

C. Level Two Appeal Item Number Three (3) –

The adverse determination letter on review dated January 30, 2007 attributes a conclusion regarding “sedentary activity” and “driving” to Dr. XXXX that is unsupported by the record. Dr. XXXX has addressed Cigna’s misconstruction of the record in his letter dated March, 2007:

“In other words Dr. XXXX feels that Mr. XXXX’s inability to perform a sedentary occupation is due to his inability to drive”

Dr. XXXX and Dr. XXXX developed a theory in the Peer Review report regarding Mr. XXXX’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....He is also unable to do **any** standing...” (Emphasis added)

Dr. XXXX and Dr. XXXX do not conclusively state Mr. XXXX “is” able to perform sedentary activities. To the contrary, they say, in “theory,” Mr. XXXX **would be able** to perform sedentary activity **were he able** to get back and forth to work. 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. The logical argument according to Dr. XXXX and Dr. XXXX is as follows (Emphasis added):

If Mr. XXXX “were able” (physically and mentally) to get to and from work *then* Mr. XXXX “would be” able to perform sedentary activity

If Mr. XXXX “is not able” (physically and mentally) to get to and from work *then* Mr. XXXX “would not be able” to perform sedentary activity.

The record is clear that Dr. XXXX and Dr. XXXX agree that Mr. XXXX “**is not able**” to get back and forth to work. Following their logic, Mr. XXXX **would not be able** to perform sedentary activity. The two physicians agree in the Peer Review Report that Mr. XXXX is unable “to get back and forth to work” for two reasons that compound each other:

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

“and also because”

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

If Dr. XXXX and Dr. XXXX were solely concerned about “driving” as the adverse determination letter incorrectly states then Dr. XXXX and Dr. XXXX would have hinged their logical argument or “theory” on “were” Mr. XXXX *driven to work by someone else* but they do not and the focus is placed in the context of Mr. XXXX’s own “ability” to get to and from work. The words “ability” and “able” are defined as the physical, mental or legal power to perform and marked by intelligence, knowledge, skill, or competence. The two physicians’ agree on the limitation/restriction “were he able to get back and forth to work” and conclude that “he is not able” (Emphasis added).

On January 11, 2007 Ms. Karen Haley, a Cigna Registered Nurse, correctly construed the peer review report’s logical argument with two reasons why Mr. Reilly does not possess the ability “get back and forth to work” and “perform sedentary activity”. Registered Nurse Haley 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)

On January 31, 2007 the Cigna Acclaim notes establish Cigna’s administrative staff reversed Nurse Haley’s proper construction of the peer review report to indicate there is only one reason, “driving,” why Mr. XXXX is unable “to get back and forth to work” so that Cigna could also incorrectly conclude “in other words Dr. XXXX feels that Mr. XXXX’s inability to perform a sedentary occupation is due to his inability to drive.” This 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. Here, Cigna altered the emphasis 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.

Dr. XXXX corrects Cigna’s logical fallacy and misconstruction of the peer review report in the closing statements of his letter dated March, 2007:

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. (Emphasis added)

Dr. XXXX unequivocally concludes that there are **two** separate issues pertaining to Mr. XXXX’s ability to perform “employment” (synonymous with work and occupation) contained in his diagnosis and that the **two** reasons “**compound**” each other. He does not mention “driving” and the word “compound” is defined as to put together (parts) so as to form a whole and to form by combining parts. Dr. XXXX states, consistent with the proper reading of the peer review report, that Mr. XXXX’s “physical disability” is the first part and “chronic opioid issues” is the second part and that the two diagnoses compound each other to form the broader diagnoses why Mr. XXXX is unable to perform “employment”. Dr. XXXX’s use of the word “employment” is consistent with the correct definition of disability contained in the policy on page 18 and is much broader in meaning in a disability evaluation than “driving.” (Emphasis added)

Cigna's attempt to logically accent or distort the emphasis in the peer review report from "to get back and forth to work" to "driving" is untenable and inconsistent with the record. The logical fallacy "Dr. XXXX feels that Mr. XXXX's inability to perform a sedentary occupation is due to his inability to drive" contained in the adverse determination letter is inconsistent with the peer review report and Dr. XXXX's letter dated March, 2007. Dr. XXXX and Dr. XXXX agree in the peer review report that Mr. Reilly's inability to perform a sedentary occupation is due to the two reasons causing his physical and mental inability to "get back and forth to work." Dr. XXXX has corrected Cigna's logical fallacy and misconstruction of the peer review report in his letter dated March, 2007.

Cigna's adverse determination on January 30, 2007 was in principal part based upon a logical fallacy and misconstruction of the peer review report and Dr. XXXX's communication with Cigna. The adverse determination is therefore invalid and must be reversed.