

E. Level Two Appeal Item Number Five (5)

The adverse determination letter dated January 30, 2007 letter states that “the medical information supports limitations and restrictions that would allow Mr. Reilly to function within a sedentary level.” This statement is contradicted by the Peer Review Report, the Dictionary of Occupational Titles, Cigna’s Independent vocational expert Ms. XXXX, Cigna’s Registered Nurse Claim Manager Ms. Karen Haley, Mr. XXXX’s treating physician Dr. XXXX and Cigna’s Peer Review Physician Dr. XXXX.

The adverse determination letter dated January 30, 2007 lists the following notes from the peer review report and provides six managerial and supervisory occupations from the Dictionary of Occupational Titles generated by the transferable skills analysis. Notably, Cigna selectively omitted the opening part of Dr. XXXX and Dr. XXXX’s “theory” from the adverse determination letter to facilitate the formation of Cigna’s flawed benefit denial:

[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.” (Emphasis added)

If Mr. XXXX “were able...but he is not...” these “would be” his work capacities:

Mr. XXXX is able to sit at a desk but would require **frequent** position changes every 10 to 15 minutes. He is **unable to do any standing**, climbing, balancing, stooping, kneeling, crawling or crouching. He would be able to frequently lift or carry up to 10 pounds but would not be able to lift or carry anything for a distance more than approximately 2 feet. (Emphasis added)

The following [Dictionary of Occupational Titles] occupations were identified:

contract administrator, advertising manager, circulation manager, sales manager, commercial-instructor SUP, merchandise manager and supervisor, order takers

Cigna’s position is in the adverse determination is faulty for the following reasons:

1. As noted throughout this appeal Dr. XXXX and Dr. XXXX do not say Mr. XXXX is able to perform sedentary work they say he “would be able.” The two physicians agreed on a “theory” that 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” and have concluded Mr. XXXX “is not able.” The words “ability” and “able” are defined as the physical, mental or legal power to perform and marked by intelligence, knowledge, skill, or competence. Neither physician has released Mr. XXXX to perform sedentary work because “he is not able”. The logic according to Dr. XXXX and Dr. XXXX is as follows: