

**K. Appeal Item Number Eleven (11)**

**The transferable skills analysis dated April 28, 2005 relied upon in making the adverse determination illustrates Cigna's pattern of selective review and self serving decisions that are contrary to Cigna's fiduciary duty to act in the beneficiary's best interests.**

1. The statement "the target wage requirement for this assessment was described as \$1,350 per (approximately \$7.87 per hour)" is entirely incorrect as illustrated above in appeal item number three (3).
2. Noticeably absent from the "records provided for review" indicating a selective review:
  - a. The Independent Medical Evaluation Addendum dated March 16, 2006 wherein Dr. XXXX discusses Mr. XXXX's pain complaints, degeneration of the knees, inability to apply a standard recovery time and medications. Considering Cigna Team Leader Beth Spicer required further clarification from the IME and ordered the Addendum (Email to R. White 3/7/06) it certainly should have been reviewed.
  - b. The four day surveillance report prepared for Cigna by XXXX Inc and the letter from Jenna Holder, Cigna to Barbie Rice, Cigna dated January 23, 2006 that summarizes the surveillance by stating that Mr. XXXX was "verified home and inactive....Further investigation is not warranted at this time."
  - c. The State of Pennsylvania law involving *Minimum Levels of Controlled Substances or Their Metabolites in Blood to establish presence of Controlled substances* that was sent to Cigna by Mr. XXXX in numerous correspondences requesting placement of the document in the medical file. Mr. XXXX's prescription for oxycodone to control pain would render him "under the influence" or "intoxicated" under Pennsylvania Law.
3. The statement "the physician noted under *fine manipulation* that it was not applicable to the diagnosis, however remarked "may be limited by affects of medication" is inconsistent with Dr. XXXX's list of "Disabling Diagnosis" wherein he lists "mild cognitive impairment related to narcotic use." as a diagnosis and mentions in answer number fifteen (15) "medication side effects".
4. The statement "the physician did not specify time periods in terms of moving around" is addressed in appeal item number six (6).
5. The statement "within the IME narrative report, it was mentioned that the claimant does do some driving short distances, however, the IME physician did specify need for access to public transportation" was completely fabricated. The IME report does

not mention “driving short distances,” nor does it mention a “need for access to public transportation.”

6. The statement “these issues of transportation were not requested to be assessed via the transferable skills analysis. Options will vary based on geographic area and individual circumstances which could include public transport, employer sponsored transport, carpool, family members providing transport etc. The existence of such within the claimant’s specific locale and personal circumstances were not requested to be reviewed for this assessment” is untenable as discussed in appeal item number four (4). Moreover, there is absolutely no mention of “transportation” contained in the TSA Referral form dated April 25, 2006, or any other document produced in the claim file, that directed the TSA not to consider transportation to/from work clearly indicating Ms. XXXX’ own decision to selectively review the facts.

7. The issue of a vague statement “move around” by a non-specialist and a specific limitation, “XXXX also requires the ability to move around from a simple sedentary position approximately 10-15 minutes for at least five minutes” by a specialist is thoroughly discussed in appeal item number six (6).

8. The statement “The Independent Medical Evaluation does reference the possible restriction on fine manipulation, however, not specified as a restriction. If information becomes available as to a specific restriction on upper extremity use, this would impact the job options mentioned.” is nothing short of absurd. Dr. XXXX’s mention of fine manipulation, the fingering of a computer keyboard, was clearly placed in the context of the “side effects of medication”. He was noting in the PAA the effects of narcotic pain medications on Mr. XXXX’s ability to function at a computer keyboard and wanted any future evaluation to take into account the “side effects of medication”. He additionally noted “cognitive impairment” and “side effects” in the narrative report. Dr. XXXX also cited the restrictions associated with the effects of medication in his letter dated 4/13/06 wherein he stated “XXXX also remains on chronic opioid treatments (chronic oxycontin) which may impair his judgment related to work and travel. Ms. XXXX ignored these comments and selectively elected **not** to address the “side effects of medication” in the transferable skills analysis. Moreover, it should be noted that there is a distinct difference in the PAA form between fine manipulations (fingering) and “upper extremity use” (reaching, grasping, lifting, carrying, pushing and pulling).

9. As noted in appeal item number three (3) all three occupational alternatives in the TSA do not meet the correct wage threshold requirement required by contractual or procedural guidelines.

10. The TSA does not discuss or evaluate Dr. XXXX’s notes regarding the availability of ergonomic workstations or environments without stairs with regard to occupations.

11. The TSA did not address how pain or the narcotic medication prescribed for Mr. XXXX's debilitating pain impacted his ability to work, much less his ability to safely travel to work. Dr. XXXX diagnosed Mr. XXXX with "chronic pain" in both the IME and the IME Addendum and stated the "pain complaints are supported by objective findings." He described the pain with striking detail "constant, burning, shooting, shock like with throbbing. The pain is worsened by sitting, standing, bending and stair climbing."

12. The TSA does not mention any vocational rehabilitation program necessary for a return to work after an eleven year absence.

13. The TSA mischaracterizes Dr. XXXX's statement regarding Mr. XXXX's ability to engage in sedentary work. Dr. XXXX's report said "with accommodation" NOT with "a combination" as the TSA claims.

14. The TSA states that "sedentary office positions in areas such as Inside Sales, Customer Service, through prior surveying have been found" however no survey is contained in the file and no such survey is specifically referenced.

The irreducible logical core of finding that a claimant is capable of performing alternative occupations is a finding that claimant has a residual functional capacity that equals or exceeds the functional requirements of a feasible alternative occupation. These two determinations – the claimant's capacity and the occupations requirements – must together be detailed enough to make rational comparison possible. Otherwise, the finding that the claimant can perform alternate occupations is nothing but a bald assertion, *Havens v. Continental Casualty Ins. Co.*, 04-cv-03269 (3d Cir. May 11, 2006).

The Transferable Skills Analysis lacks the elements required for a "full and fair" review and further illustrates Cigna's abandonment of its fiduciary duties. Cigna, at every possible turn, chose to selectively review the evidence in a self serving manner and not in the "best interests" of Mr. XXXX.

Notably, numerous requests have been made to Cigna seeking the production of copies of any Cigna policy or guideline that was considered or relied on by Cigna personnel regarding the transferable skills analysis. Cigna's attorney, XXXX, in correspondence dated September 21, 2006 denied our request and responded that Cigna policy or guideline "was not relied upon."