Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 23, 2019

CLAIM NO. 201558984

COCA-COLA BOTTLING CO. PETITIONER

VS. **APPEAL FROM HON. CHRISTINA D. HAJJAR, ADMINISTRATIVE LAW JUDGE**

CELESTYNE SULLIVAN
and HON. CHRISTINIA D. HAJJAR,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING IN PART
VACATING IN PART & REMANDING
* * * * * *

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

STIVERS, Member. Coca-Cola Bottling Co. ("Coca-Cola") appeals from the March 21, 2019, Opinion, Order, and Award of Hon. Christina D. Hajjar, Administrative Law Judge ("ALJ") in which the ALJ determined Celestyne Sullivan's ("Sullivan") past and future medical treatment for her low back condition is compensable.

On appeal, Coca-Cola asserts the ALJ erred by finding the treatment Sullivan received from the American Pain Institute, Milestone Physical Therapy, and

Jewish Hospital was reasonable and necessary. Coca-Cola also asserts the ALJ erred by concluding future medical treatment, outside of home exercises and pain medication, is compensable.

The Form 101 alleges Sullivan sustained work-related injuries to her "low back area (inc: lumbar and lumbo-sacral)" on May 21, 2015, in the following manner: "Plaintiff was helping a driver pick up spilled merchandise in the back of truck. Lifted product and felt a pop in her low back. Plaintiff suffers from depression and anxiety as a result of the injury."

Sullivan was deposed on October 4, 2018. She testified extensively concerning a non-work-related car accident that occurred on April 4, 2016, in which she sustained injuries to her head and neck. She testified, in part, as follows:

> Q: Would you explain in any more detail that you may have what your head and neck injuries consisted of?
>
> A: It was a sprain. It was – I was already in therapy. I was on my way.
>
> Q: What were you in therapy for at that time?
>
> A: I was in aqua therapy.
>
> Q: Okay. What was the aqua therapy for?
>
> A: My lower back.
>
> Q: Okay.
>
> A: From the injury at Coke. I can't really remember.
>
> Q: That's okay. In the motor vehicle accident, did you have any back pain as a result of the accident?
>
> A: I had some.

Sullivan was involved in a lawsuit as a result of the car accident, and the settlement specified that she was being compensated for injuries to her neck and head. She treated with Dr. Warren Bilkey for a cervical strain after the car accident.

Sullivan was also involved in another non-work-related car accident on January 31, 2018, in which she injured her right knee, head, neck, and back. She received chiropractic care and treatments for headaches as a result of that accident.

She was first injured at work on January 22, 2015.[1] She described the incident as follows:

> A: I pulled a muscle in my upper back.
>
> Q: And how did that happen?
>
> A: I was at Walmart, and the product was on the truck, and I had to pull the product off the truck with a jack, and it was a piece of metal, I didn't know it was a piece of metal, but when I went to pull the jack, the pallet yanked back because it was metal sticking up on the truck, and it pulled a muscle.
>
> …
>
> Q: Do you remember what kind of treatment you received?
>
> A: Muscle relaxers.
>
> Q: Did you go through any kind of physical therapy?
>
> A: No.
>
> Q: Do you know how many times you sought treatment?
>
> A: I can't really remember.

[1] According to Sullivan's deposition testimony, at the time of the January 2015 injury, she was working for the predecessor company to Coca-Cola Bottling Co. Consolidated, Coca-Cola. Coca-Cola Bottling Co. Consolidated took over in March 2015.

…

Q: Okay. Were you eventually released from medical care for that injury?

A: Yes, I went back to work.

Sullivan testified that when she returned to work after the January 2015 injury, she did not have any back pain.

Sullivan explained how the May 21, 2015, injury occurred:

A: I was at Kroger in the back room, and my truck had pulled up to the dock, and I was waiting on him to bring my product off the truck, and he had opened up the door, and then I heard him yell, 'Oh, shit,' and all the product had spilled in the truck, so I was helping him get – try to get some of the product up.

Q: So what were you doing exactly when you were trying to get the product up? Do you mean lifting a box or lifting individual things back into a box?

A: Some of it was individual. It was all wrapped in plastic, all – all the pallets was wrapped in plastic, but some of the plastic had ripped, so some of the product was on the floor and some of the plastic was bent, so product was laying on top of other product, and it was a small space, and when I went to pick up I believe it was the two liters, but it was a – what do they call them? The case that the six two-liters are in, the case.

Q: Okay.

A: And my foot was closer to the wall, and when I went to pick that one up, then I turned and I heard something pop.

Q: What did you – what did you feel when that happened?

A: I felt pain, immediate pain.

Q: Where?

A: In my back, in my lower back.

Sullivan began physical therapy for the injury at issue on May 27, 2015. At the time of her deposition, Sullivan was still treating at the American Pain Institute for the effects of the May 21, 2015, injury. She testified as follows:

> Q: Okay. Where have you continued to seek treatment?
>
> A: American Pain Institute.
>
> Q: Okay. And what kind of treatment do you receive there?
>
> A: Shots, I get shots, and I'm on pain medicine.
>
> Q: Okay. Have any doctors given a medical opinion that that treatment is related to the work injury?
>
> A: Yes. I had – I had never had like a lapse in treatment since I had – once I was admitted in the hospital, I had never had a lapse in treatment.

Sullivan testified that, for a period of time, her back pain worsened after the April 2016 car accident:

> Q: All right. Dr. Bilkey – I know you've had a lot of different accidents and some of this goes back years, and it's not – give me a piece of paper for a minute.
>
> When Dr. Bilkey saw you after the car wreck in April of 2016, he said you had a cervical strain, some increase in preexisting low back pain. Do you believe your back pain at least for a period of time got worse following the car wreck?
>
> A: For a period of time?
>
> Q: Uh-huh.
>
> A: For a period of time.
>
> Q: All right. Could you get back, though, to where you were at some point?

A: Yes.

Sullivan testified regarding the complications she experienced from a myelogram ordered by Dr. Wayne Villanueva:

> A: I was told that I – the only thing that could happen was I could get a severe headache, where my head would hurt so bad to where it would feel like I was dying.
>
> I went – the procedure should've lasted 15 to no longer [sic] 20, 25 minutes. I got – went over to Floyd, I got prepped, my mom and them was waiting on me. He took me in the back room. I was on the table, he told me to bend, so I was like bent in a position.
>
> And before he had came in, she said it was his first day, he had moved from somewhere else. He came in, he took a needle, he said my skin was too tough, so he couldn't get the first needle in.
>
> So then he got another needle and he stuck that needle in, but it wasn't in the right spot. So then he got another needle that was defective, so he couldn't get it.
>
> So by the time he used the fourth needle, I was crying and I asked him to stop. So she came over, and it was a lady in there, and she was helping. Then he said he almost got it and he thought he had the right needle, so he did it again. So when he got through, I think I had about seven different needles stuck in my spine.
>
> So then they wheeled me back in there with my mom and they sent me home, and my mom took me home.
>
> …
>
> A: I ended up going to the emergency room. I was gave [sic] medicine to kill all the pain. That was that night I had left the emergency room.
>
> It got so bad that by the time I woke up until [sic] I had to go back to the emergency room. So then after I left that emergency room, I had to go back to Dr. Villanueva, because somebody had to see me 'cause something wasn't right. I couldn't move.

> So I went to see him, then I ended up in the hospital. And I had blood on my spine from all the puncture wounds that he had kept doing, and I stayed in the hospital for seven days.
>
> Q: Okay. After that procedure, was there a change in your condition?
>
> When I say after, I don't mean after, in the days after when you were in the hospital, but coming out of the hospital, did you – did you continue to have problems following that injection?
>
> A: Yes.
>
> Q: And how did that affect your condition? What – give us an idea.
>
> A: It got worse. It was my right side. It went from all of my left side, so it wasn't just my left side anymore, it was my right side, my left side, under my buttocks.
>
> Q: Okay.
>
> A: So now on my right side, from my hip to my buttocks is numb. And they did a nerve damage test, so the nerves are damaged.

Sullivan also testified at the February 13, 2019, hearing. After the May 21, 2015 injury, she first treated at BaptistWorx where she was given muscle relaxers and put on light duty work. She had two rounds of physical therapy. She eventually came under the care of Dr. Villaneuva who ordered water therapy at Milestone and pain management at Baptist Pain Management. He also prescribed Gabapentin and a narcotic pain medicine. At that time, Sullivan was off work pursuant to Dr. Villaneuva's orders.

After the myelogram complications, Sullivan's low back symptoms worsened. She elaborated:

A: I couldn't stand. I couldn't do regular therapy.

Q: Is that when you were put in water therapy?

A: Yes.

Q: Okay. And that was at Milestone?

A: Yes.

Q: And that's one of the bills I think that may be unpaid; we're not sure. Go ahead. And what else?

A: I stayed – I stayed in aqua therapy for months. Dr. Villanueva, he sent me to pain management which was far – farther than where I lived and I had to get a ride. So, he said I could go to another one and then when he released me, he released me to Dr. Giles.

…

Q: And Dr. Giles got you a closer pain management?

A: Yes.

Q: And what was that with?

A: American Pain Institute.

Q: Okay. And that's the treatment you've been under?

A: Yes.

Sullivan filed several unpaid medical bills in the record. Relevant to this appeal are the following charges:

American Pain Institute	
October 17, 2016 – May 17, 2017	$9,344.00
June 2, 2017 – November 29, 2017	$2,993.00
January 24, 2018 – July 18, 2018	$4,730.00
Milestone Physical Therapy	
May 9, 2016 – May 25, 2016	$3,564.00
June 1, 2016 – June 30, 2016	$1,924.00

Jewish Hospital
October 27, 2017 $1,359.00

Subsequently, Sullivan filed another unpaid medical bill totaling $2,372.00 for services rendered at the American Pain Institute from August 20, 2018, through September 19, 2018. She later filed an unpaid medical bill totaling $1,187.00 for services rendered at the American Pain Institute from November 14, 2018, through December 5, 2018.

Sullivan filed several reports from Dr. Bilkey who performed an August 17, 2016, Independent Medical Examination ("IME"), consisting of a medical records review and examination. Regarding the medical records he reviewed, Dr. Bilkey stated as follows:

> In addition to the history and physical examination, I have been provided for review copies of medical records from Baptist Health Emergency Room, the EMS report, records of Dr. Villanueva, of Baptist Health Occupational Medicine, of Baptist Hospital, of Dr. Bush, including ESI procedural reports, records of Floyd Memorial Hospital, records of Brownsboro Hospital, results of diagnostic tests including MRI scan, FCE results, utilization review records, IME of Dr. Ballard, physical therapy treatment records.
>
> Dr. Bilkey set forth the following impressions:
>
> 1. 1/22/15 work injury with aggravation occurring 5/21/15 lumbar strain, lumbar radiculopathy, chronic low back pain.
>
> 2. Myofascial pain left hip.
>
> 3. 1/11/16 complication of myelogram with epidural hematoma C7-L1 requiring hospitalization and blood patch procedure. There are residual right lower extremity radicular symptoms.

> 4. 4/4/16 motor vehicle accident, cervical strain, sacroiliac strain, aggravation of prior lumbar strain. Ms. Sullivan has had physical therapy. Therapy and time have resolved these concerns. **She no longer has symptoms related to the 4/4/16 motor vehicle accident and has acquired no permanent impairment related to the 4/4/16 motor vehicle accident.** (emphasis added).
>
> He further opined as follows:
>
> Ms. Sullivan has a complex medical history. She had 2 work injuries. These apparently have culminated in persisting low back pain. Significant pathology is indeed documented on MRI and Dr. Villanueva thought it important enough to fully evaluate Ms. Sullivan that he obtained a CT myelogram. She then had a complication, epidural hematoma requiring a blood patch. Related to the epidural hematoma, Ms. Sullivan appears to have residual right lower limb radicular symptoms. There is on examination, residual sensory loss affecting the right lower limb. Reflexes and motor exam are normal on both sides. Ms. Sullivan's motor vehicle accident injuries appear not to have been serious. The symptoms related to this motor vehicle accident have fully resolved. Ms. Sullivan has not been able to return to her prior work duties. She has been assigned permanent sedentary work restrictions by her treating neuro surgeon following FCE.
>
> **In my opinion, the above diagnoses are due to the injuries as noted above. The evaluation and treatment procedures that have been carried out appear to have been reasonable, medically necessary and work injury related.** There is no evidence here that Ms. Sullivan had an active impairment affecting her back prior to 1/22/15. (emphasis added).

Dr. Bilkey opined Sullivan was at maximum medical improvement ("MMI") and assessed a 13% Lumbar DRE Category III impairment rating attributable entirely to the May 21, 2015, work injury. Dr. Bilkey also opined Sullivan has no impairment stemming from the April 4, 2016, motor vehicle accident.

Sullivan filed Dr. Bilkey's October 4, 2018, addendum report which states, in part, as follows:

> I have been provided for review additional records: treatment records of Dr. Grossfeld (office visit dates: 1/21/14, 10/24/12, 6/20/12, and 6/14/12), and results of lumbar MRI 6/18/12. I have been asked to review these records and indicate how they impact my IME conclusions.
>
> The records of Dr. Grossfeld were for the evaluation and treatment of low back pain with right lower limb radiation, onset March 2012, diagnosed as sciatica and as spondylosis. MRI results were not indicative of need for surgery but did show degenerative disc disease.
>
> After review of these records there are no changes to be made to the conclusions of the 8/17/16 IME. My reasons are as follows: Dr. Grossfeld treated non-traumatic back pain with right lower limb radiation. The work injuries caused left lower limb radiation, a new diagnosis. With respect to diagnostic imaging, tests subsequent to the work injuries along with specialty surgical evaluation found Ms. Sullivan to not need surgery. The MRI prior to the work injuries doesn't explain the cause of work injury symptoms nor show that she needed surgery for her back.

The November 7, 2018, Benefit Review Conference Order and Memorandum lists the following contested issues: permanent income benefits per KRS 342.730, average weekly wage, temporary total disability benefits, wages upon return to work, current wages, ability to return to work, vocational rehabilitation, unpaid or contested medical expenses, MMI, proper use of the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"), permanent versus partial disability, duration of benefits, and future medical benefits.

A Form 110 settlement agreement was executed by the parties for a lump sum payment of $23,000.00 which was approved by the ALJ on February 13, 2019.[2] The agreement indicates the issue of past and future medical expenses was to be submitted to the ALJ for a determination of compensability.[3] The agreement further indicates that, along with Dr. Bilkey's 13% impairment rating, Dr. Ellen Ballard assessed a 5% impairment rating for the work-related injury.

In the March 21, 2019, Opinion, Order, and Award, the ALJ set forth the following findings of fact and conclusions of law:

> The parties agree that Sullivan sustained a work-related low back injury on May 21, 2015, while she was working for Coca Cola. The parties further agree that she sustained at least a 5% impairment due to the injury. However, the parties disagree as to whether her past and future treatment is reasonable, necessary and related to her injury. KRS 342.020(1) provides that "[i]n addition to all other compensation provided in this chapter, the 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."
>
> Plaintiff retains the burden of proof on the issue of work-relatedness. *Addington Resources, Inc. v. Perkins*, 947 S.W.2d 421 (Ky. App. 1997). She has the burden of proving each of the essential elements of her claim, including that she is entitled to benefits. *Snawder v. Stice*, 576 S.W.2d 276 (Ky. App. 1979). Plaintiff is obligated to present medical evidence to overcome expert medical testimony on issues of causation which are not apparent

[2] The lump sum payment includes a waiver of vocational rehabilitation and the right to reopen.

[3] The language included in the settlement agreement indicating that, upon approval, the claim "shall be dismissed in its entirety, with the equivalency of a civil dismissal with prejudice" is erroneous as a matter of law. As the settlement agreement is comparable to an award, the claim is certainly not comparable to a civil dismissal with prejudice, and Sullivan retains the right to reopen with respect to any future medical fee disputes.

to a lay person. *Kingery v. Sumitomo Electrical Wiring*, 481 SW3d 492 (Ky. 2015).

Defendant bears the burden of proving that the contested medical expenses are unreasonable or unnecessary. *National Pizza Company v. Curry*, 802 S.W.2d 949 (Ky. App. 1991). Treatment which is shown to be unproductive or outside the type of treatment generally accepted by the medical profession is unreasonable and non-compensable. This finding is made by the Administrative Law Judge, based upon the facts and circumstances surrounding each case. *Square D Co. v. Tipton*, 862 S.W.2d 308 (Ky. 1993).

Continuing Past and Future Treatment

Defendant argues that Sullivan is not entitled to any additional medical treatment based upon Dr. Ballard's statement that no additional treatment is necessary. However, the Kentucky Court of Appeals, in *McDonald's v. Petty*, 2011 Unpub. LEXIS 182 (Ky. App. March 4, 2011), an unpublished decision, which the Supreme Court subsequently affirmed, stated, "[w]e agree with the Board that [the employer's] broad challenge to the compensability of all prospective care for [plaintiff's conditions] goes beyond the scope of KRS 342.125. *See McDonald's v. Petty*, 2012 Unpub. LEXIS 14 (Ky. February 23, 2012). The Workers' Compensation Board ("WCB") has addressed this exact issue, and specifically stated, "[n]either the ALJ nor the Board is empowered to rule on the compensability of prospective medical treatment. In other words, [the Defendant] remains liable for medical treatment reasonably required for the cure and relief from the effects of [the claimant's] work-related injury, subject to the rules and procedures set forth in the statute and its accompanying regulations pertaining to the compensability and contest of medical expenses." *Our Lady of the Way Hospital v. Miller*, DWC No. 1998-59307 (WCB March 4, 2015). This ALJ rejects Dr. Ballard's blanket statement that no additional treatment is necessary and finds that Sullivan sustained a permanent injury, and she is entitled to reasonable, necessary, and related treatment.

This ALJ also rejects Defendant's argument that Dr. Villanueva specifically recommended no further

treatment. Dr. Villanueva indicated that whether Gabapentin was to be used in the future was "open-ended", and she was to return "as-needed", suggesting that future treatment may be warranted. He also suggested that his hands were tied concerning future treatment, given the "status" of Sullivan's workers' compensation claim. At that point, he had read Dr. Ballard's IME, which suggested no future treatment would be approved. Thus, this ALJ finds that all past and future treatment was not precluded by Dr. Villanueva's recommendation that she return to him as needed.

This ALJ is also not convinced by Defendant's and Dr. Ballard's references to Sullivan's prior medical history as a reason to find the treatment not compensable. There was no convincing evidence that Sullivan was continuing to treat for any prior low back complaints at the time of her May 21, 2015 injury. Dr. Bilkey's report was convincing that the May 21, 2015 injury exacerbated her January, 2015 work-injury, and that all of the resulting impairment and treatment was due to the subsequent injury. Further, although he stated that the April 4, 2016 motor vehicle accident temporarily increased her baseline, he stated that she returned to her baseline condition after the accident. Sullivan testified that she was on her way to therapy for her low back at the time of the accident. This ALJ is not convinced that any of the disputed treatment was necessary due to the April 4, 2016, motor vehicle accident. Thus, this ALJ finds that the treatment rendered in the past or in the future for Sullivan's low back condition is related to the work injury, and is compensable.

Myelogram Complications Treatment

In regard to medical treatment for the myelogram, in *Elizabeth Sportswear v. Stice*, 720 S.W. 2d (Ky. App. 1986), the injured worker underwent a myelogram for the treatment of a work injury. He had a severe allergic reaction to the dye used in the procedure, fell into a coma, and died. The Court of Appeals determined the death to be compensable. The Court cited Professor Larson, who noted that it is uniformly held that aggravation of the primary injury by necessary medical or surgical treatment is compensable. *See Larson, Workmen's Compensation Law*, Vol. 1, sec. 13.21 (1985). This ALJ is convinced by Sullivan's testimony and Dr. Bilkey that the

complications from the myelogram are related to the injury and are compensable.

Specific Treatment

Baptist Pain Management. Defendant does not dispute this $2,455.60 expense incurred on September 2, 2016. Thus, this ALJ finds it is compensable.

Centerstone of Kentucky. The parties agree this is not related to the injury. Thus, this ALJ finds it is non-compensable.

American Pain Institute. (October 17, 2016 to present $19,439.00). Defendant argues that Sullivan started and continued treatment after Dr. Ballard determined, and Dr. Villanueva agreed, no further treatment was needed. However, this ALJ finds that treatment for her low back condition is compensable. Sullivan met her burden to prove it is related as set forth in Dr. Bilkey's reports. It is Defendant's burden to prove that such treatment is not reasonable or necessary, and this ALJ is not convinced by Dr. Ballard's blanket statement that all future treatment after her IME is not reasonable or necessary. Defendant produced no other evidence as to why the specific treatment, including the injections, procedures, or medication, would be unreasonable or unnecessary to treat her low back condition. Thus, this ALJ finds that it is compensable. However, the medical bills appear to include treatment for neck pain after the January 31, 2018 accident. Sullivan has not met her burden to prove that such treatment after the car accident for her neck pain is related. Thus, this ALJ finds that only the low back treatment at American Pain Institute is compensable.

Milestone Physical Therapy. (May 9, 2016 through June 30, 2016 ($5,488.00) Defendant argues that treatment began after April 2016 motor vehicle accident and continued after Dr. Ballard determined no further treatment was needed on May 23, 2016. However, as discussed above, this ALJ finds that Sullivan was undergoing treatment at the time of her work injury for treatment of the low back. There is no evidence in the record that such treatment was for anything other than her continuing low back complaints. Dr. Bilkey acknowledged that the motor vehicle accident increased her back pain temporarily, but he concluded that her

> treatment was due to the work injury. Thus, this ALJ finds it is compensable.
>
> **Walgreen's Pharmacy**. (February 23, 2016 through June 28, 2016 $929.25). Defendant deducted medications which are unrelated to the low back injury and from unknown prescribers and agreed that $827.88 was compensable. This ALJ finds that Sullivan has not met her burden to prove that the additional medications not stipulated by Defendant are due to the work injury. Thus, this ALJ finds that only $827.88 of the $929.25 expenses are compensable.
>
> **Jewish Hospital**. October 27, 2017 for $1,359.00. Defendant argues that there is no supporting documentation of treatment and work-relatedness and the treatment occurred after Dr. Ballard stated that no further treatment is needed. However, the bill was for lumbar spine diagnostics. This ALJ finds that Sullivan met her burden to prove that it was due to her low back injury, and that Defendant has not proven that it was unreasonable or unnecessary. Thus, it is compensable.
>
> No petition for reconsideration was filed.

Coca-Cola asserts the ALJ erred by finding the treatment Sullivan received at the American Pain Institute, Milestone Physical Therapy, and the diagnostic test at Jewish Hospital to be reasonable and necessary. Coca-Cola also contends the ALJ's finding regarding the compensability of future medical treatment, besides home exercises and pain medication, is not supported by the evidence. Coca-Cola asserts that any medical treatment extending past May 4, 2016, the date upon which Dr. Ballard determined Sullivan reached MMI for the work-related injury, should not be deemed compensable. We affirm in part, vacate in part, and remand for additional findings.

We vacate the ALJ's determination the contested medical treatment from American Pain Institute is compensable and remand for additional findings.

However, the ALJ's determination regarding whether Sullivan met her burden to prove a causal connection between the work-related injury and her treatment at the American Pain Institute is supported by substantial evidence. In Dr. Bilkey's August 17, 2016, IME report, he clearly stated Sullivan "should have continued access to medication support for pain control. These treatment recommendations are for the 1/22/15 and 5/21/15 work injuries exclusively." This opinion constitutes substantial evidence in support of the ALJ's conclusion that "Sullivan met her burden to prove it [i.e. treatment at the American Pain Institute] is related." Consequently, that portion of the ALJ's analysis finding the contested treatment work-related is affirmed.

That said, the ALJ erroneously shifted the burden of proof onto Coca-Cola to prove the reasonableness and necessity of this treatment. In the March 21, 2019, Opinion, Order, and Award, the ALJ stated, in relevant part, as follows:

> **It is Defendant's burden to prove that such treatment is not reasonable or necessary**, and this ALJ is not convinced by Dr. Ballard's blanket statement that all future treatment after her IME is not reasonable or necessary. **Defendant produced no other evidence as to why the specific treatment, including the injections, procedures, or medication, would be unreasonable or unnecessary to treat her low back condition.** (emphasis added).

Coca-Cola did not have the burden to prove the contested medical treatment at the American Pain Institute is neither reasonable nor necessary *or* to produce "other evidence" proving why her treatment was unreasonable or unnecessary. The proceeding before the ALJ was not a post-award medical fee dispute in which the burden of proof with respect to the reasonableness and necessity of the contested medical treatment falls on the employer. Here, the parties reached a partial

settlement, and the issue of the compensability of certain medical expenses and Sullivan's entitlement to future medical benefits was submitted to the ALJ for a decision on the merits. Therefore, the burden of proof concerning the reasonableness, necessity, and work-relatedness of the specific contested medical expenses and entitlement to future medical treatment *remained* on Sullivan.

On remand, the ALJ must set forth an analysis regarding the reasonableness and necessity of the contested treatment Sullivan received at the American Pain Institute based on the understanding Sullivan possessed the burden of proof. Sullivan, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of her claim, including the compensability of medical expenses, past and future, with substantial evidence. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

Should the ALJ determine Sullivan met her burden of proving the contested treatment at the American Pain Institute is both reasonable and necessary, the ALJ must clarify precisely how much of each bill incurred after the January 31, 2018, motor vehicle accident is compensable. In her findings of fact and conclusions of law, the ALJ concluded as follows: "However, the medical bills appear to include treatment for neck pain after the January 31, 2018 accident. Sullivan has not met her burden to prove that such treatment after the car accident for her neck pain is related. Thus, this ALJ finds that only the low back treatment at American Pain Institute is

compensable." This is reiterated in the order and award when the ALJ, with respect to Sullivan's treatment at the American Pain Institute, states as follows: "Defendant is not responsible for treatment of Plaintiff's headaches and neck pain after the motor vehicle accident on January 31, 2018."

Among the unpaid medical bills from the American Pain Institute filed in the record by Sullivan, three pertain to treatment received after the January 31, 2018, car accident. They encompass the following dates and totals: January 24, 2018, through July 18, 2018, totaling $4,730.00; August 20, 2018, through September 19, 2018, totaling $2,372.00; and November 14, 2018, through December 5, 2018, totaling $1,187.00.[4] On remand, the ALJ must specify the exact amount compensable from each bill.

Regarding the contested medical treatment provided by Jewish Hospital, the ALJ stated, in relevant part, as follows: "**Defendant has not proven that it [i.e. treatment at Jewish Hospital] was unreasonable or unnecessary**." (emphasis added). Here, the ALJ has also erroneously shifted the burden of proof regarding the reasonableness and necessity of this treatment onto Coca-Cola. Therefore, we vacate the ALJ's determination this treatment is compensable and remand for additional findings regarding its compensability. Specifically, the ALJ must determine whether this is reasonable and necessary treatment of the work injury, again with the understanding Sullivan possessed the burden of proof.

[4] While Sullivan represents the bills totals $1,187.00 in her "Notice of Filing of Unpaid Medical Bills," the actual bill filed reflects an ending balance of $837.00 for this time period.

However, Sullivan met her burden of proof of establishing a causal connection between the contested treatment at Jewish Hospital and the work-related accident. In light of the fact Coca-Cola failed to file a petition for reconsideration requesting additional findings, we must conclude Sullivan successfully prevailed on this issue. In her decision, the ALJ stated: "Sullivan met her burden to prove that it [the contested treatment at Jewish Hospital] was due to her low back injury." Although there is no medical opinion in the record directly addressing the work-relatedness of this lumbar spine diagnostic performed at Jewish Hospital, Coca-Cola failed to file a petition for reconsideration requesting additional findings on this issue. Consequently, inadequate, incomplete, or even inaccurate fact-finding on the part of an ALJ will not justify reversal or remand if there is substantial evidence in the record supporting the ultimate conclusion. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985). Even though Dr. Bilkey did not directly address the Jewish Hospital lumbar diagnostic, in the August 17, 2016, IME report he assessed a 13% whole person impairment rating for lumbar strain and lumbar radiculopathy, and attributed 100% of the impairment rating to the May 21, 2015, work injury. Importantly, Dr. Bilkey affirmed his diagnoses and impairment rating in his October 4, 2018, addendum, almost one year after the lumbar spine diagnostic was performed. In light of Coca-Cola's failure to file a petition for reconsideration requesting additional findings, Dr. Bilkey's diagnosis and impairment rating constitutes substantial evidence in support of the ALJ's conclusion Sullivan met her burden of proving the work-relatedness of the lumbar diagnostic she received at Jewish Hospital. This portion of the ALJ's analysis is affirmed.

Significantly, while Coca-Cola failed to file a petition for reconsideration challenging the erroneous burden-shifting in the ALJ's analysis regarding the compensability of the treatment Sullivan received at the American Pain Institute and the lumbar diagnostic at Jewish Hospital, this is an error of law and not an error of fact. Therefore, a petition for reconsideration, in the context of the ALJ's erroneous burden shifting, was unnecessary. The Board has the authority to decide questions of law regardless of whether a petition for reconsideration is filed. *See*, e.g., Bullock v. Goodwill Coal Co., 214 S.W.3d 890, 893-94 (Ky. 2007); Brasch-Berry General Contractors v. Jones, 175 S.W.3d 81 (Ky. 2005).

Finally, as to the ALJ's determination the aqua therapy treatment Sullivan received at Milestone Physical Therapy from May 9, 2016 – May 25, 2016, and from June 1, 2016 – June 30, 2016, is compensable, there was no erroneous burden shifting in the ALJ's analysis. Therefore, our inquiry focuses on whether the ALJ's finding of compensability is supported by substantial evidence in the record. We conclude that it is.

We note the crux of Coca-Cola's argument is that all medical expenses, including the aqua therapy she received at Milestone, taking place after May 23, 2016, the date upon which Dr. Ballard opined Sullivan reached MMI for the work-related injury, should be deemed non-compensable. Concerning the date of MMI, Dr. Ballard's opinion simply represents conflicting medical testimony the ALJ was free to reject. The ALJ, well within the discretion afforded to her, relied upon Dr. Bilkey's assessment of MMI – August 17, 2016 – three months after the contested aqua therapy treatment at Milestone concluded.

Dr. Villanueva's medical records indicate he referred Sullivan to aqua therapy on January 27, 2016. On the referral form, the diagnosis is "DDD (degenerative disc disease), lumbar." A review of the medical record immediately preceding the aqua therapy referral indicates Sullivan was seen for an increase in her lumbar back pain following complications from a myelogram the ALJ found related to the injury. This finding was not contested by Coca-Cola.

Further, in his August 17, 2016, IME report generated after the aqua therapy at Milestone had concluded, Dr. Bilkey referenced an awareness of Sullivan's referral to aqua therapy by Dr. Villanueva. In the "history" section, he states as follows:

> The second work injury occurred on 5/21/15. On that date she helped a truck driver pick up spilled pallets of soft drinks. .She stopped to lift these and at one point injured her low back. She had immediate onset back pain. For this she had assessment at BatpistWorx. She had physical therapy but it didn't help. She had an MRI scan of her spine. She went to see Dr. Villanueva, Neuro Surgeon. Dr. Villanueva reviewed the MRI, referred her for aqua therapy.

In this same report, Dr. Bilkey opined "[t]he evaluation and treatment procedures that have been carried out appear to have been reasonable, medically necessary and work injury related." In his supplemental report on October 4, 2018, Dr. Bilkey noted his opinions remain unchanged.

Dr. Villanueva's records firmly demonstrate Sullivan was referred to aqua therapy for the effects of the work-related injury and the work-related complications from the myelogram. Similarly, Dr. Bilkey was well aware of Sullivan's aqua therapy at the time of his August 17, 2016, IME report in which he opined the

treatment that has been carried out is reasonable, medically necessary, and work-related. We note there is also testimony in the record from Sullivan that she was on her way to aqua therapy at the time of the April 4, 2016, motor vehicle accident which is also recounted in Dr. Bilkey's IME report. Even though the contested periods of aqua therapy follow the April 4, 2016, motor vehicle accident, it was initiated to treat the effects of the work-related injury nearly three months prior. Importantly, Dr. Bilkey opined that the "motor vehicle accident injuries appear not to have been serious" and, at the time of his IME, all her symptoms were fully resolved with no permanent impairment. Since substantial evidence supports the ALJ's determination the aqua therapy is compensable, we affirm on this issue.

Finally, with respect to Sullivan's entitlement to future medical benefits beyond pain management and a home exercise program, the ALJ was entitled to exercise her discretion in making a determination regarding entitlement to future medical benefits. The ALJ's determination Sullivan is entitled to future medical benefits is amply supported by the record. Dr. Bilkey opined Sullivan should have continued access to pain management and should be on a home exercise program, something Coca-Cola is not contesting. However, the ALJ can certainly infer from Dr. Bilkey's opinions that Sullivan may need future medical treatment for her work-related injury beyond pain management and a home exercise program. We will not invade the discretion granted the ALJ. Moreover, we note the medical proof establishes Sullivan has an impairment rating, thereby as a matter of law entitling her to future medical benefits. It is undisputed Sullivan has a permanent functional impairment rating as a result of her injury. This Board has consistently held that a worker who has

established a disability for purposes of KRS 342.020 does not need to prove anything else to receive an award of future medical benefits. We interpret the Supreme Court's holding in FEI Installation v. Williams, 214 S.W.3d 313 (Ky. 2007) to mean that, where there is evidence of a permanent impairment rating in accordance with the AMA Guides, as a matter of law it is error for an ALJ to rule broad-spectrum and prospectively that future medical care is unreasonable and unnecessary. In such circumstances, pursuant to KRS 342.020(1), a general award of future medical benefits is mandated, and as noted by the Court: "[u]nder 803 KAR 25:012; Mitee Enterprises v. Yates, 864 S.W.2d 654 (Ky. 1993) and National Pizza Co. v. Curry, 802 S.W.2d 949 (Ky. App. 1991), an employer is free to move to reopen an award to contest the reasonableness or necessity of any medical treatment and also whether the need for treatment is due to the effects of the injury." FEI Installation v. Williams, at 319. Therefore, we affirm on this issue.

Accordingly, to the extent the ALJ determined the contested medical expenses at the American Pain Institute and Jewish Hospital are compensable, the March 21, 2019, Opinion, Order, and Award is **VACATED**. This claim is **REMANDED** to the ALJ for additional findings consistent with the views set forth herein. However, the ALJ's determination Sullivan met her burden to prove the contested treatment at the American Pain Institute is work-related is **AFFIRMED**. On all other issues raised on appeal, the March 21, 2019, Opinion, Order, and Award is **AFFIRMED**.

ALL CONCUR.

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