, friend, or other companion for providing in-home care, treatment, and attendant services, there does not appear to be legal precedent for the compensability of such companion care if it is provided in a full service hospital or rehabilitation unit of a hospital.

In this case, Christopher Miranda has spent more than five years in four different hospitals and rehabilitation facilities. The bulk of that time has been spent in Rockcastle County, Kentucky. The Defendant-Employer's position is that each of these medical institutions provided full services and the best of care that modern medicine has to offer, i.e., services which the Workers' Compensation Insurance carrier has graciously provided. The Defendant-Employer maintains that for the ALJ to impose an obligation on the Defendant-Employer and its Workers' Compensation Insurance carrier to provide companion services while the Plaintiff has resided in a hospital and/or rehabilitation unit would present duplicative services not envisioned by the law, unreasonable in scope, and unnecessary to the medical care and treatment that has always been the standard under applicable Kentucky law. The Defendant-Employer contends that if the Kentucky legislature had intended that such services as Plaintiff now seeks to be compensable, then it would have clearly and expressly included such language in the statute and would not have left it to the ALJ and/or the courts to add special benefits or medical services not contemplated by the Kentucky legislative branch.

On the other side of the coin, the Plaintiff reminds the ALJ that KRS 342.020 does not specify and does not limit the location at which reasonable and necessary medical care and attention can be provided. The case law precedent that extends companion care into the residence of the victim does not expressly limit such companion care and treatment to the home setting. Plaintiff argues there is nothing that precludes the remedy Plaintiff now seeks.

In an effort to resolve this valid dispute, the ALJ has given much consideration to the positions of both parties and has laboriously sought the appropriate solution. In the end, the ALJ recognizes that each and every case should be and must be decided on the specific facts presented. One size does not fit all. The evidence in this claim favored the Plaintiff. The Plaintiff has presented letters and reports from medical personnel located at two or three of the institutions at which the claimant resided. The Plaintiff also presented evidence from Ms. Mary Moraja who has supplied the ALJ with information concerning the appropriate rate of pay to be considered for Mr. Lesniak's companion services.

Dr. Bela Patel, Houston, Texas, attested to the fact that Mr. Lesniak had provided daily physical, mental, psychological, and moral support. He emphasized that Mr. Lesniak's involvement in Chris' care and his patience greatly assisted in Chris' transition to the next level of care. Dr. Stacey L. Spencer, at the Kessler Institute for Rehabilitation in New Jersey, state that in his professional opinion Mr. Miranda had benefited and come to rely on Mr. Lesniak's care and

companionship while he was a patient at Kessler. Dr. Spencer further stated in his letter of December 11, 2008, that in his opinion, it was “necessary” for the step-father, John Lesniak, to maintain his daily physical interactions with Chris. Due to the family living far away, Mr. Lesniak’s presence was crucial to Chris’ daily emotional state of mind and participation in various therapies. Dr. Spencer indicated that he had observed Chris’ increased anxiety and depression when Mr. Lesniak was unable to be present for any reason. The increased anxiety and depressive symptomatology highly interfered with Chris’ ability to fully participate in the rehabilitation process. Dr. Spencer concluded that it was critical that Mr. Lesniak “be present and hands-on” with Chris while he was a patient at Kessler.

Dr. MyLan Lam, Clinical Chief of the Spinal Cord Injury Department at Kessler, stated that due to Chris’s medical condition, he was prone to severe depression. Dr. Lam indicated that without the daily presence of Mr. Lesniak, Chris would not be able to participate in the physical and occupational therapy sessions at Kessler. Dr. Lam concluded, “Therefore, it is medically necessary for Mr. Miranda to have Mr. Lesniak present at Kessler Institute for Rehabilitation on a daily basis.”

The foregoing medical evidence is undisputed. This medical evidence, together with Mr. Lesniak’s detailed testimony as to his involvement in Chris’ care and treatment, and his participation in every level of Chris’ life, constitutes substantial evidence to support the finding that Mr. Lesniak

was providing attendant and companion services that were reasonable and necessary for the cure and relief from the effects of the devastating and catastrophic injuries suffered by Christopher Miranda at a time when he was only 31 years of age. Thus, the ALJ does hereby find and conclude that the services provided by John Lesniak are compensable under KRS 342.020 and the principles set forth in Bevins, *supra*.

As a side note, the ALJ notes that a statement appearing on page 56 of the decision in Bevins, *supra*, suggests that the severity of the injury sustained has a bearing upon the reasonableness and necessity of attendant care and further illustrates that emotional and psychological support is a factor that may be considered:

A double amputation resulting from trauma is a devastating event in one's life. Cure and relief for a double amputee requires the collaborative efforts of many in the health care industry such as the nurse, the physical therapist, the occupational therapist, the social worker, the limb maker, and the vocational counselor. The presence of a caring, supportive, and attentive spouse of many years may provide emotional and psychological support.

Certainly, Mr. Ramey's injuries sustained at Bevins Coal Company are not to be minimized, but they pale in comparison to the catastrophic injuries sustained by Christopher Miranda. From the first few days or weeks following his injury, when Chris was despondent and contemplating whether life was worth living, through the past five, and almost six, years, John Lesniak has

provided emotional and psychological support in a manner which probably could not have been provided by anyone else. The severity of Christopher Miranda's injuries, and the resulting *sequelae*, required everything the medical institutions had to offer, as well as what Mr. Lesniak had to offer. The ALJ finds Mr. Lesniak's personal sacrifice to be nothing short of amazing, and the personal bond that has developed between Chris and John over the past five plus years has proven to be critical in Chris' survival and the advancements he has been able to make since the accident.

The ALJ now turns his attention to the determination of an appropriate amount of compensation for the years of services provided by John Lesniak. Plaintiff has requested total compensation of $181,124.44 for Mr. Lesniak. Ms. Moraja, a case management specialist, provided evidence that a reasonable hourly rate for the services provided by Mr. Lesniak was $17.50. She further stated that the value of Mr. Lesniak's services was equivalent to not less than a 40-hour work week. The ALJ notes that Chris' injury occurred on January 3, 2008. Thus, a period of 68 to 69 months elapsed from the date of the accident until September of 2013, the month in which it was expected that Mr. Miranda would be transported to his home. It is recognized that on two occasions, in the summers of 2010 and 2011, Mr. Lesniak spent about four months during each summer working at his regular job of over-the-road truck driver. Thus, if we subtract this 8-month period of time that he was working driving trucks, the resulting time during which his services were rendered to Chris is essentially five years. $17.50 per hour

> times a 40-hour work week is $700 per week, multiplied by 52 weeks per year equals $36,400 per year, multiplied by 5 years equals $182,000.00. There is no evidence to rebut the evidence provided by Ms. Moraja and the ALJ finds her to be a credible witness. Based on the calculation as shown above, the ALJ finds the amount of reimbursement requested by Mr. Lesniak to be reasonable compensation for services he rendered to and on behalf of Christopher Miranda.
>
> Peripheral issues were raised as to whether Mr. Lesniak timely filed Form 114s. The regulation providing that a failure to submit a timely Form 114, without reasonable grounds, may result in a finding that medical expenses for which payment is sought are not compensable, is permissive and does not require the ALJ to deny expenses alleged. Speedway/Super America v. Elias, 285 S.W.3d 722 (Ky. 2009). In the case at bar, Mr. Lesniak testified that he did submit some Form 114s early on, but when same were not acknowledged or paid, he quit doing so. The ALJ does not find the failure to timely submit Form 114s to be fatal to the claim.
>
> The Plaintiff also raised the question of whether the Defendant-Employer had to file a Form 112 (Medical Fee Dispute) in order to preserve the issue presented in this matter. The ALJ finds that the filing of a medical fee dispute was unnecessary and the ALJ has considered and treated this claim the same as if a Form 112 had been filed.

On October 24, 2013, Miranda filed a petition for reconsideration requesting findings of fact concerning Lesniak's request for reimbursement of $18,094.67 for his

motel bills, $322.50 for his parking bills, $83.00 for his metro-rail bills, and mileage.

Centimark filed a petition for reconsideration on October 25, 2013, asserting as follows:

- "The defendant will not herein reargue the points of its brief, but would request a specific finding pertaining to what statute and/or case allows for an award of attendant care by a family member or friend during an injured employee's period of hospitalization."

- "The case cannot be stricken from the docket until final, and it is not final. Indeed, the appeal time and process has not yet lapsed or been exhausted."

- "Finally, the defendant would request the ALJ to reconsider and correct the award of 12% interest."

Centimark filed a supplemental petition for reconsideration on October 25, 2013, asking the "ALJ to make a specific finding of fact in reqard to certain monies which were utilized by Mr. Lesniak for lodging and meals, which came from the TTD/TTD checks of Mr. Miranda." It asserted "[t]hese should not be ordered to be paid for the benefit of Mr. Lesniak under this case, without appropriate qualification."

In the November 7, 2013, order ruling on both parties' petitions for reconsideration, the ALJ determined as follows:

> This claim is before the Administrative Law Judge on a Petition for Reconsideration filed by each of the parties, requesting amendments and changes to the Opinion, Award and Order (the Opinion) rendered by the undersigned Administrative Law Judge on October 11, 2013. The Administrative Law Judge has carefully considered each of the points raised by the parties in their respective petitions and has also considered the Defendant's supplemental petition and the Defendant's response to Plaintiff's Petition for Reconsideration.
>
> The Administrative Law Judge will first consider the Plaintiff's Petition for Reconsideration, together with the Defendant's response thereto. The Plaintiff raises the issue as to why the Administrative Law Judge did not specifically address and order the reimbursement of motel bills, parking bills, and metro rail reimbursement costs for the expenses incurred by Mr. Lesniak in the rendering of care and services to and on behalf of the Plaintiff. Plaintiff maintains that such reimbursement should be ordered to be paid by the Defendant-Employer. The Defendant has responded by taking the position that these expenditures were not made by the Plaintiff, but were made by Mr. Lesniak, who is not a party to this claim and whose service most closely resembles that of a medical expense; further, it cannot be argued that a physician, therapist, chiropractor, nurse, etc. would be entitled to expense reimbursement. The

Defendant states that Mr. Lesniak's reimbursement claim was litigated as a contested issue within Mr. Miranda's workers' compensation claim and was not pending upon a Form 112.

The Administrative Law Judge finds merit in the position taken by the Defendant-Employer. Whereas KRS 342.020(1), places responsibility on the employer for payment of medical and nursing services that promote cure and relief from the effects of the work-related injury, the statute does not provide for reimbursement of expenses to a provider of medical or nursing services. The Plaintiff is limited to the reasonable value of the services provided by the provider, which in this case is Mr. Lesniak. The Opinion rendered herein adequately compensates the Plaintiff for the value of Mr. Lesniak's services. Necessary expenses incurred by Mr. Lesniak in the providing of such services are not compensable. By the terms of the Opinion rendered herein, Plaintiff has already been adequately compensated for the value of the services. As the Defendant has pointed out, the services rendered by Mr. Lesniak most closely resemble a medical expense, and it would not "be argued that a physician, therapist, chiropractor, nurse, etc. would be entitled to expense reimbursement." The Opinion has provided for compensation of the services rendered by Mr. Lesniak based on a rate $17.50 per hour. The Award is based on the value of the services rendered to and for Mr. Miranda. However, it is not appropriate for anyone to recover for the expenses incurred by Mr. Lesniak in making himself available for the care and treatment of Mr. Miranda.

In the Defendant's Petition for Reconsideration, the Defendant first requests a specific finding as to the statute and/or case law which allows for an award of attendant care by a family member or friend during an injured employee's period of hospitalization. On pages 14-15 of the Opinion, the Administrative Law Judge discusses the legal basis for the rendering of the award herein. KRS 342.020 is quoted in part, as well as the meaning of "medical services" as defined in KRS 342.0011(15). The Opinion furthers cites Bevins Coal Company v. Ramey, 947 S.W. 55 (Ky. 1997), in which the Kentucky Supreme Court states on page 56 "In no manner does the statute qualify or limit the identity of the provider of medical and nursing services. Neither does it require the provider to have any designated credentials." The court further states in Bevins, at page 59:

"Therefore, it logically follows that in-home attendant or nursing services performed by an injured workers' spouse (or other non-professional relative or friend) are compensable if the services are reasonable and necessary for the cure and/or relief from the effects of a work-related injury. What is required is shat [sic] the services be medically necessary, performed completely, and provide cure and relief from the effects of the injury."

To the extent that the Opinion did not make a specific finding, the Administrative Law Judge does hereby find that the services rendered by Mr. Lesniak were reasonable and necessary for the cure and/or relief from the effects of a work-related injury. The services provided were medically necessary, performed competently, and

provided cure and relief from the effects of the injury. The rendering of such medical services (attendant or nursing services) are not expressly limited or restricted to those services rendered in the home or outside the confines of a hospital or other institutional environment. As stated in Bevins on page 56, the statute does not qualify or limit the identity of the provider of medical and nursing services. It also does not qualify or limit the place in which these services must be rendered.

The Defendant next raises the question as to the Administrative Law Judge's intention in paragraph 2 on page 20 of the Opinion, wherein it is stated "all pending issues in this claim now having been decided, the same claim shall be stricken from the active docket of the Administrative Law Judge. The Administrative Law Judge was simply trying to state that all issues have now been resolved in this claim. It was poorly worded and the ALJ will amend the Award and Order by deleting "the same claim shall be stricken from the active docket of the Administrative Law Judge."

Next, the Defendant argues that it was error for the Administrative Law Judge to award interest of 12% on the amount awarded to Plaintiff herein for value of the services rendered by Mr. Lesniak. The Administrative Law Judge agrees that Defendant's position is correct and that KRS 342. 040 provides only for interest of 12% on the past due indemnity payments. It does not provide for interest on payment of a medical expense. The services rendered by Mr. Lesniak most closely resemble a nursing expense, i.e., a medical expense, and thus it was erroneous of

the Administrative Law Judge to award interest on the sum of the value of the companion care services awarded herein.

Finally, in the Defendant-Employer's Supplemental Petition for Reconsideration, it is requested the Administrative Law Judge make a specific finding of fact in regard to certain monies utilized by Mr. Lesniak for lodging and meals, which money came from temporary total disability benefits/permanent partial disability benefits checks belonging to Mr. Miranda. The Defendant states Mr. Lesniak testified that during some of the time of Mr. Miranda's hospitalization, Mr. Lesniak utilized the Claimant's income benefits to pay for his own expenses. The fiduciary propriety of Mr. Lesniak utilizing the Plaintiff's income benefits to pay for his own expenses is not within the jurisdiction of this ALJ. This was a matter between Mr. Lesniak and Mr. Miranda. If there was any misuse of the benefits paid to Mr. Miranda such issue does not fall within the purview of the Administrative Law Judge. Perhaps the matter would require the attention of the Administrative Law Judge if reimbursement of expenses incurred by Mr. Lesniak was awarded herein. However, the ALJ has determined that reimbursement of Mr. Lesniak's expenses is not compensable. Thus, there is no overlap or duplication in any of the amounts awarded herein and in the Opinion.

It is hereby ORDERED that the Award and Order as set forth on page 20 of the Opinion is hereby amended to read as follows:

AWARD AND ORDER

> Based on the foregoing findings of fact and conclusions of law, it is hereby ORDERED and ADJUDGED as follows:
>
> 1. Plaintiff, Christopher Miranda, shall recover of the Defendant-Employer, Centimark/Cincinnati Flooring, and/or its Workers' Compensation Insurance carrier, for the companion care services provided herein by John Lesniak in the amount of $181,124.34; and Defendant-Employer shall take credit for any payment of such compensation heretofore made.
>
> 2. All pending issues in this claim have now been decided.
>
> 3. All motions for approval of attorney fees shall be filed within thirty (30) days from the date of this Order.
>
> 4. Except to the extent the Opinion is amended herein, the Petitions for Reconsideration filed by the parties are denied and overruled. To the extent that the Opinion is supplemented and amended hereinabove, the Defendant's Petition for Reconsideration is GRANTED.

On appeal, Miranda challenges the decision on three grounds. First, Miranda argues Lesniak is entitled to reimbursement for his out-of-pocket expenses such as motel bills, parking bills, metro-rail expenses, and mileage. Second, Miranda contends Centimark was obligated to file a medical fee dispute after Lesniak submitted Forms 114 seeking reimbursement for the associated costs in providing

care-giver services. Finally, Miranda asserts the ALJ's failure to award interest on the overdue and unpaid income benefits is erroneous as a matter of law.[2]

On appeal, Centimark argues Lesniak is not entitled to compensation for services rendered while Miranda was receiving in-patient care. It also argues the ALJ erred as a matter of law by awarding 12% interest on the amount of expenses to be reimbursed to Lesniak.

Concerning Miranda's first argument that pursuant to KRS 342.020(1), Lesniak is entitled to reimbursement of the out-of-pocket expenses he incurred while providing caregiver services, 803 KAR 25:096(11)(2), the pertinent regulation, states as follows:

> (2) Expenses incurred by an employee for access to compensable medical treatment for a work injury or occupational disease, including reasonable travel expenses, out-of-pocket payment for prescription medication, and similar items shall be submitted to the employer or its medical payment obligor within sixty (60 days) of incurring of the expense. A request for payment shall be made on a Form 114.

Pursuant to the plain and unambiguous wording of the regulation, only Miranda is entitled to such

[2] Miranda's brief contains a fourth argument which endeavors to establish the award for caregiver services is supported by substantial evidence. We will address this issue in our discussion of the errors alleged by Centimark.

reimbursement for out-of-pocket expenses. Being unambiguous on its face, a rule of statutory construction long accepted by Kentucky courts is that unambiguous statutes must be applied as written. Although resolution of this issue turns on the interpretation of an administrative regulation, the aforementioned principle of language construction is applicable. "[A]bsent an ambiguity, 'there is no need to resort to the rules of statutory construction in interpreting it.'" Hall v. Hospitality Resources, Inc., 276 S.W.3d 775, 784 (Ky. 2008) quoting Stewart v. Estate of Cooper, 102 S.W.3d 913, 915 (Ky. 2003). Additionally, there is no precedent in case law which supports Miranda's argument that "Mr. Lesniak essentially has stepped into Mr. Miranda's shoes for purposes of reimbursement as provided by KRS 342.020(1)." Miranda's reliance on Bevins Coal Co. v. Ramey, 947 S.W.2d 55 (Ky. 1997) for this argument is misplaced, as Bevins speaks to the compensability of caregiver services rendered by Ramey's wife. It does not speak to the compensability of out-of-pocket expenses associated with providing caregiver services such as hotel bills, mileage, and other related expenses. As there is no legal precedent for reimbursement of such out-of-pocket expenses for anyone other than the employee, the ALJ's

determination that these expenses are non-compensable will not be disturbed.

We find no merit to Miranda's second argument that Centimark was required to file a medical fee dispute after Lesniak submitted various Forms 114 seeking reimbursement for the out-of-pocket expenses associated with his caregiver services.

Exhibit 2 to the August 1, 2013, hearing transcript is a letter, dated February 2, 2011 from Lesniak to Jane English with Crawford and Companies to which several Forms 114 were attached. The letter reads as follows:

> Jane, I am sending those to you due to the fact that I have fired the previous lawyer we had, which I am sure by now you know. I do not know what he sent or did not send to you over the last year and I wanted to be sure you were up to date on these. I know they are supposed to filed in a timely manner and did not know if they had or not. When I get the new lawyer, you will be notified as to such. Thanks. John Lesniak POA for Christopher J. Miranda case #118-921.

The attached Forms 114 request reimbursement for lost wages, mileage, motels, parking, and metro-rail.

The two settlement agreements reached in this litigation, approved November 9, 2012, and September 12, 2013, were approved *after* Lesniak submitted his Forms 114.

In R.J. Corman R.R. Const. v. Haddix, 864 S.W.2d 915, 918, 919 (Ky. 1993), the Supreme Court of Kentucky determined the employer was not required to file a medical fee dispute prior to entry of a final award holding as follows:

> The amendment to KRS 342.020(1) requiring the payment of medical benefits in 30 days is clearly intended to hasten payment of those medical bills that the employer is obligated to pay. Until an award has been rendered, the employer is under no obligation to pay any compensation, and all issues, including medical benefits, are justiciable. Therefore, we believe that KRS 342.020, which addresses additional compensation for injuries, which must be determined to be work-related per KRS 342.0011(1) to be compensable, applies to medical statements received by an employer after an ALJ has determined that said bills are owed by the employer. Likewise, the rules enunciated in *Westvaco* and *Poynter* only apply post-award.
>
> From a practical standpoint, pre-award application of the 30–day rule to either pay or contest medical costs is an exercise in futility and simply adds another step to the process. In essence, the rule requires employers to file a motion to contest in order to preserve the issue for consideration at the hearing. The ALJ would hardly be able to rule on the motion before considering the merits of the claim and determining whether claimant is entitled to any compensation. Therefore, the motion to contest would necessarily be held in abeyance, with no real benefit derived from the extra procedural step.

As the terms of a settlement agreement becomes a final judgment when approved, Centimark was neither obligated to pay Lesniak's out-of-pocket expenses nor contest them by filing a formal medical fee dispute. *See* Uninsured Employers' Fund v. Turner, 981 S.W.2d 544 (Ky. 1998). Consequently, during the pendency of the claim, Centimark was not required to file a medical fee dispute.

Similarly, we find no merit in Miranda's third argument the ALJ erred by failing to award interest on past due caregiver benefits. This issue can be dealt with swiftly. KRS 342.040(1) allows for 12% interest on unpaid *income* benefits. KRS 342.0011(12) defines income benefits as follows:

> Income benefits means payments made under the provisions of this chapter to the disabled worker or his dependents in case of death, excluding medical and related benefits.

Therefore, the monetary sum due Lesniak does not constitute income benefits. Nothing in the statute provides that a medical provider is entitled to interest on unpaid medical bills. Even though the issue here pertains to entitlement to interest on the amount awarded for caregiver services, we believe the caregiver is similarly situated with a medical provider. Thus, despite Miranda's arguments to the contrary, an award of interest on past due sums

awarded for caregiver services is not permitted by law and is inappropriate.

Centimark's first argument on appeal that Lesniak is not entitled to compensation for caregiver services while Miranda was receiving in-patient care is without merit. As the facts cited by the ALJ in support of his decision are not in dispute, we will not recount in detail the supportive facts.

The ALJ provided an extraordinarily cogent explanation for his determination Lesniak's caregiver services, performed while Miranda was in an in-patient setting, are compensable. The ALJ has acknowledged this is a case of first impression. He distinguishes Bevins, supra from the current case because Bevins clearly speaks to the issue of *who* is performing the caregiver services not *where*. The issue in this litigation centers on *where* Lesniak provided caregiver services to Miranda- i.e. in an in-patient setting- not that Lesniak performed them, and Centimark's sole argument focuses on where the services were provided. However, as was the ALJ, we are convinced by certain language in Bevins that the severity of the injury speaks to the reasonableness and necessity of the attendant care and psychological support is a factor to be considered. That language from Bevins is as follows:

> A double amputation resulting from trauma is a devastating event in one's life. Cure and relief for a double amputee requires the collaborative efforts of many in the health care industry such as the nurse, the physical therapist, the occupational therapist, the social worker, the limb maker, and the vocational counselor. The presence of a caring, supportive, and attentive spouse of many years may provide emotional and psychological support.
>
> Bevins at 57.

Although Lesniak is not a spouse, it is clear he is and was Miranda's confidant and the individual to whom he had the closest attachment. Also convincing is language in Bevins holding that the true requirement of KRS 342.020(1) is the services be medically necessary, performed competently, and provide cure and relief from the effects of the injury. The Supreme Court instructed as follows:

> Administering medication, massages, heat applications, preparing meals, and assisting in personal needs, such as dressing, certainly pertain to the cure and relief of the effects of the loss of both legs due to simultaneous amputation. Therefore, it logically follows that in-home attendant or nursing services performed by an injured worker's spouse (or other nonprofessional relative or friend) are compensable if the services are reasonable and necessary for the cure and/or relief from the effects of a work-related injury. **What is required**

> **is that the services be medically necessary, performed competently, and provide cure and relief from the effects of the injury.**

Id. at 59. (emphasis added).

We agree with the ALJ, there is no case law specifically limiting the compensability of caregiver services to those services rendered in a home setting. Additionally, the ALJ correctly observed KRS 342.020(1) does not overtly limit the *location* where reasonable and necessary caregiver services can be provided. The statute reads, in relevant part, as follows:

> In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease.

We again emphasize a rule of statutory construction long accepted by Kentucky courts is that unambiguous statutes must be applied as written. Hall v. Hospitality Resources, Inc., supra. KRS 342.020(1) is unambiguous on its face.

Also convincing to the ALJ were the opinions of Dr. Bela Patel, Dr. Stacey L. Spencer, and Dr. MyLan Lam

who strongly acknowledged the benefits Miranda derived from Lesniak's presence. As the ALJ noted, in a letter dated December 11, 2008, Dr. Spencer opined it is "critical that Mr. Lesniak be present and hands-on with Christopher while he is a patient" at the Kessler Institute for Rehabilitation, and Dr. Lam, in a letter dated November 29, 2008, stated Lesniak's daily presence at the Kessler Institute for Rehabilitation is "medically necessary." Additionally, Dr. Patel wrote the following in a letter dated July 9, 2008:

> This letter is also an attestation that patient's step dad, Mr. John Lesniak, has been with Christopher daily for physical, psychological and moral support. His full involvement on [sic] his care and his patience greatly helped on [sic] Christopher's transition to the next appropriate level of care.

We conclude substantial evidence supports the ALJ's determination the caregiver services rendered by Lesniak to Miranda when he was receiving inpatient care, is compensable, therefore the ALJ’s determination cannot be disturbed.

Centimark's final argument on appeal is the ALJ erroneously awarded 12% interest on the expenses reimbursed to Lesniak. As the ALJ denied Lesniak’s claim for reimbursement of his expenses and the November 7, 2013,

order set aside the award of interest on the amount awarded for caregiver services, this argument is moot.

Accordingly, concerning all issues raised in both appeals, the October 11, 2013, opinion, award, and order and from the November 7, 2013, order ruling on both parties' petitions for reconsideration are **AFFIRMED**.

ALL CONCUR.

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