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In the ORS 656.327 Medical Treatment Dispute of  
**JOSEPH W. LOADER, Claimant**  
Contested Case No: H02-113  
**PROPOSED AND FINAL ORDER ON DEFAULT**  
December 27, 2004

JOSEPH W. LOADER, Petitioner  
LIBERTY NORTHWEST INSURANCE CORP., Respondent  
Before Catherine P. Coburn, Administrative Law Judge, Administrative Hearings

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**HISTORY OF THE CASE**

Claimant appeals an administrative order issued on October 10, 2002 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (director or department). On October 26, 2004,<sup>1</sup> the department referred the matter to the Office of Administrative Hearings (OAH). On December 8, 2004, Administrative Law Judge Catherine P. Coburn conducted a contested case hearing. Petitioner Joseph W. Loader (claimant), *pro se*, failed to appear. Respondent Liberty Northwest Insurance Corporation (insurer) was represented by attorney Robert J. Yanity. No witnesses testified and the record closed on the date of hearing.

**ISSUE**

Whether the L5-S1 anterior fusion proposed by Jeffrey J. Larson, MD is appropriate medical treatment.

**EVIDENTIARY RULINGS**

WCD Exhibits 1 through 82 were admitted into the record without objection.

**FINDINGS OF FACT**

I adopt and incorporate the findings of fact contained in the administrative order with the following supplementation:

- (1) Claimant was notified of the hearing date and failed to appear without explanation.

**CONCLUSION OF LAW**

The proposed L5-S1 anterior fusion proposed by Jeffrey J. Larson is not appropriate medical treatment.

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<sup>1</sup> The hearing was postponed during claimant's military deployment.

**OPINION**

Jurisdiction lies with the director. ORS 656.245(6). I review *de novo*. OAR 436-001-0225(1). The burden of proving a fact or position falls upon the proponent. ORS 183.450(2). As petitioner, claimant bears the burden of proving by a preponderance of evidence that the administrative order is incorrect. *Cook v. Employment Div.*, 47 Or App 437 (1980) (In the absence of legislation adopting a different standard, the standard of proof in an administrative hearing is preponderance of evidence). Proof by a preponderance of the evidence means that the factfinder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1989).

Where claimant failed to appear at hearing after being duly notified of the time of the hearing, and his failure to appear is not due to circumstances beyond his reasonable control, I may issue a default order upon a showing of a *prima facie* case made upon the record. OAR 137-003-0670. Here, claimant was notified by mail of the hearing date. He failed to appear and offered no explanation of any circumstances that would constitute circumstances beyond his reasonable control. Therefore, I find that a default order is appropriate.

Pursuant to ORS 656.245(1)(a), an insurer is obligated to provide medical services that are materially related to a compensable condition for so long as the nature of the injury or the process of recovery requires. This obligation continues over the worker's lifetime. ORS 656.245(1)(b). However, insurer is not obligated to provide medical services that are excessive, inappropriate, ineffectual or in violation of administrative rules. ORS 656.327(1). Relying on the opinion of medical arbiter, Julio A. Ordonez, MD, MRU determined that the proposed lumbar fusion was not appropriate treatment. Therefore, I conclude that the record contains *prima facie* evidence to support the administrative order. Accordingly, I affirm.

**ORDER**

IT IS HEREBY ORDERED that:

The Administrative Order dated October 10, 2002 is affirmed.