

**F. Appeal Item Number Six (6)**

**Dr. XXXX, Physical Rehabilitation Medicine, defers to the expertise of specialist Dr. XXXX, Orthopedic Surgeon in IME report; however, Cigna chose to defer to Dr. XXXX's vague and unspecific restriction "move around" in the Transferable Skills Analysis over Dr. XXXX's specified restriction "move around from a simple sedentary position approximately 10-15 minutes for at least five minutes". Cigna's self serving actions are clash with ERISA guidelines, Cigna's fiduciary duties and Dr. XXXX's clear deference to Dr. XXXX regarding this complex medical case.**

**1. ERISA GUIDELINES REGARDING MEDICAL JUDGMENT**

It cannot tenably be argued that Mr. XXXX's orthopedic medical history is not extremely rare and remarkable. He has undergone twelve (12) surgical procedures on his knees and suffers from the effects of spinal stenosis all before he even turned forty (40) years of age. Moreover, both Dr. XXXX and Dr. XXXX agree that he will need future knee replacement surgery.

During the course of completing the initial IME report, Dr. XXXX recognized and acknowledged the complexity of Mr. XXXX's medical case and the treatment of same. Dr. XXXX explicitly deferred to the medical judgment and expertise of Orthopedic Specialist, Dr. XXXX, when he made the following comment in response to a question from Cigna: "I believe his orthopedic surgeon could better comment on the specifics about the problems with his knees." (Emphasis added).

Dr. XXXX further noted in the addendum to the IME report that: "to date his treatment has been orthopedic surgery based." (Emphasis added).

With all due respect to Dr. XXXX as a Physical Medicine practitioner, he is not an Orthopedic Surgeon. It is apparent that he recognized this fact and also recognized the complexity of Mr. XXXX's orthopedic issues when he deferred to an Orthopedic Surgeon, Dr. XXXX, regarding Mr. XXXX's primary disabling condition, "his knees."

According to ERISA claim procedures it is incumbent on the fiduciary to retain a health care professional with the appropriate training and experience **in the specific field of medicine**, here orthopedics, involved in the medical judgment Cigna is seeking in the IME:

*Plans providing disability benefits. The claims procedures of a plan providing disability benefits will not, with respect to claims for such benefits, be deemed to provide a claimant with a reasonable opportunity for a full and fair review of a claim and adverse benefit determination unless the claims procedures comply with the requirements of paragraphs (h)(2)(ii) through (iv) and (h)(3)(i) through (v) of this section.*