BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CONNIE SHIRLEY, Claimant, v. LIFE A CENTER FOR INDEPENDENT LIVING, INC., Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants.	I.C. No 2020-031663 **ORDER DENYING REQUEST FOR RECONSIDERATION OF ORDER ON JRP 22 HEARING** **FILED OCTOBER 20, 2026** **IDAHO INDUSTRIAL COMMISSION**

Pursuant to Idaho Code § 72-718, Claimant timely moved for reconsideration of the Idaho Industrial Commission's (hereinafter, "Commission") Referee Robinson's Order on JRP 22 Hearing filed on September 3, 2026. In that order, Referee Robinson granted Defendant's Motion to Compel Independent Medical Examination (IME) of Connie Shirley ("Claimant") filed on August 14, 2026. On October 2, 2026, Defendant filed a Response to Claimant's Motion to Reconsider. Claimant then filed a reply to Defendant's Response to Motion to Reconsider on October 9, 2026.

Defendants moved to compel Claimant to attend an IME scheduled for Saturday, October 24, 2026, at 10am. Claimant lives in Idaho Falls, Idaho, and objects to an IME being set on Saturday at 10am in Pocatello, approximately a 45-minute drive from Idaho Falls. Claimant prefers an IME on a regular business day, noting that a Saturday IME may unreasonably burden Claimant's ability to select her own physician to attend with her as most physicians do not work

on Saturday. Defendants offered a Friday in Twin Falls or Boise any other day of the week with their selected physician, but Claimant declined to attend an IME outside of southeastern Idaho.

CONTENTIONS OF THE PARTIES ON RECONSIDERATION

Claimant's Arguments. Claimant argues that Defendants have not met their burden of showing that the scheduled Saturday IME is reasonable. Claimant contends that notice, mileage, and proximity do not prove reasonableness of the scheduled IME with Defendant's selected physician. Claimant noted that Defendants did not ask their selected physician about weekday availability in eastern Idaho. Claimant argues that an IME scheduled on a Saturday is unreasonable for Claimant as Claimant may need to have her own physician attend the IME. Claimant argues that injured workers do not have the same established access to physicians as Defendants and may not be able to preserve Claimant's own statutory right of having a physician present at the IME on a Saturday.

Defendant's Arguments. Defendants argue that Claimant's objection to a Saturday IME is one for objection's sake and Claimant is requesting the Commission to find that Saturdays are *per se* unreasonable. Defendants claim they have attempted to work with Claimant and offered other weekday times with their selected physician, although the proposed locations are not in Claimant's preferred location of eastern Idaho. Defendants argue that Claimant did not submit any evidence to speak to her concerns about attending a Saturday IME, such as declarations or affidavits of a health care professional whom Claimant has selected to attend or Claimant's concerns of travel or scheduled time of day of the IME.

STANDARDS OF RECONSIDERATION

Under Idaho Code § 72-718, a decision of the Commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated, provided that within 20 days from the

date of the filing of the decision, any party may move for reconsideration. However, "[i]t is axiomatic that a [party] must present to the Commission new reasons factually and legally to support a hearing on [a] Motion for Rehearing/Reconsideration rather than rehashing evidence previously presented." *Curtis v. M.H. King Co*., 142 Idaho 383, 388, 128 P.3d 920 (2005).

The Commission may reverse its decision upon a motion for reconsideration, or rehear the decision in question, based on the arguments presented, or upon its own motion, provided that it acts with the time frame established in Idaho Code § 72-718. *See Dennis v. School District No. 91*, 135 Idaho 94, 97, 15 P.3d 329, 332 (2000) (citing *Kindred v. Amalgamated Sugar Co.*, 114 Idaho 284, 756 P.2d 410 (1988)). A motion for reconsideration must be properly supported by a recitation of the factual findings and/or legal conclusions with which the moving party takes issue. The Commission is not inclined to re-weigh evidence and arguments during reconsideration simply because a motion was not decided in a party's favor.

DISCUSSION

Pursuant to Idaho Code § 72-433, when an employee suffers an injury or occupational disease, the employer or the Commission may require the employee to attend a medical examination at reasonable times and places with a qualified physician. Idaho Code §72-433. The employee is entitled to reimbursement for the reasonable travel and subsistence expenses incurred in attending the examination, as well as for any loss of wages. §72-433(2). The employee has the right to have a physician of their own choosing and at their own expense present during the employer-scheduled IME. *Id*. This right does not limit the employer's designated physician from visiting the employee at reasonable times and under reasonable conditions during the period of disability. *Id.*

The Claimant relies on the recent Idaho Supreme Court decision in *Coray v. Idaho Reg'l*

Hand & Upper Extremity Ctr., PLLC, 174 Idaho 43, 50 (2024), asserting that an employer bears the burden of proving the reasonableness of its requested IME pursuant to section 72-434 as well as proving the reasonableness of the exam under section 72-433 in a motion to compel attendance if the employee objects to the exam's reasonableness. *Coray* cites *Hewson v. Asker's Thrift Shop*, 120 Idaho 167 (1991), noting that the "legislative intent of I.C. § 72-433 is to protect an employee compelled to undergo medical examination by physicians whom he or she did not select against potential intrusive questions and techniques." If an employer or surety and the injured employee have a medical exam dispute that arises regarding the failure of the employee to cooperate with an independent medical exam (IME) requested by the employer or surety and cannot settle it with the Industrial Commission's stamp of approval through, for example, an informal pre-hearing conference, then the dispute shall be determined by the Commission. *Arreola v. Scentsy, Inc.*, 172 Idaho 251, 531 P.3d 1148 (2023). The Commission finds that the Defendant proved their scheduled IME is at a reasonable time and place.

I. Defendants met their burden of demonstrating the reasonableness of the IME scheduled on a Saturday.

Under Idaho Code Section 72-433, Defendants are entitled to schedule an IME with a physician of their choosing at a reasonable time and place. Defendants chose Dr. Friedman. On August 28, 2026, Defendants submitted an affidavit of Linda Silva, a claims examiner with Surety who knew that Dr. Friedman had a travel schedule that could accommodate Claimant's location. IMEs scheduled on a Saturday are not *per se* unreasonable, and Defendants demonstrated the IME is reasonable by providing advance notice of the IME at a reasonable time and reasonable place in proximity to the Claimant as outlined in Ms. Silva's affidavit. Defendants gave Claimant more than 10 weeks advance notice of the scheduled IME. Defendants then attempted to work with

Claimant on scheduling the IME during a weekday within their selected physician's schedule when Claimant asserted a weekday preference. Claimant did not assert any concerns of hardship in attending an IME scheduled for Saturday, nor did she claim any traveling concerns. Recently, Claimant had a wedding come up on the date of the scheduled IME but did not want the Commission to find the IME unreasonable based on this conflict. Claimant does not argue that she is unable to travel due to hardship, conflict, or otherwise. Defendants state they will comply with reimbursement for travel in accordance with the Idaho Code. Both parties have admitted and understand that Saturdays can be considered reasonable for other Claimants. Defendant is willing to work with Claimant on other days, times, and locations for Claimant to attend an IME. Where issues of travel or other claimed hardship are not present for Claimant, the Commission denies Claimant's request for reconsideration.

ORDER

Based on the foregoing, Claimant's request for reconsideration is DENIED. Pursuant to § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this ___20th____ day of _October__, 2026.

INDUSTRIAL COMMISSION SEAL STATE OF IDAHO

INDUSTRIAL COMMISSION

Claire Sharp

Claire Sharp, Chair

Aaron White, Commissioner

Attest:

Mary McMenomey

Commissioner Secretary

Unavailable to Sign

George Gutierrez, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that on the __20th____ day of __October_____ 2026, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by *E-mail transmission* and by regular United States Mail upon each of the following:

MATTHEW ROMRELL
1670 JOHN ADAMS PARKWAY
IDAHO FALLS, ID 83401
matt@mrdattorneys.com

WESTON DAVIS
490 MEMORIAL DR.
IDAHO FALLS, ID 83402
wsdavis@nhptlaw.net

Jennifer Kommperud