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In the ORS 656.327 Medical Treatment Dispute of

**KAE MILLER, Claimant**

Contested Case No: H05-002

**PROPOSED AND FINAL ORDER**

MAY 2, 2005

KAE MILLER, Petitioner

HOME DEPOT INC., Respondent

Before Catherine P. Coburn, Administrative Law Judge, Administrative Hearings

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**HISTORY OF THE CASE**

Claimant appeals the Administrative Order issued on December 6, 2004 by the Medical Review Unit of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (department or director). On January 18, 2005, the department referred the matter to the Office of Administrative Hearings (OAH). On April 6, 2005, Administrative Law Judge Catherine P. Coburn conducted a hearing in Beaverton, Oregon. Attorney James T. Guinn represented petitioner Kae Miller (claimant). Attorney Gordon Clark represented responding self-insured employer, Home Depot, Inc. and its claims administrator, Sedgwick Claims Management Services, Inc. (insurer). No witnesses testified and the record closed on the date of hearing.

**ISSUE**

Whether MRU correctly determined that physical therapy proposed by Gregory Knopf, MD is not appropriate medical treatment for claimant's compensable condition.

**EVIDENTIARY RULINGS**

WCD Exhibits 1 through 69 were admitted into the record without objection.

**FINDINGS OF FACT**

The findings of fact contained in the Administrative Order dated December 6, 2004 are adopted and incorporated.

**CONCLUSION OF LAW**

MRU correctly determined that physical therapy proposed by Dr. Knopf is not appropriate medical treatment for claimant's compensable condition.

**OPINION**

WCD has jurisdiction over medical disputes arising under ORS 656.327 where compensability is not at issue. ORS 656.704(3)(a), ORS 656.704(3)(b)(C) and ORS

656.327(1)(b) and OAR 436-010-0008(1)(a). I may modify the administrative order only if it is not supported by substantial evidence in the record or reflects an error of law. ORS 656.327(1)(b) and 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 contrary legislation, the standard of proof in administrative hearings is preponderance of evidence). Proof by a preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1998).

MRU determined that the proposed physical therapy was not appropriate medical treatment, and therefore, insurer is not liable. Claimant contends that, to the extent MRU addressed compensability of a medical condition, the administrative order is invalid for lack of jurisdiction. In contrast, insurer takes the position that the administrative order is correct and should be affirmed.

Under ORS 656.245 and ORS 656.327, the insurer is required to provide medical services for a compensable injury unless the treatment is excessive, inappropriate, ineffectual or in violation of the administrative rules. Here, MRU relied on the opinion of medical arbiter Joan M. Takacs, DO, and determined that the disputed medical treatment was not reimbursable. Based on the record, I find that MRU made no legal ruling concerning compensability of any medical condition. Moreover, MRU acted properly within the statutory scope of its jurisdiction. Therefore, the administrative order reflects no error of law and I affirm.

#### ***ATTORNEY FEES***

Claimant has not prevailed in a contested case hearing and is not entitled to a reasonable attorney fee. ORS 656.385(1).

#### **ORDER**

IT IS HEREBY ORDERED that:

The Administrative Order dated December 6, 2004 is affirmed.

DATED this 26<sup>th</sup> day of April, 2005.