Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 13, 2021

CLAIM NO. 199789398

PAXTON MEDIA GROUP PETITIONER

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

LYNDA HAMMOND;
DR. RICHARD DINSDALE;
DR. CHIKWENDU NWOSU; and
HON. CHRISTINA D. HAJJAR,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

ALVEY, Chairman. Paxton Media Group ("Paxton") appeals from the February 15, 2021 Medical Fee Dispute and Opinion and the March 3, 2021 Order on Petitions for Reconsideration rendered by Hon. Christina D. Hajjar, Administrative Law Judge ("ALJ"). The ALJ sustained Lynda Hammond's ("Hammond") Motion to Reopen to assert a medical dispute, and found compensable the Form 114

expenses totaling $4,482.54, plus an additional $1,200.00 in acupuncture expenses. The ALJ found Paxton waived its defenses by failing to file a Motion to Reopen to assert a medical dispute pursuant to KRS 342.020(1) and 803 KAR 25:096 §8. The ALJ found Paxton's obligation to *refile* a medical dispute and Motion to Reopen was not tolled pursuant to 803 KAR 25:096 § 8(2), noting Paxton did not request a treatment plan.

On appeal, Paxton argues the ALJ failed to identify Hammond's designated physician for each compensable date of treatment and failed to cite to the corresponding medical records establishing a referral for that treatment, despite its request to do so in its Petition for Reconsideration. Paxton further argues the ALJ did not properly analyze the applicability of the doctrine of *res judicata*. Paxton argues the ALJ abused her discretion by rejecting Dr. Richard Dinsdale's opinion. It asserts he provided the only medical opinion in the record addressing reasonableness and necessity. It further asserts the ALJ was compelled to find none of the contested treatment had been ordered by the designated physician who is the single physician selected by Hammond and who has the sole authority to make a referral to a treatment facility or specialist. Paxton argues the ALJ abused her discretion by refusing to compel Hammond to attend an independent medical examination ("IME"). Paxton also argues the ALJ abused her discretion by failing to find Hammond has not met her burden of proof as to causation. Finally, Paxton argues it and/or its payment obligor met the requirements of KRS 803 KAR 256:096 §10 and the thirty-day obligation was properly tolled. Because Paxton/Kentucky Insurance Guaranty Association ("KIGA") failed to file a timely medical fee dispute with a

Motion to Reopen to contest Hammond's requests for reimbursement for medical expenses and mileage, we affirm.

Testimony

Hammond testified by deposition on June 19, 2020 and at the final hearing held December 17, 2020. Hammond, a resident of Gold Canyon, Arizona, was born in January 1962. She worked as a news anchor from 1986 to 1997 for several television stations located in Minnesota, Kansas, New York, and Kentucky. Hammond initially sustained an injury in 1992 while working as the morning anchor for Smith Broadcasting in Wichita, Kansas. The hydraulic component of the chair Hammond was sitting in broke, causing it to slam down approximately six inches. Hammond felt immediate right-sided low back pain radiating to her right leg and foot. Hammond treated with a physician and laid on a mattress for approximately six weeks. She then moved to Utica, New York when a job opportunity arose with Smith Broadcasting. She began treating with a physician in Utica, who recommended physical therapy, including swimming and walking in the pool, ultrasound, heat, and deep tissue massage. She also joined a gym.

Hammond testified she was "not doing too badly" when she moved to Paducah, Kentucky to work for Paxton. She continued with her physical therapy and gym regimen. She began treating with Dr. John Noonan, a Paducah neurosurgeon, in 1994. On April 16, 1996, Hammond slipped on a newly waxed floor while working as an anchor for Paxton, causing her back pain to worsen significantly. Hammond treated at a Paducah hospital on several occasions due for her back pain. On July 27, 1996, Hammond fell while navigating the stairs of the

resistance therapy pool, which was part of the physical therapy she had engaged in since moving to Paducah. She stated the third injury occurred on July 27, 1996, not in 1997. Regardless, she sustained two injures while working for Paxton. She attributed the July 1996 incident to Paxton since it "just exacerbated my already terrible pain . . . It was just part of the injury because it was the same old, same old injury, same feeling, just worse, made worse by the fall."

Following the two incidents in 1996, Hammond settled her claim with Paxton in October 1997. Although Hammond retained her right to medical benefits, she did not submit bills for her treatment to the workers' compensation insurer for eighteen years. Hammond moved to Indianapolis and continued to run, lift weights, swim, and do yoga. A psychiatrist prescribed anti-depressants in 1998 or 1999, for depression Hammond related to the pain from her work injuries.

Hammond eventually moved to Arizona, and joined a gym to continue running, yoga, lifting weights, and swimming. She began treating with Dr. Dinsdale in approximately 2008 or 2009. He became her primary care physician, and she designated him as her treating physician in 2015. He ordered diagnostic testing, physical therapy, and epidural injections. He occasionally treated her depression and anxiety by prescribing medication and referring her for psychiatric and other related treatment. Hammond began receiving acupuncture for her low back and right leg symptoms.

In 2018, Hammond stopped treating with Dr. Dinsdale when he became "belligerent" towards her and refused to prescribe her treatment. Hammond testified in depth about her beliefs regarding that incident at her deposition and

hearing. Hammond sought treatment elsewhere and designated Dr. Asim Khan as her physician in 2017 or 2018. Dr. Khan recommended treatment, including epidural injections. Dr. Khan administered an epidural in October 2018, which was either done incorrectly and/or in the wrong spot. Hammond went to the emergency room due to increased pain and numbness after the epidural. An MRI revealed no issues due to the epidural and she was discharged. Hammond testified she stopped treating with Dr. Khan following her epidural experience.

Hammond then sought a new designated physician. Dr. Dinsdale was designated as her physician briefly in 2019. Then, Dr. William Stevens was designated her physician from 2019 to 2020. Dr. Chikwendu Nwosu became her current designated physician in July 2020. Hammond emphasized her difficulty in finding a designated physician who would accept the Kentucky fee schedule and due to problems with KIGA.

Hammond has treated with multiple psychiatrists for depression, which she attributes to the chronic pain stemming from her work injuries. Hammond received four Ketamine treatments for depression and chronic pain in 2019. Hammond acknowledged she did not have a designated physician at the time but assumed it would be covered. Hammond has been prescribed Cymbalta since 2004 and the workers' compensation insurer began paying for the medication in 2015. Similarly, the workers' compensation insurer has paid for Clonazepam; however, it stopped reimbursing her for medical treatment and mileage in March 2019. Thereafter, she sought reimbursement for her expenses and mileage.

Hammond testified her current pain radiates throughout the right side of her body. Medication does not relieve her symptoms. She gets pain relief from swimming, running, yoga, stretching, weight lifting, acupuncture twice a month, extreme deep tissue massage, TENS unit, Ketamine treatment, and Cymbalta. Hammond indicated the Ketamine treatments and Cymbalta help both her pain and depression.

Procedural History

On October 7, 1997, a settlement agreement was approved reflecting April 16, 1996 and February 20, 1997 as the injury dates. The agreement reflects Hammond allegedly sustained a "slip on rug on top of waxed floor & reinjury" and she sustained a low back strain. Hammond was provided a lump sum payment with "open medicals which relate to the injury of 4-16-96 & 2-20-97."

In July 2016, Paxton filed a Motion to Reopen to assert a medical fee dispute. Paxton challenged the ongoing need for treatment and medical management for Hammond's lumbar spine arguing her lumbar condition is not causally related to the 1996 or 1997 work injury. Hon. Jonathan R. Weatherby, Administrative Law Judge ("ALJ Weatherby") rendered an Opinion and Order on April 10, 2017. ALJ Weatherby rejected the opinion that Hammond's lumbar complaints and resulting treatment since 2015 were unrelated to the 1996 and 1997 work events. ALJ Weatherby found Dr. Khan's opinions the most persuasive. ALJ Weatherby concluded:

> Dr. Kahn found that the symptoms the Plaintiff was having were due to her work injury and that she would benefit from epidural steroid injections. This opinion has convinced the ALJ and the ALJ therefore finds that

> the ongoing treatment for low back pain that is being received by the Plaintiff remains causally work related and thus compensable.

The ALJ resolved the medical dispute in Hammond's favor, and neither party appealed his decision.

Hammond filed a Motion to Reopen and a Form 112 on June 6, 2019, which is subject to the current appeal. Hammond listed the date of injury as April 1996 and her "back" as the body part affected. She requested reimbursement for expenses and mileage associated with Ketamine treatment received on April 17, 19, 22, and 23, 2019, and mileage reimbursement for a therapy session with Dr. Kathryn Briggs on April 16, 2019. Hammond filed the accompanying Form 114, dated April 24, 2019, requesting reimbursement for these expenses, as well as receipts of payment for each Ketamine treatment.[1] Hammond also filed a bill for a lumbar MRI performed on November 8, 2018. She also attached a letter she prepared on June 3, 2019. Hammond alleged she stopped receiving reimbursement payments for mileage and medical expenses from KIGA three months prior. Hammond alleged she contacted Scott Webster ("Webster") of KIGA about payments but received no response. Hammond also asserted she had been unable to find a new designated physician in Arizona willing to accept the Kentucky fee schedule. Hammond asserted she should be reimbursed for expenses associated with acupuncture, gym membership, yoga, and mileage. Hammond attached an incomplete Form 113. In a subsequent letter, Hammond attached an undated e-mail exchange between her and

[1] Throughout the litigation of this medical dispute, Hammond continued to submit ongoing Form 114s requesting reimbursement for mileage, expenses associated with acupuncture, and annual gym membership fees.

Webster. Hammond stated she was having difficulty finding a new psychiatrist willing to take a workers' compensation case. She asked about reimbursement for each treatment. Webster replied, "We will contest it."

In response to Hammond's Motion to Reopen, Paxton submitted the June 26, 2019 affidavit of Stephanie Jeffries ("Jeffries"), KIGA's claims supervisor. Jeffries stated the medical providers referenced in Hammond's medical dispute did not comply with the billing requirements for payment outlined in 803 KAR 25:096 despite numerous requests; Hammond had not provided Paxton or KIGA a completed Form 113 Notice of Designated Physician (despite repeated requests); and the failures by Hammond and the medical providers to comply with the applicable regulations prevented Paxton or KIGA from processing billing or conducting utilization reviews.

On July 17, 2019, the ALJ sustained Hammond's Motion to Reopen to the extent she made a *prima facie* showing for reopening.

The ALJ entered an Order on August 22, 2019, following a telephonic conference. The ALJ clarified the issues as follows: Hammond's inability to find an out-of-state designated physician who will accept the Kentucky fee schedule; whether she is permitted to change her designated physician for the third time; the compensability of Ketamine and mileage reimbursements; and the sufficiency of her motion to reopen. The ALJ added reimbursement for annual gym membership as a contested issue. The ALJ noted Hammond expressed she was unaware of the need to have a new designated physician in order to be reimbursed for some of her expenses. The ALJ also noted the issue of whether previously denied bills were

timely disputed by KIGA. The ALJ noted Hammond would attend IMEs with two doctors and left proof time open for both parties.

On September 3, 2019, Hammond filed a letter requesting interest on all past due expenses and mileage. Hammond requested her deposition and any IMEs be conducted in Arizona or by video conferencing since she is unable to travel due to her back pain. She also filed a completed Form 113 designating Dr. Dinsdale as her physician. On August 26, 2019, Hammond filed another Motion to Reopen and Form 112. The new Motion to Reopen and Form 112 are substantially similar. However, Hammond identified the date of injury as April 1996 and April 1997, and named Dr. Dinsdale as her medical provider. Hammond filed additional Form 114s for mileage and expenses reimbursement incurred from February 2019 to August 2019. Paxton, as insured by KIGA, filed a Form 111 on September 24, 2019 denying the claim.

The ALJ found Hammond established a *prima facie* showing for reopening, and sustained her supplemental motion to reopen in an Order dated September 25, 2019. The ALJ reopened the claim concerning whether the submitted mileage expenses, therapy expenses, gym membership expenses, and Ketamine are compensable. The ALJ directed Paxton to attempt to schedule an IME prior to the telephonic conference scheduled in October 2019.

Subsequently, Hammond submitted a Form 113, designating Dr. William Stevens as her physician on October 15, 2019.

In an Order dated October 30, 2019, the ALJ noted that at a telephonic conference, Paxton advised it had scheduled two IMEs in Louisville

within a three-day time period to allow Hammond to attend them in one trip, with direct flights to and from Arizona. Hammond advised she was unable to attend the two IMEs and a deposition scheduled in Louisville by Paxton due to back pain and other reasons. The ALJ directed Paxton to file a motion to compel, if it so chose.

Accordingly, Paxton filed a Motion to Compel on November 13, 2019 requesting the ALJ to compel Hammond to appear in Louisville to attend an IME with Dr. Robert Sexton scheduled for February 4, 2020, and an IME with Dr. Walter Butler scheduled for February 5, 2020, as well as appear at a deposition on February 6, 2020. According to Paxton, Hammond had previously refused to attend two IMEs and a deposition scheduled for November 19 and 20, 2019 in Louisville. Paxton asserted a direct flight from Phoenix to Louisville did not exceed four hours and no physician has placed restrictions on Hammond preventing her from traveling.

Hammond responded in a letter dated December 9, 2019 and objected to attending the two IMEs in Louisville. Hammond asserted she has been unable to fly since 2007 due to her back pain. Hammond asserted prolonged sitting and the interruption to her rigorous work-out schedule caused by flying would aggravate her back pain. Hammond proposed conducting her deposition in Phoenix or via video conference, and that any IME be conducted in Phoenix. She also expressed concern that despite designating Dr. Stevens as her physician, she still had not received any reimbursement from Paxton.

Paxton filed two Form 112 medical disputes on December 15 and 16, 2019, listing Dr. Stevens and OrthoArizona as the medical provider. It disputed a physician's visit on November 13, 2019 stating, "No preauthorization was requested.

The employer believes that the claim may not be compensable" and that "compensability of all treatment is currently in litigation." Paxton filed the office note from the November 13, 2019 visit with Dr. Stevens who advised Hammond should not sit for more than three hours without breaks considering her degenerative disc disease. He also prescribed physical therapy for modalities including acupuncture and dry needling, and recommended a yoga-based exercise program. Dr. Stevens released Hammond from his care since he had nothing more to offer her.

In an Order dated December 20, 2019, the ALJ overruled Paxton's Motion to Compel and determined Hammond was not required to attend IMEs and depositions in Kentucky. The ALJ found it was unreasonable to require Hammond to fly to Kentucky considering her objections and the fact the flights in question would exceed Dr. Stevens' restrictions. The ALJ noted Paxton could schedule examinations and her deposition in Arizona. The ALJ cautioned Hammond to reasonably comply with Paxton's efforts to schedule IMEs in Arizona.

In a separate Order dated December 20, 2019, the ALJ passed Paxton's medical disputes and provided it twenty days to file evidence and to explain the specific treatment and/or bills being disputed and the reasons for the denial of each treatment or bill. The ALJ noted Paxton had placed Hammond "in a catch-22 situation, in which it is denying reimbursement because of the need for a designated physician, but is also apparently denying her a visit with such physician."

On January 9, 2020, Paxton filed a notice of withdrawal of its medical disputes stating it no longer disputed Dr. Stevens' treatment and it had no objection to naming him as her designated physician. In a January 14, 2020 Order, the ALJ

dismissed the medical disputes filed by Paxton on December 15 and 16, 2019 as withdrawn. The ALJ further ordered that Dr. Stevens is acknowledged as Hammond's designated physician.

On January 25, 2020, Hammond submitted a letter indicating her wish to change her designated physician to Stripes Primary Care. She sought help in expediting the approval process and explained why she wished to change her designated physician. After significant delay, Dr. Nwosu of Stripes Primary Care was designated as Hammond's physician in July 2020. Hammond treated with his nurse practitioner on June 25, 2020. He performed an examination and diagnosed lumbar pain with radiculopathy affecting the right leg, mild episode of recurrent major depressive disorder, and generalized anxiety disorder. He referred Hammond to massage therapy, physical therapy, aqua therapy, and acupuncture. He advised Hammond to continue going to the gym, running, and yoga, and to see a psychiatrist for depression and anxiety. Hammond was seen by Dr. Nwosu on July 26, 2020. He diagnosed Hammond with lumbar pain with radiculopathy affecting her right lower extremity, a mild episode of recurrent major depressive disorder, and generalized anxiety disorder. He ordered lab tests and stated Hammond should continue with the already ordered therapies recommended by the nurse practitioner.

In an Order dated July 21, 2020, the ALJ noted Paxton argued at a telephonic conference the new designated physician had not provided a treatment plan. The ALJ indicated the recommendations by Dr. Nwosu and the nurse practitioner were sufficient to allow Paxton to seek utilization review and/or file a dispute. Paxton requested additional time to obtain an IME. The ALJ ordered that

a date of the anticipated IME be determined prior to the next conference, and that Paxton "shall advise on what basis the treatment and/or bills submitted by Hammond are being challenged, if at all."

On August 25, 2020, Paxton filed a Form 112 medical dispute and motion to join Dr. Nwosu and Stripes Primary Care. The Form 112 listed April 1992 as the date of injury. Paxton disputed "all bills & requests for reimbursement submitted by the Plaintiff." Paxton alleged Hammond was injured in April 1992 while working for a different employer in Kansas. Hammond treated continuously since that time to the present. Therefore, Paxton asserted Hammond had a pre-existing active condition at the time of her April 16, 1996 temporary exacerbation while working in Kentucky. In support of its medical dispute, Paxton filed the August 21, 2020 report by Dr. Darryl Thomas. After reviewing medical records, Dr. Thomas opined Hammond sustained minor soft tissue injuries to her neck and back due to the 1996 and 1997 work events. Dr. Thomas opined, "It is far more likely that the claimant's continued chronic pain stems from other clinical issues to include the previous injury 1992."

The ALJ entered an Order on August 27, 2020 following a telephonic conference. She noted the issue of work-relatedness is passed to the merits and that Paxton's objection concerning the treatment plan was preserved as an issue. The ALJ further noted Hammond was scheduled for IMEs on October 21, 2020 and October 28, 2020, but she objected to the time of one of the scheduled IMEs. The ALJ stated Paxton will attempt to re-schedule for an earlier time at a different date, if possible, but declined to rule on whether she must attend at a specific date and time.

Over Hammond's objection, the ALJ found Paxton is entitled to IMEs and set Paxton's deadline to file evidence to November 17, 2020.

The ALJ entered an Order on September 9, 2020 sustaining Paxton's motion to join medical providers. The ALJ clarified Paxton objected to the treatment provided by Stripes Primary Care since the medical records allegedly do not establish a treatment plan pursuant to the regulations. The ALJ noted Paxton's current medical disputes challenges all treatment on the issue of work-relatedness to her 1996 injury. The ALJ noted the issue of work-relatedness of Hammond's continuing back treatment was addressed in the prior dispute. The ALJ noted Paxton had not filed a motion to reopen on this issue and argued Hammond must prove work-relatedness of treatment in any future disputes. The ALJ allowed the parties may file evidence concerning work-relatedness of her current treatment.

On September 10, 2020, Hammond filed a letter objecting to attending the two IMEs scheduled in October 2020. Hammond alleged Dr. David Fetter does not live nor have an office in Phoenix, Arizona, and his office address is listed in Illinois, thus requiring him to travel from Illinois to Arizona to conduct the IME scheduled on October 21, 2020. Hammond raised concerns with this due to COVID-19. Hammond also stated there was no IME scheduled for October 28, 2020 with Dr. Susan Borgaro as asserted by Paxton. She further alleged Paxton did not respond to her inquiries regarding the details of the October 2020 IMEs. Hammond requested any IME be conducted by a physician located in the Phoenix area or that Dr. Fetter and any staff be subject to strict quarantine and testing procedures. Paxton did not respond to Hammond's objection.

The ALJ entered an Order on September 22, 2020. Regarding the allegations raised by Hammond regarding Dr. Fetter, the ALJ found her request for an examination by a local doctor in Arizona is reasonable considering the pandemic. If Hammond's allegations are true that Dr. Fetter will be flying in for the exam, the ALJ declined to order her attendance. If Dr. Fetter is not flying in for the exam, the ALJ stated Paxton may establish by affidavit that he has an established office in Phoenix, follows social distancing protocols, and will not be flying within 14 days of the examination. Otherwise, Paxton may either choose a different doctor who regularly practices in Phoenix, but must "provide the name of the doctor, his or her CV, date of the IME, the location, and confirmation that the doctor is established in Phoenix, Arizona and is following social distance protocols to Ms. Hammond at least 15 days prior to the examination." The ALJ stated Hammond must not unreasonably refuse to attend the examination. The ALJ also noted Paxton may choose to have Dr. Fetter review Hammond's records and provide an opinion without an examination. The ALJ ordered Paxton to confirm Hammond is scheduled for an examination with Dr. Borgaro on October 28, 2020 at 10:30 a.m., the location of the exam, provide a CV, provide assurance that she is established in Phoenix, and is following CDC social distancing guidelines. The ALJ ordered that if October 28, 2020 did not work for Hammond, that Paxton provide a different date and time.

On October 25, 2020, Paxton submitted a letter dated October 20, 2020 and addressed to Hammond. In the letter, Paxton notified Hammond it had scheduled an IME by Dr. Joel Parker on November 2, 2020 at his office in Phoenix,

Arizona, and a second IME on November 5, 2020 by Dr. Terrence Crowder located in Gilbert, Arizona. No other information was provided as directed by the ALJ in the September 22, 2020 Order. Hammond filed an objection on October 26, 2020, noting she only became aware of the scheduled IMEs the day before when they were electronically filed by Paxton on October 25, 2020. Hammond reiterated her safety concerns with COVID-19. She requested Paxton provide written proof of a negative COVID test the day the examinations and information regarding the safety protocols followed by both physicians.

The ALJ entered an Order on November 3, 2020, noting Hammond did not appear at the IME scheduled for November 2, 2020. Regarding the remaining IME, the ALJ overruled Hammond's motion for proof of a negative COVID-19 test. However, the ALJ noted it was unknown whether Paxton complied with the September 22, 2020 Order since the full 10 days has not passed allowing it to respond to Hammond's October 26, 2020 filing. Therefore, the ALJ passed the remainder of Hammond's motion. The ALJ noted she would consider whether the IMEs may be rescheduled or if Paxton waived the right to the in-person IME by not complying with the September 22, 2020 Order. The ALJ declined to compel Hammond to attend the IME scheduled for November 5, 2020. The ALJ also informed Paxton that if it waived its right, no additional time would be provided for an in-person IME but that a medical report without an in-person examination would be permitted prior to the expiration of proof time.

Hammond filed several letters subsequent or contemporaneous to the November 3, 2020 Order. In essence, she asserted Paxton did not comply with the

September 22, 2020 Order and waived its right to an in-person IME. Paxton filed a response on November 4, 2020 and outlined its attempts to have Hammond examined by an independent examiner eight times during the pendency of the current litigation. Paxton alleged it sent Hammond a copy of the October 20, 2020 letter via e-mail the same day, but did not provide a copy of such e-mail. Essentially, Paxton argued Hammond refuses to be examined despite its exhaustive attempts to accommodate her concerns and objections. Paxton argued it has a statutory right to require continued physical examination pursuant to KRS 342.205. Paxton asserted a records review would be insufficient. Paxton attached the CVs from both Dr. Parker and Dr. Crowder, along with written confirmation they observe all recommended COVID-19 protocols and they practice in Arizona. Paxton subsequently filed a motion for extension of time and motion to compel on November 10, 2020. It requested the ALJ to compel Hammond to attend rescheduled IMEs with Dr. Crowder on November 19, 2020 and Dr. Parker on November 30, 2020. It requested to extend its proof time to December 30, 2020. Hammond objected to the motion to compel.

The ALJ entered an Order on November 18, 2020 addressing several motions, but we will only discuss those portions relevant to the IME issue. She first provided a detailed and thorough outline of the procedural history. The ALJ determined Paxton's right to have an IME for the issues raised in this current dispute is waived. The ALJ noted Hammond made many objections and conditions regarding scheduling an IME throughout the course of the litigation, which she reasonably accommodated. The ALJ further stated as follows:

3. Although Defendant argued it accommodated Plaintiff, it only did so under orders by the ALJ, and disregarded the recent orders requiring notice to Plaintiff of such exams. Defendant did not comply with the order requiring notice 15 days prior to the examination. Although a letter dated October 20, 2020 provided Plaintiff with notice of the exam, there is no corresponding e-mail showing it was e-mailed to Plaintiff on that date. Further, Plaintiff asserted she did not have any notice of it until it was attached as part of Defendant's October 25, 2020 response. Even assuming it was e-mailed on October 20, 2020, notice was not given to Plaintiff within 15 days of the exam, as the exam was on November 12, 2020, just 13 days after the letter was allegedly mailed. The ALJ also ordered Defendant to provide information which was not included with the letter. The ALJ finds Defendant's arguments that it has gone out of the way to accommodate Plaintiff are disingenuous, as Defendant never explained why Ms. Hammond was unable to confirm the IME appointment with Dr. Borgaro, and never proceeded with such IME, despite alleging it was scheduled.

4. The ALJ gave Defendant notice that the right to have the exam (for the current contested dispute) could be waived, due to Defendant's failure to provide the requisite notice required by the ALJ, and that a written report by the doctors could still be filed prior to Defendant's proof deadline. However, Defendant chose to insist on an in-person exam. The right to the IME for the issues raised in this current dispute is waived.

5. This order does not preclude Defendant from pursing an in-person examination during any period in which Plaintiff continues to claim entitlement to treatment for her work injury. If Defendant wants to pursue an exam concerning continuing treatment, Defendant does have the right to reschedule the exam, and pursue its own motion to reopen to compel attendance, if necessary. Defendant may pursue any penalties within such dispute. However, whether Defendant has a right to an in-person examination and the circumstances of the exam is no longer a contested issue in this dispute, as proof time is complete.

> 6. Defendant's motion for extension of proof time is overruled. The ALJ now declares Defendant's proof time closed. Plaintiff has 10 days to file rebuttal proof.
>
> 7. Although Defendant filed a medical dispute contesting all treatment based upon a pre-existing and active condition, Defendant never filed its own motion to reopen. Further, Defendant's argument that Plaintiff's continuing back complaints and treatment were pre-existing and active at the time of the injury is not well-taken, as the issue was already decided by [ALJ Weatherby], in his prior medical dispute opinion. The ALJ agrees that it is Plaintiff's burden to prove work-relatedness as part of the dispute. However, this would not require Plaintiff to re-litigate whether she sustained an injury, or had a pre-existing and active condition, as the issue was clearly already fully litigated and decided.

A Benefit Review Conference ("BRC") was held on November 19, 2020. The parties stipulated a settlement agreement was approved on October 7, 1997; a work-related incident occurred on April 16, 1996; ALJ Weatherby issued an Opinion on April 10, 2017; Dr. Nwosu is Hammond's current Form 113 doctor, and Hammond was born in January 1962. The following were identified as contested issues: reimbursement of medical expenses, including Ketamine treatment, acupuncture, gym expenses, TENS unit and expenses, and mileage expenses; interest on reimbursements not paid in a timely manner; lack of responses from the insurance company to requests by Hammond; payment in full for medical expenses; rate of payment of mileage expenses; Hammond's request for medications to be mailed to her home; reasonableness and necessity of treatment; pre-existing and active condition; and whether Hammond has and had a treatment plan in effect and whether requests for reimbursements are included as part of the treatment plan. The ALJ, *sua sponte,* raised additional contested issues: timeliness of request for

reimbursements; whether Paxton properly disputed reimbursement requests, including whether it should have obtained UR and filed its own motion to reopen and medical dispute, and whether the medical dispute Paxton filed was timely; and whether the issue of work-relatedness is *res judicata*.

At the hearing, the parties included the following issues: whether the ALJ properly refused Paxton the right to obtain IMEs; whether the ALJ properly refused to allow the parties to stipulate a 1992 injury at the BRC; and whether the ALJ properly added contested issues at the BRC *sua sponte*.

Medical Records

Voluminous treatment records spanning from 1994 to 2020 were filed into the record, including medical records, physical therapy records, acupuncture records, psychiatric records, psychotherapy records, Ketamine treatment records, and diagnostic studies. This Board has reviewed them in full and will discuss only those records relevant to the issues on appeal.

ALJ Opinion and Order on Reconsideration

The ALJ rendered a Medical Fee Dispute and Opinion on February 15, 2021. The ALJ noted Paxton is responsible for reasonable and necessary medical expenses for the cure and relief of the work injury pursuant to KRS 342.020. The ALJ further noted 803 KAR 25:096 §11(2) provides expenses incurred by an employee for access to compensable medical treatment for a work injury, including reasonable travel expenses, out-of-pocket payment for prescription medication, and similar items "shall be submitted to the medical payment obligor within 60 days of incurring the expense on a Form 114." The ALJ noted the Kentucky Supreme Court

has held that post-award medical bills must be paid or disputed within 30 days of the final utilization review determination and a request for pre-authorization equates to a "statement of services." The ALJ noted Hammond's initial claim was settled with her right to medical benefits open, placing the burden on Paxton to either pay the expenses or dispute her medical treatment within 30 days. The ALJ determined Hammond timely submitted her Form 114 expense requests, and this finding is not challenged on appeal. Although the ALJ could not find specific case law stating a completed Form 114 is a "statement for services," she found Paxton had the burden to pay or contest Hammond's expenses within 30 days of receipt for the Form 114s she submitted. The ALJ next determined the thirty-day period was not tolled under the circumstances outlined in 803 KAR 25:096 § 8(2). The ALJ focused on the third circumstance, which could toll the thirty-day period, and whether Hammond's designated physician failed to provide a treatment plan.

The ALJ reviewed the regulations governing the employee's selection of a Form 113 physician contained in 803 KAR 25:096 §3, and noted subsection 5 states the unreasonable failure of an employee to comply with the section *may suspend* all benefits payable until compliance by the employee and receipt of the Form 113 by the medical payment obligor has occurred. 803 KAR 25:096 §4 permits the employee to change their designated physician without authorization to a second designated physician. However, a further change of a designated physician "shall require the written consent of the employer, its medical payment obligor, arbitrator, or the [ALJ]" and this "consent shall not be unreasonably withheld."

The ALJ determined Paxton's suspension of benefits was unwarranted since Hammond did not unreasonably refuse to designate a new doctor pursuant to 803 KAR 25:096 §3. The ALJ noted Hammond's testimony regarding why she no longer wished to treat with either Dr. Khan or Dr. Dinsdale, and found her decision to not to return to either of them was reasonable. She also found Hammond had difficulty in finding a physician in Arizona willing to accept the Kentucky fee schedule; that she notified Paxton of this difficulty on several occasions; and the record did not evidence any attempt by Paxton to assist her with finding a doctor in Arizona. The ALJ noted Webster stopped reimbursing Hammond for expenses in the spring of 2019 because she did not have a signed Form 113, as evidenced by an e-mail sent by Webster alleging Hammond reached a level of unreasonable failure to respond, which may suspend all benefits until compliance by her and receipt of the Form 113. Based upon the reasoning contained in Hitachi Aug. Sys. Americas, Inc. v. Coots, No. 2018-CA-000087-WC (Ky. App. October 19, 2018)(unreported), the ALJ found even if Hammond unreasonably failed to have a Form 113 doctor during this time period, her benefits were only suspended during the times she did not have a designated physician.

The ALJ next found Paxton knew Hammond designated Dr. Stevens as her physician on October 3, 2019 based upon an e-mail relaying that information to Webster. Thereafter, Paxton filed a medical dispute on December 15, 2019. The ALJ found Paxton unreasonably refused to pay for Dr. Stevens' treatment since, at that time, the only issue was the compensability of Hammond's submitted expenses.

The ALJ noted Paxton never disputed all treatment until it filed a medical dispute contesting the work-relatedness, and even then, it failed to file a motion to reopen.

The ALJ determined Paxton did not accept or deny Hammond's submitted expenses within 30 days of October 3, 2019, the date she submitted her new Form 113 designating Dr. Stevens as her new physician. Paxton also did not respond to Hammond's inquiries as to why she was still not receiving reimbursement checks now that she had a designated physician, nor did it request a treatment plan. In January 2020, Paxton withdrew its dispute and accepted Dr. Stevens as the designated physician, but failed to explain why any of her reimbursement requests were still being challenged now that the issue of her Form 113 doctor was resolved. The ALJ rejected Paxton's response to Hammond's medical dispute (via the affidavit by Jeffries). Although Paxton was seeking discovery and attempting to schedule IMEs, "the litigation of Hammond's motion to reopen, or even a pending IME, did not toll Defendant's obligation to contest or pay her expenses."

The ALJ noted Hammond next requested to find a new designated physician since Dr. Stevens advised there was nothing more he could do for her. The ALJ found Hammond's request was reasonable under the circumstances. The ALJ noted it took nearly six months to approve Dr. Nwosu as Hammond's current designated physician, and found the delay was in part due to Paxton's lack of cooperation. The ALJ noted it was not until she intervened that Dr. Nwosu was eventually designated as the provider.

The ALJ found Paxton "never filed a Motion to Reopen to assert any of its claimed defenses, such as failure to find a new designated doctor; whether

Hammond is permitted to change her designated provider; failure to file an updated Form 113; or failure of the provider to submit a treatment plan." Rather, Paxton orally asserted these claimed defenses at conference calls, and the ALJ provided an example of such occurrence. The ALJ noted Paxton asserted at a conference call that it needed a treatment plan once Dr. Nwosu was designated as the new provider, but never filed evidence that it notified the physician of the need for a treatment plan.

The ALJ next summarized 803 KAR 25:096 §5, outlining when treatment plans are required and what they are to include. The ALJ cited to subsection (2), which states the designated physician shall provide a copy of the treatment plan to the medical payment obligator seven days in advance of an elective surgical procedure or placement into a resident work hardening, plan management or medical rehabilitation program. "In all other instances where a treatment plan is required, a copy of the treatment plan shall be provided within fifteen (15) days *following a request by the medical payment obligor.* An amendment, supplement, or change to a treatment plan shall be furnished within fifteen (15) days following a request." The ALJ ultimately determined:

> There is no evidence in the record that Defendant has ever requested the treatment plan from any of her designated providers. . . . The ALJ finds it to be illogical to refuse to pay Hammond's bills based upon a failure of the designated physician to provide a treatment plan, when they were never notified of the need to do so.

The ALJ concluded Paxton's burden to either pay or contest the expenses within 30 days was not tolled after she filed her Form 114s since it did not notify any provider of the need for a treatment plan pursuant to 803 KAR 25:096 §5(2). The ALJ concluded as follows, *verbatim*:

> The Supreme Court explained that "[a]lthough 803 KAR 25:012, § 1(2) permits an injured worker to file a medical dispute in order to obtain a decision on the compensability of a proposed medical treatment when a recalcitrant employer fails to do so, that fact does not absolve the employer of its burden to initiate the formal dispute." Kentucky Associated Gen. Contractors Self-Ins. Fund v. Lowther, 330 S.W.3d 456, 461 (Ky. 2010). Defendant waived whatever objection it might have had to the bills submitted since Defendant never filed a motion to reopen. Phillip Morris, Inc. v. Poynter, 786 S.W.2d 124, 125 (Ky. Ct. App. 1990). For this reason alone, the ALJ finds that medical bills submitted are compensable.
>
> Notwithstanding the ALJ's finding that Defendant waived its defenses by failing to file a motion to reopen and form 112, and failed to request a treatment plan, this ALJ has also addressed the issues raised by the parties at the BRC on the merits.

The ALJ determined the issue of work-relatedness is *res judicata*, as ALJ Weatherby already addressed whether Hammond's treatment for her continuing lumbar complaints were due to her work injury or some other cause, including a pre-existing injury. However, the ALJ found, "Hammond's testimony and evidence submitted" corroborate her claim she sustained aggravations of her 1992 work injury from her two work-related accidents in 1996 and 1997.

The ALJ determined Hammond's expenses were reasonable and necessary based upon her testimony that the treatment helped relieve her back pain stemming from her work injury. The ALJ noted Paxton did not file evidence to contradict this, and never properly raised the issue of reasonableness and necessity.

The ALJ found Hammond is entitled to mileage expenses related to picking up compensable medication and obtaining compensable treatment, and

awarded mileage based upon the rate set forth in 200 KAR 2:006. She also found Dr. Stevens' bill compensable.

The ALJ next determined the expenses related to Ketamine, gym membership, running, yoga, and acupuncture are compensable. The ALJ denied Hammond's request for mileage expenses to and from the gym. She found any future expenses were not the subject of the current dispute, and that she is unable to rule on the compensability of prospective treatments. She found the issue of home delivery of medication was not ripe for consideration. The ALJ found Paxton was responsible for acupuncture expenses under the fee schedule.

Regarding the IMEs, the ALJ incorporated her December 20, 2019 and November 18, 2020 Orders. The ALJ reiterated her determination that Hammond did not unreasonably refuse to attend the exams under the circumstances. The ALJ noted Paxton did not present a compelling argument as to why the evaluations should take place in Kentucky considering Hammond's asserted inability to travel. The ALJ noted Paxton "is entitled to have Hammond examined. However, the ALJ declined to allow the additional proof given the substantial delays and the adequate notice given to Defendant concerning the proof deadline and what was required in order to timely proceed with the IME under reasonable circumstances during the pandemic." The ALJ cautioned that failure to submit to future IME exams may result in Hammond's benefits being suspended if she refuses to attend the IME under reasonable circumstances.

The ALJ noted that once Dr. Nwosu is notified of a request for a treatment plan, Paxton may either continue paying for the expense or dispute the expense pursuant to a proper motion to reopen as applicable.

The ALJ sustained Hammond's Motion to Reopen to assert a medical fee dispute and found the submitted expenses compensable in accordance with an attached spreadsheet ($4,482.54 total compensable expenses, plus an additional $1,200.00 in acupuncture expenses subject to the fee schedule). The ALJ ordered Paxton to issue payment to Hammond within 30 days of the final decision. The ALJ ordered the issue of work-relatedness is *res judicata*, and Hammond is entitled to continuing treatment for her low back complaints. The ALJ declined to award interest on any claimed expenses as requested by Hammond. The ALJ ordered Dr. Stevens' bill compensable and Dr. Nwosu is approved as Hammond's treating Form 113 doctor. The ALJ noted Paxton is obligated to follow the applicable statutes and regulations under the Act and is to remain responsible for reasonable and necessary medical treatment for the cure and/or relief of Hammond's work-related injury pursuant to KRS 342.020.

Both parties filed Petitions for Reconsideration. The ALJ denied Hammond's Petition for Reconsideration and other filings. The ALJ also overruled Paxton's Petition for Reconsideration, other than to correct a typographical error. The ALJ declined Paxton's request for additional findings of fact concerning who the designated physician was for each compensable date of service, where in the treatment plan or records from each designated physician the referrals can be found, and where a treatment plan can be found. She stated as follows:

> This ALJ has ruled that Defendant waived its defenses to the dispute filed by Hammond by its failure to respond to or contest Hammond's requests for payment. Although Defendant may have initially been excused for not reimbursing Plaintiff, as it appears Defendant requested that she find a Form 113 doctor, once she found a new Form 113 doctor, Defendant never filed a motion to reopen or medical dispute asserting its basis for its continuing to refuse to pay for her expenses (until the medical dispute filed contesting all treatment due to work-relatedness). Further, the lack of a designated physician merely suspends payment, rather than the expenses being forfeited. It is Defendant's burden to either pay or contest an expense within 30 days, (or provide Hammond and her doctor notice of what additional information is required). Defendant must request a treatment plan from the providers, and there is no evidence that Defendant ever did so. Thus, this ALJ finds it unnecessary to go through each expense and find in the treatment plans or records where such treatment or referral was recommended.

The ALJ also addressed Paxton's request for specific findings of fact as to each element set forth in Yeoman v. Commonwealth Health Policy Board, 903 S.W.2d 459 (Ky. 1998) to support a finding of *res judicata*. The ALJ first noted she had already found Paxton failed to fulfill its obligation to file a motion to reopen, and that its obligation was not tolled. Since Paxton never filed a motion to reopen, the ALJ found the issue of work-relatedness was not properly before her. Despite this finding, the ALJ provided an additional analysis supporting her determination that the dispute is barred by the doctrine of *res judicata* pursuant to Yeoman v. Commonwealth Health Policy Board, supra.

In a second Order dated March 9, 2021, the ALJ denied Hammond's additional Petition for Reconsideration.

On appeal, Paxton argues the ALJ failed to find who Hammond's designated physician was for each compensable date of treatment and failed to cite to that physician's records establishing a referral for that treatment, despite its request to do so in its Petition for Reconsideration. Paxton further argues the ALJ did not conduct a proper analysis in determining the doctrine of *res judicata* applied. Paxton argues the ALJ abused her discretion by rejecting Dr. Dinsdale's opinion, the only medical opinion in the record addressing reasonableness and necessity. It further asserts the ALJ was compelled to find none of the contested treatment had been ordered by the designated physician who is the single physician selected by Hammond who has the sole authority to make a referral to a treatment facility or specialist. Paxton argues the ALJ abused her discretion by refusing to compel Hammond to attend IMEs. Paxton argues the ALJ abused her discretion by failing to find Hammond has not met her burden of proof as to causation. Finally, Paxton argues it and/or its payment obligor met the requirements of KRS 803 KAR 256:096 §10 and the thirty-day obligation was properly tolled.

Paxton raises numerous arguments on appeal. However, this Board will first address its last argument since it is the threshold issue. The issue concerns whether Paxton satisfied its obligation to tender payment or filed a medical fee dispute with an appropriate motion to reopen the claim within thirty days following the receipt of a completed statement for services and whether its obligation was tolled. *See* KRS 342.020, 803 KAR 256:096 §8(1) and (2).

KRS 342.020 provides the employer, insurer, or payment obligor "shall make all payments for services rendered to an employee directly to the

provider of the services within thirty days of receipt of a statement of services." 803 KAR 256:096 §8 provides that following a resolution of a claim by an opinion or order of an ALJ, including an order approving settlement, the medical payment obligor "shall tender payment or file a medical fee dispute with an appropriate motion to reopen the claim, within thirty (30) days following receipt of a completed statement of services." 803 KAR 256:096 §11(2) provides that an employee shall submit to the employer or medical payment obligor a Form 114 within 60 days of incurring expenses for access to compensable medical treatment for a work injury, including reasonable travel expenses, out-of-pocket payment for prescription medication, and similar items. For purposes of KRS 342.020 and 803 KAR 256:096 §8, the ALJ determined Hammond's Form 114s constitute statements for services, a determination not challenged on appeal. Similarly, Paxton does not allege Hammond's Form 114s were untimely filed or insufficient.

As noted in Westvaco Corporation v. Fondaw, 698 S.W.2d 837 (Ky. 1985), KRS 342.125 provides the mechanism to reopen a claim for a decision by an ALJ on any medical expenses submitted which are contested. In Phillip Morris, Inc. v. Poynter, 786 S.W.2d 124 (Ky. App. 1990), the old Board awarded Poynter income benefits and medical benefits. Subsequently, Poynter filed a motion to require the employer to pay for medical bills he had incurred. The bills submitted to the Employer had not been paid within the 30-day limit set forth in KRS 342.020(1) nor did Phillip Morris file a motion to reopen to challenge the bills. The Kentucky Court of Appeals held the failure of the employer to challenge bills submitted by the employee, post-award, constituted a waiver of its right to challenge them.

> We find that the key to resolving this appeal is Westvaco. It requires that employers who wish to challenge a medical or drug bill must file a motion to reopen. Westvaco, 698 S.W.2d at 839. We do not find the phrase included in the opinion in Westvaco, "submitted by the disabled worker", to be controlling, since it is the clear intent of the Supreme Court to require the employer to bear the burden in challenging a medical expense. As a result, it was incumbent upon Phillip Morris, Inc., to file a motion to reopen if it wanted to challenge the medical expenses submitted by Poynter.
> . . . .
>
> Since Phillip Morris, Inc., did not file a motion to reopen challenging Poynter's medical bills, it is now foreclosed from challenging them. While Westvaco, supra, does not expressly state that failure to so file will constitute a waiver, we find that such a result is nonetheless required. . . As a result, we conclude the board was correct in finding that Phillip Morris, Inc., waived whatever objection it might have had to the bills submitted by Poynter since no motion to reopen was filed.
>
> Id. at 125.

This holding was echoed by the Kentucky Court of Appeals in National Pizza Company v. Curry, 802 S.W.2d 949 (Ky. App. 1991), which stated, "Clearly the employer must raise the issue of compensability of medical treatment with the board or the right to object is waived." This holding was reiterated by the Kentucky Supreme Court in R.J. Corman Railroad Construction v. Haddix, 864 S.W.2d 915 (Ky. 1993). The burden rests upon the Employer not only to prove the contested medical expenses were unreasonable and unnecessary, but that the contested medical bills were received no more than 30 days before the motion to reopen was filed. Mitee Enterprises v. Yates, 865 S.W.2d 654, 656 (Ky. 1993).

Kentucky Associated General Contractors Self-Insurance Fund v. Lowther, 330 S.W.3d 456 (Ky. 2010), concerned a dispute over the propriety of a fine based on unfair claims settlement practices by an employer's insurance carrier. There, the issue concerned whether the injured worker or the employer bore the burden of filing a post-award medical dispute and motion to reopen when the employer denied a requested treatment following a utilization review decision refusing to pre-authorize medical treatment. The Kentucky Supreme Court determined, "the employer has the burden to initiate a formal medical dispute following a final utilization decision denying pre-authorization." Id. at 461.

We agree with the ALJ's determination that Paxton failed in its burden to either tender payment or file a medical fee dispute with an appropriate motion to reopen the claim within thirty 30 days of receiving Hammond's Form 114 expense requests. Hammond submitted requests for reimbursement for expenses she had paid with proper Form 114s authorized by the Kentucky Department of Workers' Claims. The first such request was prepared on April 24, 2019 for mileage and expenses occurring on April 16, 17, 19, 22, and 23, 2019. There is no allegation the requests were not received by KIGA in a timely manner. However, neither Paxton nor KIGA filed a motion to reopen, nor instituted a formal medical dispute. The same is true for Hammond's subsequent requests. While KIGA may well have had reasons for such refusal, merely not paying or not responding are not available options. If legitimate objections to the request exist, it is incumbent upon Paxton and/or KIGA to formally assert them.

Hammond initiated this current litigation by filing a Motion to Reopen and Form 112 seeking reimbursement of her Form 114 expenses. Paxton never filed a medical fee dispute with a motion to reopen. At most, Paxton filed a Form 112, without an accompanying motion to reopen, on August 25, 2020, disputing all bills and requests for reimbursements based on an asserted pre-existing active condition. It was incumbent upon Paxton to file a motion to reopen if it wanted to challenge the medical expenses and mileage reimbursements submitted by Hammond. Since Paxton did not file the appropriate motion challenging Hammond's request for reimbursement for medical expenses and mileage, it is now foreclosed from challenging them.

We agree with the ALJ's determination that Paxton's 30-day period provided by KRS 342.020 was not tolled pursuant to KAR 256:096 §8(2). Paxton asserts the June 26, 2019 affidavit of Jeffries establishes the conditions necessary to toll the 30-day period. However, the ALJ was not compelled to find persuasive Jeffries' affidavit on this issue. The ALJ provided a thorough and detailed analysis supporting her determination the 30-day period was not tolled in the Opinion and Order on Petitions for Reconsideration. We find the ALJ's determination that the thirty-day period was not tolled, including that Paxton/KIGA did not request a treatment plan from any provider pursuant to 803 KAR 25:096 §5(2), is supported by substantial evidence. Therefore, we affirm.

We also acknowledge Paxton's argument that the ALJ erred in failing to compel Hammond to attend an IME pursuant to KRS 342.205, which states, in relevant part, as follows:

> 342.205 Right of employer to require continued physical examination -- Payment of cost of examination -- Effect of employee's refusal -- Statement of earnings to be furnished at request of party.
>
> (1) After an injury and so long as compensation is claimed, the employee, if requested by a party or by the administrative law judge, shall submit himself or herself to examination, at a reasonable time and place, to a duly-qualified physician or surgeon designated and paid by the requesting party. The employee shall have the right to have a duly-qualified physician or surgeon designated and paid by himself or herself present at the examination, but this right shall not deny the requesting party's physician or surgeon the right to examine the injured employee at all reasonable times and under all reasonable conditions.
>
> (2) The party requesting an examination pursuant to subsection (1) of this section shall make arrangements to provide all the cost of the examination. The requesting party shall also prepay the cost of transportation of the employee to and from the examination if public transportation is utilized. If the employee uses his or her own vehicle to travel to and from the examination, the requesting party shall prepay the employee at the state mileage rate. The requesting party shall also reimburse the employee for the cost of meals, lodging, parking, and toll charges upon proof of same by written voucher. The amounts prepaid or reimbursed by the requesting party, as required by this subsection, shall be the same as, and in accordance with, state travel administrative regulations and standards promulgated and established pursuant to KRS Chapter 45.
>
> (3) If an employee refuses to submit himself or herself to or in any way obstructs the examination, his or her right to take or prosecute any proceedings under this chapter shall be suspended until the refusal or obstruction ceases. No compensation shall be payable for the period during which the refusal or obstruction continues.

The ALJ found Paxton's request for Hammond to be evaluated in Louisville was unreasonable. The ALJ did not bar Paxton from having an

evaluation performed, but set specific requirements due to Hammond's inability to travel, and additional restrictions and concerns necessitated by COVID-19. The record reveals Paxton did not comply with the ALJ's requirements that we deem were appropriate. Paxton was not prevented from having a medical evaluation performed, and nor is it prevented from having evaluations performed in the future. We additionally find the ALJ did not err in setting specific dates for introduction of evidence. Paxton's failure to comply with the requirements established by the ALJ, and specific proof times, do not constitute reversible error.

Based upon the factors in this case, it is apparent that Hammond properly attempted to obtain reimbursement for expenses she had paid. It is equally clear neither KIGA nor Paxton properly brought their concerns before the ALJ for a determination. Since KIGA/Paxton did not timely contest Hammond's requests for reimbursement, it waived all other defenses. Therefore, we will not address the additional arguments on appeal raised by Paxton.

Accordingly, the February 15, 2021 Medical Fee Dispute and Opinion and the March 3, 2021 Order on Petitions for Reconsideration rendered by Hon. Christina D. Hajjar, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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