

In the ORS 656.327 Medical Treatment Dispute of

**Elizabeth A. Munds, Claimant**

Contested Case No: 08-044H

**PROPOSED & FINAL ORDER**

August 22, 2008

ELIZABETH A. MUNDS, Petitioner

PORTLAND GENERAL ELECTRIC, Respondent

Before Elizabeth Fulsher, Administrative Law Judge

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Pursuant to notice, a hearing was scheduled for June 18, 2008 in Portland, Oregon before Administrative Law Judge Fulsher. Prior to the scheduled hearing, the parties agreed to submit this matter on the documentary record with written closing arguments. Claimant is represented by attorney, Bennett Dalton. The employer, Portland General Electric, is represented by its attorney, Deborah Sather. The record closed on July 23, 2008 upon expiration of the time for claimant to submit a reply argument.

Exhibits 1 through 39 are admitted into evidence.

**ISSUE**

Whether claimant is entitled to microthermal laser resurfacing treatment.

**SUMMARY OF FINDINGS**

I adopt the findings contained in the February 25, 2008 order. The following is a brief summary of the relevant facts.

Claimant was compensably injured on March 24, 2000. The claim was accepted as a chin laceration and cervicothoracic strain.

The chin laceration resulted in a raised scar. Dr. Weber performed a revision of the scar on May 17, 2001. (Ex. 10). Claimant saw Dr. Key on November 13, 2002. Dr. Key suggested a series of pulse dye laser treatments to treat claimant's keloid scar. (Ex. 19). Claimant underwent the series of laser treatments performed by Dr. Key. Claimant's condition was determined to be medically stationary on December 14, 2001. (Ex. 14).

On September 18, 2007 Dr. Key suggested microthermal laser resurfacing to reduce the erythema and scar volume. (Ex. 26). On October 16, 2007, the employer asked whether there had been a change in claimant's scar since her initial treatments and what objective improvement was expected with the additional treatments. Dr. Key wrote that the scar was improved since the initial treatment and the additional treatments would result in scar lessening and improvement. (Ex. 27). On October 29, 2007, the employer declined to authorize any further microthermal laser resurfacing treatment. (Ex. 28). Claimant requested administrative review. (Ex. 29).

A February 25, 2008 Administrative Order found that claimant was not entitled to the proposed microthermal laser resurfacing treatments. In the order, the director found that

claimant's accepted condition was medically stationary and that therefore, she was subject to the limitations imposed by ORS 656.245(1)(c). (Ex. 37).

### CONCLUSIONS OF LAW AND OPINION

In medical treatment disputes under ORS 656.327, the administrative law judge may modify the director's order only if it is not supported by substantial evidence in the record or if it reflects an error of law. New medical evidence or issues may not be admitted or considered. See OAR 436-001-0225(2).

The Administrative Order found that claimant is medically stationary and is subject to the limitations imposed by ORS 656.245(1)(c) and that claimant did not establish entitlement to the treatment under the statute. Claimant argues that the treatments performed by Dr. Keys are compensable medical services and seeks reversal of the Administrative Order. The employer argues that the order applied the correct legal standard and that its findings are supported by substantial evidence.

ORS 656.245(1)(c) provides that:

“Notwithstanding any other provision of this chapter, medical services after the worker's condition is medically stationary are not compensable except for the following:

“(A) Services provided to a worker who has been determined to be permanently and totally disabled.

“(B) Prescription medications.

“(C) Services necessary to administer prescription medication or monitor the administration of prescription medication.

“(D) Prosthetic devices, braces and supports.

“(E) Services necessary to monitor the status, replacement or repair of prosthetic devices, braces and supports.

“(F) Services provided pursuant to an accepted claim for aggravation under ORS 656.273. (G) Services provided pursuant to an order issued under ORS 656.278.

“(H) Services that are necessary to diagnose the worker's condition.

“(I) Life-preserving modalities similar to insulin therapy, dialysis and transfusions.

“(J) With the approval of the insurer or self-insured employer, palliative care that the worker's attending physician referred to in ORS 656.005 (12)(b)(A) prescribes

and that is necessary to enable the worker to continue current employment or a vocational training program. If the insurer or self-insured employer does not approve, the attending physician or the worker may request approval from the Director of the Department of Consumer and Business Services for such treatment. The director may order a medical review by a physician or panel of physicians pursuant to ORS 656.327 (3) to aid in the review of such treatment. The decision of the director is subject to review under ORS 656.704.

“(K) With the approval of the director, curative care arising from a generally recognized, non-experimental advance in medical science since the worker's claim was closed that is highly likely to improve the worker's condition and that is otherwise justified by the circumstances of the claim. The decision of the director is subject to review under ORS 656.704.

“(L) Curative care provided to a worker to stabilize a temporary and acute waxing and waning of symptoms of the worker's condition.”

Here, the record does not establish that claimant's treatment fits within any of the above listed exceptions contained in ORS 656.245(1)(c). Under such circumstances, I conclude that the Administrative Order is supported by substantial evidence and contains no legal error. Claimant has not established entitlement to the treatment.

### **ORDER**

The February 25, 2008 Administrative Order is affirmed.