

In the ORS 656.327 Medical Treatment Dispute of

**John A. Andersson, Claimant**

Contested Case No: 14-042H

Administrative Order No: TX 14-0369

**AMENDED FINAL ORDER**

June 24, 2015

JOHN A. ANDERSSON, Petitioner

SAIF CORPORATION, Respondent

Before John Shilts, Workers' Compensation Division Administrator

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The Final Order in this matter was initially issued on June 18, 2015. A clerical error in the heading was subsequently discovered, in that the identification of the petitioner and respondent were reversed. This Amended Final Order is therefore being issued to correct the heading. That correction is the only change from the June 18, 2015 Final Order. Judicial review may be obtained by filing a petition for review with the Court of Appeals within 60 days from the date of service of this Amended Final Order.

SAIF Corporation (SAIF) filed exceptions in this case to the November 12, 2014, Proposed and Final Order entered by the Administrative Law Judge, Jacqueline Jacobson. The Proposed and Final Order concluded that the underlying June 20, 2014, Administrative Order TX 14-0369 (as corrected on July 21, 2014) issued by the Workers' Compensation Division's Medical Review Team (MRT) was not supported by substantial evidence. The Proposed and Final Order also modified the underlying Administrative Order "to reflect that the prescribed Innovation In Motion X8 Extreme Power Wheelchair is an appropriate medical service." SAIF suggests that the Proposed and Final Order failed to properly apply the substantial evidence standard of review and asks that the underlying Administrative Order be upheld. On review, I adopt the Proposed and Final Order's conclusions, with supplementation.

### **ISSUES**

1. Did substantial evidence support the MRT's finding that the prescribed Innovation In Motion X8 Extreme Power Wheelchair was not an appropriate medical treatment for Mr. Andersson?
2. If substantial evidence did not support the underlying Administrative Order, did the Proposed and Final Order correctly determine that the underlying order should be modified to reflect that the prescribed Innovation In Motion X8 Extreme Power Wheelchair is an appropriate medical treatment?

### **FACTUAL AND PROCEDURAL SUMMARY**

Mr. Andersson sustained a compensable injury on January 18, 1986. He injured his right knee when a pile of sheetrock fell on him. On April 30, 1986, Mr. Andersson underwent a right knee arthroscopic joint inspection and arthroscopic meniscectomy. His surgery was complicated by post-operative infection. Mr. Andersson developed right knee adhesions and underwent

arthroscopic lysis of adhesions and partial lateral meniscectomy. The claim was closed by Determination Order on October 27, 1988, with a medically stationary date of October 6, 1988.

On December 3, 2004, Mr. Andersson began treating with Ronald Teed, M.D.. On March 17, 2009, Dr. Teed prescribed an electric scooter due to Mr. Andersson's significant pain and activity limitation, and supported his request for a four-wheel-drive vehicle. SAIF authorized the purchase of a Kawasaki Mule 610 4X4 on November 18, 2010.

On July 1, 2013, Dr. Teed prescribed a four-wheel-drive Innovation In Motion X8 Extreme Power Wheelchair (X8 Extreme). SAIF referred the matter for an Independent Medical Examination (IME). John Di Paola, M.D., performed the IME on August 27, 2013. Dr. Di Paola opined that the X8 Extreme wheelchair was not medically reasonable and necessary. After reviewing Dr. Di Paola's report, Dr. Teed concurred with Dr. Di Paola's determination. SAIF requested administrative review of Dr. Teed's prescription of the Extreme X8 wheelchair on September 27, 2013. On February 24, 2014, John Ballard, M.D., evaluated claimant on behalf of the Medical Resolution Team (MRT). Dr. Ballard determined that the function of the X8 Extreme is consistent with Mr. Andersson's medical needs and that purchase of the chair would be appropriate.

Relying in large part on Dr. Di Paola's opinion and the operating guidelines and restrictions described in the X8 Extreme user manual, the MRT issued an Administrative Order which determined that the prescribed X8 Extreme wheelchair was not an appropriate medical treatment for Mr. Andersson. Mr. Andersson requested a hearing to review the MRT's order. After a hearing, ALJ Jacobson issued a Proposed and Final Order reversing the MRT's Administrative Order, finding that the MRT lacked substantial evidence to conclude that the X8 Extreme was not an appropriate medical treatment for Mr. Andersson. ALJ Jacobson reasoned that the MRT had erred when it relied solely on warnings contained in the X8 Extreme user manual, because there was no evidence suggesting that Mr. Andersson would not use the X8 Extreme in accordance with the manual's safety precautions. The Proposed and Final Order also modified the underlying Administrative Order "to reflect that the prescribed Innovation In Motion X8 Extreme Power Wheelchair is an appropriate medical service." SAIF Corporation filed exceptions requesting Director Review of the Proposed and Final Order. SAIF suggests that the Proposed and Final Order failed to properly apply the substantial evidence standard of review and asks that the underlying Administrative Order be upheld.

## FACTUAL ISSUES

ORS 656.327(2) prohibits me from admitting new medical evidence or issues after the MRT's review of the disputed medical treatment is final. However, I must consider all evidence available in the record that was before MRT, whether or not the evidence was actually considered by MRT in its order. Under ORS 656.327(2), I must prepare a full record capable of judicial review and determine whether the MRT's order was supported by substantial evidence. Substantial evidence exists to support a finding when the record, reviewed as a whole, would permit a reasonable person to make that finding. *Armstrong v. Asten-Hill Co.*, 90 Or. App. 200 (1988). Considering those germane facts already in the record is not finding additional facts; it is merely considering all the relevant facts in the record pursuant to a substantial evidence review.

*SAIF Corp. v. Leland*, 160 Or. App. 480 (1999). In order to adequately prepare the record in this dispute for judicial review and to assist this evaluation of whether the record, reviewed as a whole, would permit a reasonable person to reach the same finding as MRT, I find it necessary to review several facts that were available in the record before MRT.

First, the MRT's order stated that Dr. Ballard's opinion should be given less weight because there was no indication that Dr. Ballard had reviewed the X8 Extreme wheelchair's operating manual when rendering his opinion. However, the MRT's own physician report guidelines state that a reviewing physician must review all of the provided medical record, which in this case included the manual attached to Dr. Di Paola's examination report. Ex. 17-3. Assuming that Dr. Ballard fulfilled the requirements of the MRT physician report guidelines, he would have reviewed the manual and accompanying product warnings in the normal course of his record review. Furthermore, Dr. Ballard's records summary specifically references Dr. Di Paola's finding that Mr. Andersson would be a poor candidate for the device because of the safety risks and hazards described in the X8 Extreme user manual. Ex. 18-9. In reviewing Dr. Di Paola's report, Dr. Ballard would have at least been made aware of the product warnings and operating guidelines referenced and quoted by Dr. Di Paola.<sup>1</sup> As a result, I do not believe the MRT had a reasonable basis to discount Dr. Ballard's opinion, as the evidentiary record indicates that Dr. Ballard necessarily reviewed relevant portions of the X8 Extreme manual when rendering his opinion.

Second, Dr. Di Paola's opinion and the MRT's order misstate several limitations on the use of the X8 Extreme. Dr. Di Paola and the MRT note that the joystick hand control is not water proof and therefore should not be used in the wet climate of the Pacific Northwest. However, they fail to note that the X8 Extreme can be supplied with a waterproof joystick cover. Ex. 4-124. In fact, the price quote obtained by Mr. Andersson included that option. Ex. 11-141.<sup>2</sup> Dr. Di Paola and the MRT also express concern over the risk posed by exposure to electromagnetic interference. However, the operating manual's warning about electromagnetic interference is in reference to a risk shared by *every* powered wheelchair. Ex. 4-162. It does not indicate that the X8 Extreme is more susceptible to electromagnetic interference than other powered wheelchairs.<sup>3</sup> As a result, I do not believe Dr. Di Paola and the MRT had a reasonable basis to factor those purported attributes of the X8 Extreme into their respective determinations.

Finally, I believe it is necessary to review several facts related to the X8 Extreme's intended and proposed use. In the Proposed and Final Order, ALJ Jacobson states there is "no dispute that claimant requested the Extreme X8 wheelchair so that he could go to the beach and ride on trails with his family."<sup>4</sup> With respect, I do not believe the ALJ's statement is accurate. The record indicates that the X8 Extreme was intended, more generally, to address Mr.

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<sup>1</sup> I note that Dr. Di Paola liberally quotes the X8 Extreme operating manual throughout his report.

<sup>2</sup> The manual suggests an additional solution: bringing a plastic bag to cover the joystick. Ex. 4-149.

<sup>3</sup> If anything, it would appear that Mr. Andersson's intended rural usage of the chair would leave him less susceptible than a user of a regular power wheelchair in an urban environment, as the manual notes that the greatest danger comes from being in close proximity to strong sources of radio waves such as TV and radio stations. Ex. 4-163.

<sup>4</sup> The MRT's Administrative Order at times focuses on the potential use of the X8 Extreme on the beach and trails, but does not state or imply that those uses constitute all of the chair's intended functions. As such, I do not believe the MRT made a finding of fact on this topic.

Andersson's limited mobility resulting from his right knee injury as well as his inability to traverse uneven terrain.

Mr. Andersson's requests for a mobility device date as far back as 2007, when Dr. Teed prescribed him an "outdoor scooter" and Dr. Lorber recommended a scooter for getting around outdoors. Exs. 4-43 and 11-296. On March 9, 2009, Dr. Teed again prescribed a scooter and supported the suggestion that it be a four-wheel-drive vehicle. Ex. 4-47. He explained that a four-wheel-drive vehicle was necessary because it would help Mr. Andersson get around his farm and because "he does not live in an urban environment that would allow an electric scooter to get up and down a sidewalk." Ex. 4-47.<sup>5</sup> Mr. Andersson's requests for a mobility device renewed in April of 2012, when he received a prescription from Dr. Teed for a Segway (a powered two-wheeled personal transportation device) "to help him get around town." Ex. 4-61. Dr. Teed wrote another prescription for a Segway on April 8, 2013, to allow Mr. Andersson to be "more mobile with his family." Ex. 4-79. The physical capacities evaluation performed on May 5, 2013, concluded that Mr. Andersson had difficulties completing a 0.15 mile walk test, that his mobility was compromised by his right knee condition, and that a mobility device would help him get from location to location, particularly on uneven terrain. Ex. 4-114-16. On July 15, 2013, Dr. Teed wrote a prescription for the X8 Extreme and explained that the device would help Mr. Andersson to "get down trails and out in rougher terrain." Ex. 1-35. On July 17, 2013, Mr. Andersson completed an "Equipment Justification" form, sent to SAIF, which indicated that the anticipated benefits of the X8 Extreme were that he would lead a more productive and meaningful life with his family, that the chair would allow him to be more self-sufficient, and that the chair would help with mobility problems related to his right knee pain. Ex. 4-128. On October 21, 2013, Mr. Andersson sent a letter to MRT stating the X8 Extreme would be "a means of practical mobility for my needs for a more productive life." Ex. 8-2. On December 7, 2013, Mr. Andersson sent a letter accompanying his request for administrative review of SAIF's denial of the X8 Extreme, stating that the purpose of the chair was for "mobility issues and to follow my own direction in life" and "my well-being." Ex. 11-2. In his request for administrative review, he identified the medical dispute as one regarding a "mobility issue" and "X8 denial." Ex. 11-5.

To the extent that ALJ Jacobson's statement refers to the issues presented to her for review by the parties at hearing, I must again respectfully disagree. On page 1 of his Request for Hearing, Mr. Andersson states that he has "the right to be independent and to choose when and where [he] should like to go or do." On page 3 of his Request for Hearing, he goes on to state that his "limited mobility should be addressed for [his] chronic pain and quality of life." At the hearing, Mr. Andersson stated he has a poor standard of living because of immobility. Hearing Transcript at 9:11:55. He went on to take issue with Dr. Di Paola's characterization that the chair would be for recreational purposes and contended that that the purpose of the chair would be to assist with acts of daily living (*Id.* at 9:13:15 and 9:23:15) and to be more mobile outdoors (*Id.* at 9:15:20).

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<sup>5</sup> SAIF subsequently purchased a Kawasaki Mule All-Terrain-Vehicle (ATV) for Mr. Andersson's farm use on the basis of that prescription. As related to the current dispute it is relevant to note that the prescription documented Mr. Andersson's inability to traverse a rural environment and reflects Dr. Teed's determination that an off-road scooter or vehicle should be purchased to address that issue.

In short, while Mr. Andersson has referred to travelling on the beach and on trails as examples of the kinds of activities he wishes to engage in (*see* Ex. 1-35), it is inaccurate to state that the intended and proposed application of the X8 Extreme in this case is, solely, to engage in such activities. On the contrary, Mr. Andersson and his physicians have consistently described the medical need addressed by the X8 Extreme as his mobility issues from his right knee injury, particularly on uneven terrain, which diminish his ability to be independent, self-sufficient, and to spend time with his family. Mr. Andersson and his physicians have also consistently stated that the X8 Extreme will help to address those medical issues by allowing him to be mobile outdoors in his rural living environment, including “rougher terrain.”

### CONCLUSIONS OF LAW

An insurer has a duty to provide compensable medical services for the life of the worker, including prosthetic devices. ORS 656.245(1)(b).<sup>6</sup> A party may request director review of a medical treatment if the party believes that the treatment is “excessive, inappropriate, ineffectual or in violation of rules regarding performance of medical services.” ORS 656.327(1). After the director decides the medical treatment dispute in an administrative order, the dissatisfied party may request review under ORS 656.704. ORS 656.327(2). The administrative order may be modified at hearing only if it is not supported by substantial evidence in the record or if it reflects an error of law. ORS 656.327(2); OAR 436-001-0225(2); OAR 436-010-0008(13)(a).

In this case, the MRT’s Administrative Order determined that the prescribed X8 Extreme wheelchair was not an appropriate medical treatment for Mr. Andersson. The MRT concluded as follows:

The director reviewed the Extreme X8 general operating guidelines, product warnings, and off road driving tips and found the information fraught with serious safety hazards, such as tipping over, mechanical failure due to exposure to the elements, specifically salt water; one of the main reasons that Mr. Andersson desired the device [*sic*] was so he could go to the beach. The advertisement for the Extreme X8 portrays it as a device that can go anywhere without limitations; however the general operating guidelines, product warnings, and off road driving tips portrays it in a contradictory light, and in all good conscience, the director can not approve Mr. Andersson’s request. Therefore based on the medical record and Dr. Di Paola’s well reasoned opinion, and the fact that Dr. Teed (Mr. Andersson’s attending physician) agreed with Dr. Di Paola that the Extreme X8 was not medically necessary or reasonable for Mr. andersson’s [*sic*] accepted condition, the director concludes the Extreme X8 is not appropriate for Mr. Andersson.

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<sup>6</sup> SAIF has not disputed the MRT’s determination that the X8 Extreme wheelchair qualifies as a compensable prosthetic device under ORS 656.245(1)(b).

ALJ Jacobson reversed the MRT's order after conducting a hearing, finding that the MRT lacked substantial evidence to conclude that the X8 Extreme was not an appropriate medical treatment for Mr. Andersson. She reasoned as follows:

... While I do not find that the MRT erred in considering the content of the operating manual and product warnings, I disagree that the warnings contained within those documents are sufficient evidence to establish that the Extreme X8 wheelchair is inappropriate for claimant's purported use. In other words, the Extreme X8 wheelchair is clearly designed for people unable to ambulate independently, and also for use on sand and in mud. While the manual supports the MRT's finding that, if the wheelchair is used improperly, it may pose a safety risk to claimant, the same can be true about many other devices and vehicles. For instance, if a paraplegic worker required a special van outfitted to allow him to drive, there would be significant risk of a motor vehicle accident, the same risk that exists for any other driver on the road. The existence of said risk is not, in and of itself, evidence. Instead, the existence of that risk is speculative. The same is true in this case. Reliance solely on the warnings contained in a manual amounts to speculation and conjecture, and does not constitute sufficient evidence to warrant a finding that the prescribed medical treatment is not appropriate for claimant.

Further, to the extent the MRT inferred from the manual that the wheelchair would be unsafe for claimant, it must provide a basis in reason connecting the inference to the facts. *See City of Roseburg v. Roseburg City Firefighters*, 292 Or 266, 271 (1981) (as part of their review for substantial evidence and reasons, courts review agency orders "for the existence of a rationale," *i.e.*, "whether there is a basis in reason connecting the inference to the facts from which it is derived."). There is no evidence suggesting that claimant would use the Extreme X8 wheelchair in any way not recommended by the manufacturer in accordance with the guidance of the manual and safety precautions. Thus, I find the MRT's conclusion regarding the safety of the Extreme X8 wheelchair unsupported by the record.

On review, SAIF suggests that ALJ Jacobson failed to properly apply the substantial evidence standard of review and asks that the MRT's underlying Administrative Order be upheld. I disagree, and uphold ALJ Jacobson's Proposed and Final Order, as I conclude that MRT's Administrative Order was not supported by substantial evidence.

Substantial evidence supports a finding when the record, viewed as a whole and keeping in mind the evidence against the finding as well as the evidence supporting it, permits a reasonable person to make the finding. ORS 183.482(8)(c); *SAIF Corp. v. Leland*, 160 Or. App. 480, 487 (1999); *Armstrong v. Asten-Hill Co.*, 90 Or. App. 200, 206 (1988). In addition to the statutory requirement that findings be supported by substantial evidence, agencies also are required to demonstrate in their opinions the reasoning that leads the agency from the facts it has found to the conclusions that it draws from those facts. *Jenkins v. Board of Parole*, 356 Or. 186,

195 (2014); *Drew v. PSRB*, 322 Or. 491, 500 (1996); *City of Roseburg v. Roseburg City Firefighters*, 292 Or. 266, 271–72 (1981).

I agree with ALJ Jacobson that product warnings and restrictions, without more, are not sufficient evidence to establish that a product is an inappropriate medical treatment. Rather, there must be evidence indicating that the risks associated with a proposed treatment make it inappropriate in the context of its intended and proposed usage by a particular patient. *See, e.g., In re Greg A. Harsha*, 12 CCHR 281 (2007) (Finding that, based on the record as a whole, a reasonable person would not find that the proposed surgery was appropriate without first dealing with claimant's psychological and substance abuse issues.).

I supplement the Proposed and Final Order to emphasize that a particularized risk of abuse or misuse of a proposed medical treatment is sufficient basis for a determination that a proposed medical treatment is inappropriate. *See, e.g., In re Guy J. Brown*, 17 CCHR 95 (2012) (Substantial evidence supported the conclusion that prescription pain medications were excessive or inappropriate, even though the claimant benefitted from them, where doctors reported the claimant exhibited odd behavior and overused the medications.). When prescribing medical treatment, physicians must consider the risk that the patient will abuse or misuse the medication, device, etc. that is being prescribed. For example, a physician may determine that a prescription for an opiate is inappropriate for a patient with a history of opiate abuse, even if such a prescription is otherwise medically appropriate. The risk of abuse alone, in such a case, may be sufficient. The same standard could apply to a prescription for a prosthetic device, if some evidence particular to the patient indicated an inappropriate risk that the worker would unsafely misuse the device.

Here, the MRT never articulated why the inherent risks associated with use of the X8 Extreme would have made it inappropriate in the context of its intended and proposed usage by Mr. Andersson.<sup>7</sup> Nor did MRT provide a basis in reason connecting the facts of the case to a particularized and inappropriate risk of abuse or misuse. Instead, the MRT's order found that the X8 Extreme wheelchair was "fraught with serious safety hazards" and concluded that the chair was therefore not appropriate for Mr. Andersson. The MRT stated that its conclusion was based on "the medical record and Dr. Di Paola's well reasoned opinion" and "the fact that Dr. Teed (Mr. Andersson's attending physician) agreed with Dr. Di Paola that the X8 Extreme was not medically necessary or reasonable for Mr. andersson's [*sic*] accepted condition." However, I do not find this general reference to potential, and unidentified, reasons contained within the medical record as sufficient to satisfy the agency's requirement to demonstrate the reasoning that

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<sup>7</sup> After noting that the chair would be susceptible to saltwater, the MRT's order does mention that one of the primary purposes of the device will be to go to the beach. At best, the statement may qualify as a factual determination that it would be unsafe for Mr. Andersson to use the chair at the beach due to its susceptibility to saltwater. Even so, the order fails to articulate a rational connection between that factual determination (that the chair shouldn't be used at the beach) and the ultimate legal conclusion (that the device was inappropriate to address Mr. Andersson's medical need for a mobility device). Use of the chair on the beach was only one example out of a wide-spectrum of potential uses. Without an explanation as to how the fact that the chair was unsafe for use at the beach equates to a determination that it would be inappropriate for alleviating Mr. Andersson's more generalized mobility issues, the order does not articulate a rational connection between the facts and the legal conclusions it draws from them.

led the MRT from the facts it has found to the conclusion that it drew from those facts. *See Drew*, 322 Or. at 500.<sup>8</sup>

The second issue before me is whether the Proposed and Final Order correctly determined that the MRT's Administrative Order should be modified to reflect that the X8 Extreme wheelchair is an appropriate medical treatment.<sup>9</sup> In these circumstances, I may issue a final order or an amended proposed and final order, request the administrative law judge to hold further hearing, or remand the matter for further administrative action. *See* ORS 656.327(2) (MRT's administrative order may be modified at hearing if it is not supported by substantial evidence); OAR 436-001-0246(4).

A proposed medical treatment may not be excessive, inappropriate, ineffectual, or in violation of rules regarding the performance of medical services. ORS 656.327(1). WCD's administrative rules state that medical services provided to the injured worker must not be more than the nature of the compensable injury or the process of recovery requires. OAR 436-010-0230(1). Services that are unnecessary or inappropriate according to accepted professional standards are not reimbursable. *Id.* Because the evidentiary record establishes that the X8 Extreme is a reasonable and necessary treatment for Mr. Andersson's compensable injury, and I do not believe the X8 Extreme would be inappropriate according to accepted professional standards, I conclude that the X8 Extreme wheelchair is an appropriate medical treatment.

SAIF does not dispute that Mr. Andersson has substantial mobility restrictions. Indeed, the physical capacities evaluation performed in May 2013 concluded that Mr. Andersson had difficulties completing a 0.15 mile walk test and that his mobility was compromised by his right knee condition. Ex. 4-114-16.

SAIF also does not dispute whether Mr. Andersson needs some form of mobility device. The evidentiary record also persuasively establishes the fact. Mr. Andersson's physical capacities evaluation concluded that potential use of a mobility device would help him get from location to location. Ex. 4-114-16. Dr. Teed has been recommending a mobility device for outdoor use in varying forms since February of 2007. Exs. 4-43, 4-47, 4-61, 4-79, 4-123, 4-126, 1-35. Dr. Ballard agreed that a mobility device was necessary to allow Mr. Andersson to go outside. Ex. 18-13. Even Dr. Di Paola never explicitly questions Mr. Andersson's mobility issues or need for a mobility device.<sup>10</sup> In fact, Dr. Di Paola appears to recognize Mr. Andersson's

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<sup>8</sup> Even if the MRT's reference to Dr. Di Paola's opinion sufficiently demonstrated MRT's reasoning, I would still conclude that the MRT's order was not supported by substantial evidence because Dr. Di Paola's opinion only addressed the use of the X8 Extreme on the beach and on trails. In short, Dr. Di Paola never offered an opinion on whether the X8 Extreme was an appropriate, reasonable, and necessary treatment for Mr. Andersson's limited mobility and inability to traverse uneven ground. As such, even if the MRT's order incorporated Dr. Di Paola's reasoning by reference, it was still insufficient. *See In re Daren S. Kirkpatrick*, 16 CCHR 219 (2011) (Where the administrative review fails to address the issue presented to it, this constitutes error.).

<sup>9</sup> After concluding that substantial evidence did not support the MRT's Administrative Order, the Proposed and Final Order provided no rationale explaining why the X8 Extreme was appropriate. Because I do not believe that those two conclusions are necessarily equivalent in these circumstances, I believe it is necessary to provide supplementary analysis.

<sup>10</sup> Instead, Dr. Di Paola concludes that X8 Extreme is not medically reasonable and necessary because "such a motorized device is not usually considered necessary in the great majority of workers with similar impairments." Ex. 4-132. As the MRT notes in its Administrative Order, this is not a proper application of the reasonable and

mobility issues and need for a mobility device when he suggests several alternative devices. Ex. 4-134.

The only legitimate point of contention, therefore, is whether the X8 Extreme, specifically, is inappropriate to address Mr. Andersson's medical needs or otherwise inappropriate in light of accepted professional standards. Here, Mr. Andersson is only able to walk for short durations, is unable to go outside on uneven ground, and lives in a rural environment, including terrain that would be unconventional for a regular wheelchair. Dr. Teed expressed the opinion that the X8 Extreme would address that medical need when he wrote the prescription for the X8 Extreme, stating that the purpose of the device was to "get down trails and out in rougher terrain." Ex. 1-35. Dr. Di Paola disagreed with that assessment, finding that the X8 Extreme was "strongly contraindicated" because Mr. Andersson would be "exposed to an unacceptable amount of danger" when using the X8 Extreme for the "recreational uses that Mr. Andersson wishes to use this device" because of "personal factors, health factors, and unpredictable environmental conditions." Ex. 4-134. After reviewing Dr. Di Paola's report, Dr. Teed reversed his opinion and indicated that he agreed with Dr. Di Paola that the X8 Extreme was not reasonable and necessary for Mr. Andersson. Ex. 4-170. After being asked to review the matter by MRT, Dr. Ballard stated that the indications for the X8 Extreme are consistent with Mr. Andersson's medical circumstances, as it is to be used for indoor and outdoor use by someone who is partially disabled. Ex. 18-12. He adds that a conventional wheelchair would not be adequate for going outside, while the X8 Extreme would allow Mr. Andersson to be indoors and outdoors and on uneven types of terrain. *Id.* Finally, on November 22, 2013, Dr. Mindi Lynn Robinson provided Mr. Andersson an additional prescription for the X8 Extreme, although she provided no explanation and it is unclear what information was available to her for review. Ex. 11-169.

While I am presented with contradictory medical opinions, I am ultimately persuaded that Dr. Ballard's determination should be given the greatest weight as I believe that he alone conducted the proper inquiry. Dr. Ballard proceeded from the premise that the medical necessity addressed by the X8 Extreme was Mr. Andersson's limited mobility indoors and outdoors and on uneven terrain. He then analyzed the capabilities of the X8 Extreme in the context of that medical necessity and concluded that it would be beneficial. Dr. Di Paola, by contrast, responded to an inquiry that fundamentally misrepresented the factual and legal context of this dispute. In its letter requesting Dr. Di Paola's examination, SAIF stated that Dr. Teed had prescribed the X8 Extreme because Mr. Andersson was "still insistent that he needs this device to walk with his family including on the beach or on a trail." Ex. 11-129. It then asked Dr. Di Paola to discuss whether "this particular device would be appropriate for use on the beach and along trails." Ex. 11-130. Finally, when defining a "medically reasonable and necessary" treatment for the purposes of Dr. Di Paola's review, SAIF mistakenly quoted OAR 436-010-0230(11),<sup>11</sup> which sets a heightened evidentiary standard that requires a reviewing physician to "specifically set forth why the worker requires an item not usually considered necessary in the great majority of

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necessary standard in the context of prosthetic devices. To the extent Dr. Di Paola questions the causal relationship between Mr. Andersson's compensable injury and the current need for a mobility device, it is an issue which is outside the scope of this review. *See* ORS 656.245; ORS 656.704.

<sup>11</sup> Administrative Order 13-052 was applicable at the time of Mr. Andersson's request for the X8 Extreme. Under the current rules, the rule is renumbered as OAR 436-010-0230(12).

workers with similar impairments.” Ex. 11-129. First, I do not believe that SAIF accurately represented Dr. Teed’s July 15, 2013, opinion.<sup>12</sup> In addition, regardless of how one chooses to characterize Dr. Teed’s purpose in prescribing the chair, the relevant legal standard, as defined in OAR 436-010-0230(1), is not whether Mr. Andersson will be able to do all the activities he desires, it is whether the prescribed medical treatment is appropriate in the context of his compensable injury and relevant accepted professional standards. As a result, the relevant focus of the inquiry is that framed by Dr. Ballard: whether the X8 Extreme will be beneficial in the context of Mr. Andersson’s limited mobility indoors and outdoors and on uneven terrain. Third, much of Dr. Di Paola’s opinion must be deemed irrelevant, as it appears he incorrectly relied upon OAR 436-010-0230(11)—the applicable evidentiary standard according to SAIF’s instructions—when evaluating the reasonableness and necessity of the X8 Extreme. For example, just prior to concluding that the X8 Extreme does not meet the definition of a “medically reasonable and necessary” treatment, he mirrors OAR 436-010-0230(11) when stating that a motorized mobility device “is not usually considered necessary in the great majority of workers with similar impairments.” Ex. 4-132. Based on the foregoing, I must conclude that Dr. Di Paola’s ultimate conclusions are of questionable value as he was asked to complete an inquiry that was factually and legally inaccurate. I must also discount the value of Dr. Teed’s concurrence with Dr. Di Paola’s review, as he may have been similarly influenced by the improper manner in which SAIF framed the inquiry for Dr. Di Paola. At most, I read Dr. Teed’s concurrence as reaching only as far as the issues addressed by Dr. Di Paola: that the X8 Extreme is inappropriate for use on beaches and trails with substantial slopes and grades. Such a conclusion is also logical when read in the context of the medical record, as Dr. Teed has been recommending a mobility device for outdoor use in varying forms for Mr. Andersson since February of 2007. Exs. 4-43, 4-47, 4-61, 4-79, 4-123, 4-126, 1-35. Finally, I believe that Dr. Ballard’s opinions are most consistent with the capabilities of the X8 Extreme, as described in the evidentiary record. The manual indicates that the chair has the capacity to climb or descend inclines and obstacles or cross bumpy or uneven surfaces, within certain limitations. Exs. 4-143 and 4-148. An online document entitled “Off Road Driving Tips” states the chair can also drive through water and mud, soft sand, and snow—again, within certain limitations. Ex. 21-1. Based on the described capabilities of the X8 Extreme wheelchair, the well-reasoned opinion of Dr. Ballard, and the full context of Dr. Teed’s medical evaluation, I believe that the X8 Extreme would be appropriate to address Mr. Andersson’s medical needs.

Certainly, Dr. Di Paola has identified several reasons why it may not be advisable for Mr. Andersson to use the X8 Extreme in certain beach and trail environments. In other words, it will be incumbent upon Mr. Andersson to use the chair within the limitations described by its manufacturer and consistent with the instructions provided by Dr. Teed. See, *e.g.*, Ex. 1-35 (“... I am concerned about the stability of the machine and the risk of it tipping over and injuring him. He fully understands that and reassures me that he will use it in relatively level spots such as an open, flat beach, etc.”).

However, the fact that there are limitations on Mr. Andersson’s use of the X8 Extreme does not render it an inappropriate device. On the contrary, one purpose of Oregon’s workers’

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<sup>12</sup> SAIF quoted Dr. Teed’s summary of his interaction with Mr. Andersson, not Dr. Teed’s rationale for prescribing the chair. Ex. 1-35. Dr. Teed’s rationale was, in fact, that the chair X8 Extreme would help Mr. Andersson to “get down trails and out in rougher terrain”. *Id.*

compensation law is to restore the injured worker physically and economically to a self-sufficient status in an expeditious manner and to the greatest extent practicable. *SAIF v. Glubrecht*, 156 Or. App. 339, 348–49 (1998) (finding that home remodeling was reasonable and necessary when allowing the worker greater access to parts of the home). As such, evidence that the requested service would make the worker more independent is evidence that the service is necessary in light of the nature of worker's injury and the process of recovery. *See Stoddard v. Credit-Thrift Corp.*, 103 Or. App. 283 (1990). In this case, there is a wide range of potential applications of the chair outdoors on uneven ground that would fall short of a beach or trail with substantial slopes and grades. Unpaved roadsides, paved trails, flat and well-maintained trails and unpaved roads, to name just a few examples. In light of Mr. Andersson's rural living environment, intended use for rural outdoor activities, and the lack of any evidence that the chair would be unsuitable for such general rural outdoor usage, the only reasonable conclusion available is that the chair would restore Mr. Andersson physically to a self-sufficient status to a significant, if not unlimited, extent.

Dr. Di Paola also identifies several reasons why Mr. Andersson may be a poor candidate to operate the X8 Extreme. As I emphasized earlier in this order, a medical treatment may be inappropriate for a patient, even when the treatment is otherwise medically reasonable and necessary, if the evidentiary record establishes a particularized and inappropriate risk of abuse or misuse. Dr. Di Paola notes that Mr. Andersson has been noncompliant with the use of narcotic medications, that he has been in violation of pain management contracts "because of ideas that Mr. Andersson had regarding what was appropriate medical treatment and what was safe and what was not safe," and that he has admitted to medical providers to drinking alcohol while taking prescription medicines. Ex. 4-132. These are substantial concerns. However, Dr. Teed, who has served as Mr. Andersson's attending physician for a number of years and is in the best position to evaluate the likelihood that Mr. Andersson will properly use the device, was satisfied by Mr. Andersson's assurances that he would use the chair as directed. Ex. 1-35. In fact, Dr. Teed has been recommending a mobility device for outdoor use for Mr. Andersson in varying forms since February of 2007. Exs. 4-43, 4-47, 4-61, 4-79, 4-123, 4-126, 1-35. Similarly, Drs. Ballard and Robinson express no such concern concerning Mr. Andersson's operation of the chair. I also consider that the evidentiary record provided to MRT includes a year-and-a-half of clean drug screens, from April 2012 to October 2013. Exs. 11-225–29. Based on the opinions of Drs. Teed, Ballard, and Robinson, as well as the fact that none of the evidence submitted to the record indicates that Mr. Andersson has a current drug or alcohol abuse problem, I do not believe there is a sufficient risk of misuse of the X8 Extreme to render the device inappropriate for Mr. Andersson.

Based on the above reasoning, I conclude that a prescribed medical treatment is reasonable and necessary within the context of my review under ORS 656.327 when, as here, medical treatment is required as a result of the nature of the worker's compensable injury, there is evidence that the prescribed medical treatment will address that medical requirement in significant part, and there is no evidence in the record that an alternative medical treatment would suffice.<sup>13</sup> *See Sedgwick Claims Mgmt. Servs. v. Jones*, 214 Or. App. 446, 450-51 (2007) (analyzing the reasonableness and necessity of a wheelchair-accessible modified van under ORS 656.245). If the treatment is reasonable and necessary under that standard, and is not otherwise

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<sup>13</sup> SAIF has submitted no evidence concerning alternative mobility devices for Mr. Andersson.

inappropriate in light of accepted professional standards or applicable administrative rule, the treatment satisfies the requirements of OAR 436-010-0230(1) and is an appropriate medical treatment under ORS 656.327.

In summary, I conclude that the MRT's finding that the X8 Extreme wheelchair was not appropriate for Mr. Andersson was not supported by substantial evidence, because the MRT never articulated why the risks associated with use of the X8 Extreme would have made it inappropriate in the context of its intended and proposed usage by Mr. Andersson. I also conclude that the X8 Extreme wheelchair is an appropriate medical treatment for Mr. Andersson, because the X8 Extreme is reasonable and necessary for addressing Mr. Andersson's medical requirements and because the X8 Extreme is not otherwise inappropriate in light of accepted professional standards.

**IT IS HEREBY ORDERED:** The June 20, 2014 Administrative Order TX 14-0369, as corrected on July 21, 2014, is modified to reflect that the prescribed Innovation In Motion X8 Extreme Power Wheelchair is an appropriate medical treatment.