UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

MARKIE L. FARNHAM   )
)
            Plaintiff,   )
)
v.   )   No. 1:13-cv-305-JDL
)
WALMART STORES EAST L.P.   )
)
            Defendant.   )

ORDER

A hearing on the Defendant's objection to the Magistrate Judge's decision on order on payment of expert fees was held on June 16, 2014. Defendant objects to the Magistrate Judge's conclusion that Dr. Stephen Kelly should be treated as an "expert witness" for purposes of Fed. R. Civ. P. 26(b)(4)(E) and compensated as such. Plaintiff contends that Defendant failed to preserve this objection by failing to make a copy of Dr. Kelly's deposition part of the record before the Magistrate Judge.

Plaintiff designated Dr. Kelly as an expert witness who would testify "that [P]laintiff is disabled within the meaning of the Maine Human Rights Act." The Magistrate Judge concluded that this designation of Dr. Kelly pursuant to Rule 26(b)(4)(E) was sufficient to entitle him to receive a "reasonable fee for time spent in responding to discovery" as authorized by the Rule. The Magistrate Judge's decision noted that "Defendant contends that Dr. Kelly actually confirmed during his deposition that he did not wish to serve an expert witness."

The court has not been provided a transcript of the proceedings before the Magistrate Judge and cannot determine whether the Magistrate Judge was informed that, as explained in Defendant's objection, Dr. Kelly had previously testified at his deposition that he had not conducted a disability assessment of the Plaintiff and would not offer an expert opinion as to whether Plaintiff is disabled. Based on the limited record before me, I cannot determine whether this critical aspect of Dr. Kelly's deposition testimony was made known to the Magistrate Judge. Accordingly, I discern no error in the Magistrate Judge's conclusion that Dr. Kelly's status as an expert witness should be controlled by Plaintiff's designation.

It is ORDERED that the defendant's objection is overruled.

/s/ Jon D. Levy
Jon D. Levy
U.S. District Judge

Dated: June 18, 2014