

## H. Level Two Appeal Item Number Eight (8)

Both Cigna's IME physician, Dr. XXXX, and Cigna's Peer Review Physician, Dr. XXXX, detail that Mr. XXXX's condition has deteriorated and degenerated since Cigna's last benefit determination in 1997. The file indicates a far more serious and limiting condition has developed while Mr. XXXX has received benefits and has at all times met the "definition of disability" in the contract over the past nine (9) years.

As far back as April 11, 1997, Cigna Nurse, Ali Parker RN, noted the degenerative nature of Mr. XXXX's condition. The IME report nine years later by Dr. XXXX further noted Mr. XXXX's degenerative condition wherein he made the following diagnosis, "degenerative disease both knees" and the following observations: "pain complaints are supported by objective findings on exam. He has restricted range of motion and x-ray evidence of degeneration of the knee joints. He developed chronic pain and degeneration of the knees, which has made it impossible to apply a standard number to his recovery time." (Emphasis added).

Cigna's last benefit decision, to reinstate benefits, was rendered on April 14, 1997 in a letter from Ms. Becky Schomer. The reinstatement overturned a denial based on a TSA that identified three sedentary occupations as defined in the Dictionary of Occupational Titles. The reinstatement was primarily based on a letter from Dr. XXXX dated March 25, 1997. In that letter, Dr. XXXX listed Mr. XXXX's limitations and job restrictions as follows:

*"As per my previous rating with XXXX, I think he will never again be able to hold an occupation which requires any climbing, kneeling, prolonged standing, prolonged ambulation or fast ambulation or stair work. Additionally, I do not think he will be able to ever extensively lift any weights more than 20 lbs with the condition of his knee. However when I completed the previous evaluation, I did feel that it was possible for him to try a sedentary job that will leave him mostly in a sitting position providing he could move around his legs from time to time, as a persistent flexed position after a few hours. In accordance with this , however, it is important to note that not only was the nature of the work important , but how XXXX would transport himself to this job was of great concern.....I have also recommended that Mr. XXXX receive vocational counseling or retraining...."*

Then on July 31, 1997 Cigna's Ms. Becky Schomer requested again from Dr XXXX "restrictions and limitations." On August 7, 1997 Dr. XXXX provided same in a letter, "*I feel he will never again be able to do any type of work which would require climbing, kneeling, bending, lifting or prolonged ambulation....He is currently unable to return to work unless transportation needs can be met....Current restrictions and limitations are no kneeling, no climbing, no prolonged ambulation. He can sit for short periods of time but must be able to get up and move around. He is unable to drive a long distance without frequent breaks, and should not be driving in stop and go traffic."*

Mr. Reilly received benefits and met the definition of disability in the contract for nine plus years based on Dr. XXXX's unwavering diagnosis. Now after nine years an IME is performed for Cigna by Dr. XXXX and supplemented with an addendum. In that report, Dr. XXXX addresses and confirms the entire set of diagnosis, limitations, restrictions and employability issues established in 1997 that have been the basis of Mr. XXXX meeting the definition of disability and receiving benefits for the past nine years:

Dr. XXX's 1997 Diagnosis

No Climbing  
No Kneeling  
No Bending  
No Prolonged Ambulation  
No Fast Ambulation  
Lifting and Carrying up to 20 lbs  
Transportation Issues  
Sit short periods w/ need move around  
Pain (not requiring narcotics)  
Vocational counseling/retraining

Dr. XXXX's Diagnosis 2006

Dr. XXXX affirms (Including stairs)  
Dr. XXXX affirms  
Dr. XXXX affirms  
Dr. XXXX affirms  
Dr. XXXX affirms  
Dr. XXXX further restricts to 10 lbs  
Dr. XXXX affirms  
Dr. XXXX affirms "allow.. move around"  
Dr. XXXX (**Pain requiring narcotics**)  
Dr. XXXX does not note any offered, rendered, denied or performed even though the contract contains a rehabilitative work provision.

However, Dr. XXXX went remarkably further than Dr. XXXX's diagnosis in 1997 in his IME report, and presented a much deteriorated and degenerated condition over the past nine years. He supplemented Mr. XXXX's diagnosis with new conditions, observations, limitations and restrictions that were not even present in 1997 when Cigna made their last benefit decision overturning a "sedentary" TSA based denial.

1. Reactive Depression
2. Mild Cognitive impairment due to narcotic use
3. Chronic pain syndrome and degeneration of knees necessitating narcotic treatment (consistent with industry standards)
4. Limited spine movement (later X-rays and MRI reveal degenerative disc disease and spinal stenosis)
5. Further restricts lifting and carrying to 10 lbs
6. Degeneration of knees so severe the need for bi-lateral knee replacements is diagnosed (never discussed in 1997)
7. Pain supported by objective findings - restricted range of motion, "degeneration of knees"
8. No work around machinery
9. No work in past 10 years certainly impacting employability (No retraining or vocational rehab though Dr. XXXX recommended same to Cigna)
10. Fine manipulation (fingering) affected by medication.
11. Seizure due medications battling pain

Then in January, 2007 Cigna sought the consultation of Dr. XXXX as a Peer Review physician. Dr. XXXX also reiterated the diagnosis, restrictions and limitations put forth by Dr. XXXX.

Dr. XXXX's 1997/2006 Diagnosis

No Climbing  
No Kneeling  
No Bending  
No Prolonged Ambulation  
No Fast Ambulation  
Lifting and Carrying up to 20 lbs  
Transportation Issues  
Sit short periods w/ need move around  
Pain (not requiring narcotics)  
Vocational counseling/retraining

Dr. XXXX Diagnosis 2007

Dr. XXXX affirms  
Dr. XXXX affirms  
Dr. XXXX affirms  
Dr. XXXX affirms  
Dr. XXXX affirms  
Dr. XXXX says 10 lbs/ 2 ft.  
Dr. XXXX affirms  
Dr. XXXX affirms  
Dr. XXXX (LT Heavy doses of narcotics)  
Dr. XXXX does not note any offered, rendered, denied or performed even though the contract contains a rehabilitative work provision

Dr. XXXX added the following diagnosis not present in 1997: Reflex sympathetic dystrophy, chronic pain management problems and is on long term heavy doses of Oxycontin.

ERISA requires Cigna to be "consistent" (See § 2560.503-1(b) (5)) in its claim decisions. The evidence above indicates Cigna has not consistently reviewed the totality and continuity of this case in rendering a determination that Mr. XXXX does not meet the definition of disability in 2006. Cigna's own physicians, Dr. XXXX and Dr. XXXX, present a much deteriorated situation related to Mr. XXXX's disabling condition, employability, limitations and restrictions. The definition of disability in the policy remained constant during the corresponding timeframe and Mr. XXXX met the definition of disability under the contract to receive benefits. Mr. XXXX's impairments have been thoroughly discussed by three highly trained physicians with varying backgrounds and there is absolutely no question they document a far worsened condition over the past nine years. How Mr. XXXX could not meet the definition of disability in light of Dr. XXXX's, Dr. XXXX's and Dr. XXXX's diagnosis and observation is beyond comprehension without changing the definition of disability in the contract. Cigna is applying the plan provisions inconsistently and is therefore in breach of its requirements under ERISA claim procedure (See § 2560.503-1(b) (5)).

Supporting Documents to appeal item number eight (8):

- July 29, 1996 TSA – Ginny Schmidt, Cigna -
- Mar. 20, 1997 Becky Schomer, Cigna to Mr. XXXX –
- Apr. 14, 1997 Becky Schomer, Cigna to Mr. XXXX–
- Mar. 25, 1997 Letter Dr. XXXX to Becky Schomer

- Apr. 11, 1997 Claim Note Cigna Nurse Ali Parker RN
- July 31, 1997 Becky Schomer, Cigna to Dr. XXXX
- Aug. 07, 1997 Letter Dr. XXXX to Becky Schomer, Cigna
- Feb. 7, 2006 Independent Medical Evaluation Report –
- Mar. 16, 2006 Addendum to IME dated 2/7/2006 – Dr. XXXX
- January 4, 2007 Peer Review – Dr. XXXX