

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-02327-REB-MJW

CAMERON McARTHUR,

Plaintiff,

v.

SOURCE GAS, LLC,

Defendant.

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MINUTE ORDER

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Entered by Magistrate Judge Michael J. Watanabe

It is hereby ORDERED that Plaintiff's Motion to Compel Defendant's Payment of Fees to Non-Retained Expert for Time at Deposition (docket no. 67) is DENIED for the following reasons. Each party shall pay their own attorney fees and costs for this motion.

In this case, Plaintiff designated Susan Kamler, MA, LPC, as a non-retained expert pursuant to Fed. R. Civ. P. 26(a)(2)(C). See Plaintiff's Amended Designation of Expert Witness (docket no. 64). Prior to Ms. Kamler's deposition, Defendant paid Ms. Kamler a witness and mileage fee in the amount of \$49.28 pursuant to 28 U.S.C. § 1821. See copy of check issued to Ms. Kamler which is attached as Exhibit 3 to Plaintiff's Motion, page 9 (docket no. 67-3). Courts have held that non-retained experts, i.e., treating physicians, are akin to ordinary witnesses for purposes of payment of witness fees for testimony. See Baker v. Taco Bell Corp., 163 F.R.D. 348, 350-51 (D. Colo. 1995) (two doctors testifying to their own personal examinations and treatment of the plaintiff were only entitled to a \$40 witness fee plus mileage pursuant to 28 U.S.C. § 1821). Ms. Kamler is a non-retained expert who was designated by Plaintiff to testify regarding her examination and treatment of Plaintiff just like the doctors in the Baker case, *supra*. Accordingly, the Baker case is dispositive on the subject motion (docket no. 67) and therefore the subject motion (docket no. 67) should be denied.

Date: August 23, 2011

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