

B. Level Two Appeal Item Number Two (2) –

The adverse determination letter on review dated January 30, 2007 spins the facts to attribute a “prohibition” of driving to Dr. XXXX and Dr. XXXX that is a complete fabrication based on a logical fallacy and contradicted by the record of this case. Cigna’s misleading and unfounded statement at issue provides:

neither your client’s attending physician nor did the peer reviewing physician indicate that the Oxycontin prohibited any activity other than driving.

1. The word “prohibit” is not contained in the record in any context from either physician.
2. Dr. XXXX’s medical opinion as stated in his letter to Latonya Puckett dated April 13, 2006 unequivocally concluded that Mr. XXXX can only drive, at best, short distances because of his physical limitations. In a subsequent comment, Dr. XXXX stated that chronic Oxycontin use would impair judgment related to “work” and “travel.”

One of the key issues here is XXXX’ bilateral knee problems that make it difficult for him to ambulate over extensive periods of time, let alone get him to and from work activities....My statement is that transportation would have to be provided to XXXX every day of his work schedule. As XXXX does have some days where he is capable of driving, he is realistically unable to drive more than short distances for the majority of the time... Please also note that XXXX also remains on chronic opioid treatments (chronic Oxycontin) which may impair his judgment relating to work and travel.

Dr. XXXX never “prohibited” driving because he said Mr. XXXX was physically limited to driving short distances the majority of the time due to his “bilateral knee problems”. Dr. XXXX also said “please also note” Oxycontin impairs judgment related to “work” and “travel” and is silent on any prohibitions associated with Oxycontin.

On March, 2007 Dr. XXXX wrote a letter to Ms. Karol Johnson correcting her incorrect statements in the adverse determination letter regarding Oxycontin and driving and reminded her that he has always maintained that Oxycontin impairs judgment related to work and travel:

Dear Ms. Johnson,

I am in receipt of a copy of your letter regarding Thomas Reilly dated January 30, 2007. Please be advised that your statements and inferences contain inconsistencies with my prior communication with Cigna regarding this patient.

I refer you to my letter dated April 13, 2006 to Ms. Latonya Puckett wherein I state “Thomas remains on chronic opioid treatments (chronic oxycontin) which may impair his **judgment relating to work and travel**” and my letter dated May 3, 2006 to Ms. Latonya Puckett wherein I state “Please also note Thomas remains on chronic opioid treatments (chronic oxycontin) which may impair his **judgment relating to work and travel**. This is an extremely severe issue and needs to be taken into account for any type of job activity using mental skills.” (Emphasis added)

The word “work” is in part defined as “to perform work or fulfill duties regularly for wages or salary” and entails far more than “driving”; the word “travel” is in part defined as “to move or undergo transmission from one place to another; to withstand relocation successfully” and also entails far more than “driving.” Cigna has refused, for over one year, to see and comprehend the words “work” and “travel” contained in the record and instead to adulterate the record and the result the record compels by supplanting them with their own words “prohibit” and “driving” which apparently Cigna believes more suits the ends it seeks to bring about. The record is clear - Dr. XXXX’s medical opinion is that at best Mr. XXXX could periodically drive short distances due to his bi-lateral knee problems, thus he has not “prohibited” driving and he said Oxycontin impairs judgment related to work and travel.

3. Dr. XXXX’s peer review states in the Summary of Records:

Dr. XXXX penned a letter on 4/13/06 noting the claimant had continued bi-lateral knee issues that made it difficult for the claimant to ambulate or sit for extended periods. He was unable to drive for more than short distances and required the ability to move around from a sedentary position every ten to fifteen minutes for at least fifteen minutes. The claimant remained on chronic opioid treatment that may cause impaired judgment.

This summary is consistent with the letters Dr. XXXX penned, referenced above, and it notes

- Mr. XXXX has bi-lateral knee problems affecting ambulation and sitting
- Unable to drive more than short distances
- Mr. XXXX needs to move around
- Chronic opioid treatments cause impaired judgment

Again, there are no “prohibitions” on driving and Oxycontin is referenced in the context of “judgment” not driving.

4. Dr. XXXX additionally notes the following issues regarding the narcotic oxycontin diagnosed by physicians in the “Summary of Records”:

- Mild Cognitive impairment due to narcotic use. (Dr. XXXX – Cigna Independent Medical Evaluation Physician)
- Fine finger manipulation may be limited due to medication effects. (Dr. XXXX – Cigna IME Physician)
- The claimant remained on chronic opioid treatment that may cause impaired judgment. (Dr. XXXX – Mr. XXXX’s treating physician)

In the next section of the report Dr. XXXX was asked by Cigna “to review the medical information sent to you and comment whether the restrictions and limitations are supported in the documentation provided” and to indicate if there is any “conflicting medical information.” Dr. XXXX did not indicate that a single restriction or limitation, including the three pertaining to narcotic usage, was not supported or was conflicting in the medical documentation. In fact, Dr. XXXX added the following in the “advisor review” section of the report to support the findings of Dr. XXXX and Dr. XXXX regarding Oxycontin:

With my discussion with Dr. XXXX it is clear that this claimant has bilateral knee problems....In addition he has developed reflex sympathetic dystrophy, **has chronic pain management problems and is on long term heavy doses of Oxycontin. (Emphasis added).**

5. Dr. XXXX and Dr. XXXX develop a “theory” or argument in the Peer Review report regarding Mr. Reilly’s ability or inability to perform sedentary duties:

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.

The two physicians agree in the Peer Review Report that Mr. XXXX is unable “to get back and forth to work” for two reasons. The two reasons are entirely consistent with the record contained in the Peer Review “Summary of Records” noted above:

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

“and also because”

2. His ongoing use of Oxycontin.

The word “prohibit” is not mentioned and Mr. XXXX’s narcotic usage is placed in the context of impacting the broader “ability to get back and forth to work” not just “driving.” If Dr. XXXX and Dr. XXXX were concerned solely about “driving” they would have hinged their “theory” on “were he” *driven to work by someone else*. Thus,

the two physicians have hinged their argument on Mr. XXXX's broader physical and mental "ability" to get back and forth to work.

6. On January 11, 2007, Ms. Haley Cigna's RN correctly read the peer review report's logical argument or "theory" constructed by Dr. XXXX and Dr. XXXX with two reasons Mr. XXXX can not "get back and forth to work" and in turn perform "sedentary activity." She notes her medical opinion in the Cigna Acclaim Notes that "the provided medical records are sufficient to support restrictions and limitations that would **prevent** sedentary activity during the time period in question....because of cx's [Mr. XXXX's] use of OxyContin he would be **unable to work**. (Emphasis added)

7. Dr. XXXX wrote a letter to Ms. Karol Johnson dated March, 2007 reiterating and reinforcing the point that there are two major issues related to his disability evaluation:

XXXX clearly has significant physical disability which is compounded severely by the chronic opioid issues noted above. The suggestion that employment options that require clear sustained mental faculties are an option for him is inconsistent with the above previously stated facts.

Dr. XXXX states, consistent with the proper reading of the peer review report and consistent with the record, that Mr. XXXX's "physical disability" is the first part of his disability evaluation and "chronic opioid issues" is the second part of his disability evaluation and that the two diagnoses compound each other to form the broader diagnoses. The word "compound" is defined in part as to put together (parts) so as to form a whole and to form by combining parts. Cigna's attempt to distort the peer review report by restating Dr. XXXX's medical opinion on two issues affecting Mr. XXXX's ability "to get back and forth to work," as two issues impacting "driving" is untenable as Dr. XXXX makes clear in his letter.

8. On March 7, 2007 and March 17, 2007 Mr. XXXX sent emails to Dr. XXXX asking him to clarify the amphiboly contained in the peer review report.

Dear Dr. XXXX,

Please read the attached Cigna internal document regarding the Peer Review you performed for Cigna. You will note that the Registered Nurse at Cigna, Karen Haley, concluded after reading your report "the provided medical records are sufficient to support restrictions/limitations that would prevent sedentary activity.....because of ongoing use of Oxycontin he would be unable to return to work." However, a Cigna non-medical employee, Mr. Gary Person, overturned the Nurse's conclusions as "not correct" and that you stated oxycontin only affects driving not work. He then proceeded to use your report to deny my benefits. I have two small children ages 3 and 1 and have been out of the workforce for ten years after a freefall elevator accident. These contradictions are

unacceptable when a family with small children is involved. Is there any way you could please explicitly state whose opinion above accurately reflects your own?

I can only ask for your clarity and I do so respectfully. I hope you can understand my situation.

Dr. XXXX did not respond to Mr. XXXX's legitimate request for clarity. His silence is laden with meaning. Dr. XXXX is also a graduate of law school; therefore, he understands the use of logical arguments or "theories" in the law. His insertion of amphiboly - when the conclusions used in a logical argument are ambiguous because of careless or ungrammatical phrasing - is completely unacceptable and inconclusive in a disability case.

Summary:

1. The word "prohibit" is not contained in the record from either physician.
2. Dr. XXXX says Mr. XXXX can only drive short distances because of his severely and irretrievably damaged legs, which directly contradicts any "prohibition" claim by Cigna and further is consistent with the first reason the peer review gives for Mr. XXXX's inability to get to and from work.
3. Dr. XXXX has always placed any comments regarding Oxycontin in the context of impaired judgment relating to "work" and "travel" which entails far more than Cigna's characterization limiting Dr. XXXX's opinion to driving.
4. The Peer Review report mentions Dr. XXXX's comments on "driving short distances."
5. Cigna asked Dr. XXXX if Dr. XXXX and Dr. XXXX's diagnoses regarding Oxycontin - "cognitive impairment" "impaired judgment" are unsupported or conflicting. Dr. XXXX does not even intimate any disagreement with the physicians in the peer review report.
6. Dr. XXXX and Dr. XXXX agree on a theory. The theory is consistent with the record and says Mr. XXXX is unable to get back and forth to work for two reasons:
 - a. His inability to drive because inability to move his legs

"and also because"

 - b. His ongoing use of Oxycontin.
7. Cigna's own claim manager Karen Haley - a Registered Nurse - properly reads the construction of the peer review report and has definitively concluded that Mr. XXXX would be unable to work due to his limitations and OxyContin use.

8. Dr. XXXX's letter dated March, 2007 reiterates the two part disability evaluation stating the two reasons affecting employment, Mr. XXXX's "physical disability" and "chronic opioid issues" which "compound" each other.

9. Mr. XXXX emailed Dr. XXXX to clarify the amphiboly in the peer review report. Dr. XXXX did not, apparently because he could not; respond in a way that supports Cigna's position.

Cigna has fabricated the conclusion that "neither your client's attending physician nor did the peer reviewing physician indicate that the Oxycontin prohibited any activity other than driving." Dr. XXXX and Dr. XXXX render no such "prohibition" of driving due to Oxycontin use. The peer review report states within the logical construct of the "theory" that Oxycontin affects the ability "to get back and forth to work" which renders Mr. XXXX unable to perform sedentary activity. Cigna has based the denial of benefits on a selective misreading of the peer review report that is both self serving and contradicted by the record summarized above. It is called the logical fallacy of accent. Accent is a form of fallacy accomplished by shifting meaning by altering which parts of a statement are emphasized. In this case, Cigna altered the emphasis in the peer review report from "were he able to get back and forth to work" to "driving" in order to create the logical fallacy on which the benefit denial is based. The denial of benefits is unequivocally invalid and must be reversed.

It should be noted that Cigna's selective review and distortion of Dr. XXXX's words regarding the narcotic Oxycontin as it relates to "work," "travel," "transportation" and "to and from work" has become a pattern in this case. Cigna continues to untenably insert the word "driving" into the record where the words "work," "travel," "transportation" and "to and from work" exist. Dr. XXXX had previously admonished Cigna for the same "cherry picking" and selective review in his letter dated May 3, 2005:

I find it extremely embarrassing that you have chosen to pick and choose, and more or less cherry pick, out of letters to support, pause and ignore other statements clearly by physicians....Even more outstanding is the fact that you have chosen to ignore the closing sentence of the letter which states "'XXXX remains on chronic opioid treatments (chronic oxycontin) which may impair his judgment relating to **work and travel**'...XXXX is severely limited in his ability to **travel** and this adds to his primary disability.