

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."*