

**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.*

*(h)(3)(iii) states-*

*(iii) Provide that, in deciding an appeal of any adverse benefit determination that is based in whole or in part on a medical judgment, including determinations with regard to whether a particular treatment, drug, or other item is experimental, investigational, or not medically necessary or appropriate, the appropriate named fiduciary shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment;*

Dr. XXXX certainly recognized his lack of experience and training in orthopedics and stated so in his report when he deferred to Dr. XXXX, “his orthopedic surgeon.” Cigna’s fiduciary responsibilities enumerated in ERISA mandate that Cigna have retained a professional in the field of orthopedics to perform the IME, particularly in light of this uniqueness of Mr. XXXX’s medical case. Cigna failed Mr. XXXX and its fiduciary duty in this regard.

## **2. DEFERENCE TO THE SPECIALIST AND SPECIFICITY IN TSA IS REQUIRED**

Cigna disregarded both Dr. XXXX’s deference to Dr. XXX cited above and its fiduciary duty to act in Mr. XXXX’s best interests when it conducted the internal transferable skills analysis dated April 28, 2006. In the TSA report Cigna chose to defer to Dr. XXXX’s unspecified restriction “move around” in order to make their adverse benefit decision over Dr. XXXX’s specified restriction: “Thomas also requires the ability to move around from a simple sedentary position approximately 10-15 minutes for at least five minutes.”

Cigna’s decision to defer to the vague and unspecified restriction of a non-specialist over the specified restriction of an orthopedic surgeon is inconsistent with ERISA guidelines, Cigna’s fiduciary duties and Dr. XXXX’s own clear deference to Dr. XXXX in this complex medical case. Moreover, had Cigna made the proper fiduciary deference to Dr. XXXX the TSA would have, in Ms. XXXX opinion, concluded “**this degree of specificity would not appear to be compatible with typical competitive work demands. Moving away from the workstation and walking for five minutes every fifteen minutes would not appear to be consistent with typical requirements for productivity and maintaining a work pace.**”

Cigna had the opportunity to request a clarification or additional specification from Dr. XXXX regarding his vague restriction “move around” when Cigna requested an IME addendum over a month after the initial IME report, but inexplicably elected not to do so.

In addition, numerous requests were made to Cigna seeking the production of copies of any Cigna policy or guideline that was considered or relied on by Cigna personnel in performing the TSA. Cigna's attorney, XXXX, in correspondence dated September 21, 2006 denied this request and responded that Cigna policy or guideline "was not relied upon."