

A. Level Two Appeal Item Number One (1)

The statements “transportation to and from the workplace is not part of our analysis when determining your ability to function and/or work” set forth in Ms. Puckett’s May 2, 2006 adverse benefit determination letter and “the ability to get to and from work is not a material duty of an occupation” set forth in Ms. Johnson’s January 30, 2007 adverse determination letter are flatly contradicted by Cigna’s own records over the past eleven years. Those statements also erroneously disregard “risk” in the disability evaluation and take a position that renders the Peer Review Report’s “theory” regarding the ability to perform sedentary activities meaningless.

1. Dr. XXXX, Cigna’s Peer Review physician, made the following comment regarding the “theory” he and Dr. XXXX agreed upon regarding Mr. XXXX’s ability or inability to perform sedentary activity:

Dr. XXXX agrees that **theoretically** this patient **would be able** to perform sedentary activities **were he able** to get back and forth to work but **he is not able** to drive because of the inability to move his legs and also because of his ongoing use of Oxycontin....He is also unable to do **any** standing... (Emphasis added)

Dr. XXXX and Dr. XXXX both agree that Mr. XXXX “**is not able**” to get back and forth to work. Indeed, this fact has never been disputed by Cigna. Both physicians also agree that **if** Mr. XXXX **were able** to get back and forth to work, only then, *theoretically*, would Mr. Reilly **be able** to perform sedentary activity. The report states that Mr. XXXX “**is not able**” to get back and forth to work for two reasons:

1. His inability to drive because inability to move his legs

“and also because”

2. His ongoing use of Oxycontin. (Emphasis added)

The words “ability” and “able” are defined as the physical, mental or legal power to perform and marked by intelligence, knowledge, skill, or competence. Dr. XXXX and Dr. XXXX have inextricably and logically tied the physical and mental ability “to get to and from work” to the physical and mental ability to “perform sedentary activity.” Dr. Levy and Dr. XXXX did not hinge their “theory” or argument on “were” Mr. XXXX *driven to work by someone else* they say “were he **able** to get back and forth to work.” (Emphasis added) They focus on Mr. XXXX’s own physical and mental “ability” and say “were he able” and conclude that “he is not able.” Neither physician has released Mr. XXXX to perform sedentary work nor have they concluded that he “is” able to perform sedentary work in the peer review report, additional compelling evidence that mandates reversal of Cigna’s denial of benefits. The logical argument according to Dr. XXXX and Dr. XXXX is as follows: