IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: DIET DRUGS (PHENTERMINE/ FENFLURAMINE/DEXFENFLURAMINE) PRODUCTS LIABILITY LITIGATION	:	MDL Docket No. 2:15 MD 1203
SHEILA BROWN ET AL.	:	
v.	:	Civil Action No. 99-20593
AMERICAN HOME PRODUCTS CORPORATION	:	REPORT AND AWARD OF ARBITRATOR
Appellant: Arbitration No.: Claim No.:	:	

FINDINGS OF FACT

1. On , ("Claimant") submitted a Pink Form which signed on .

2. On or about , Claimant submitted a Green Form, Part II, which was completed by Dr. and based upon a echocardiogram. This Green Form supports conditions for benefits payable for Matrix Compensation Benefits at Matrix B-1, Severity Level III based upon the representation and documentation of severe mitral regurgitation, mitral valve prolapse, and surgery to repair or replace the mitral valve following Diet Drug use. See Settlement Agreement § IV.B.2.c. and d. See also, Green Form Part II, Questions C.3.a, D.7, and F.9.

3. Pursuant to the Parallel Processing Procedures ("PPP") as approved by the Court at Pretrial Order 3882, on or about the AHP Settlement Trust ("Trust") provided the Claim to Class Counsel Claims Office ("CCCO").

4. Consistent with the PPP, Wyeth notified the Trust of the appropriate designation for the Claimant's claim for benefits. See PPP at Paragraphs 10 and 11.

5. Based upon this designation, on , the Trust issued a Determination awarding Matrix B-1, Severity Level III Benefits. The Claim was reduced to Matrix B-1 because Claimant documented: (a) the presence of mild mitral regurgitation between Diet Drug use and the close of the Screening Period, (b) the Green Form representation of mitral valve prolapse, and (c) Diet Drug use of less than sixty-one (61) days. See Settlement Agreement § IV.B.2.d.(2)(a) and (2)(c)ii)b).

6. Claimant contested the Determination, claiming that should receive benefits under Matrix A-1, at Severity Level III, because there is no evidence that had heart problems prior to Diet Drug use.

7. Wyeth declined to amend the benefit determination based upon the medical conditions as documented in the Green Form (mild mitral regurgitation and mitral valve prolapse); however, it conceded Claimant had provided evidence of Diet Drug use for over sixty (60) days.

8. On , the Trust issued a Final Determination denying claim for Matrix Compensation Benefits at Matrix A-1 at Severity Level III. Instead, the Trust determined that the awarded benefits to the Claimant pursuant to Matrix B, Level III and payment was sent to the Claimant on . The claim was reduced to Matrix B-1 benefits because Claimant demonstrated the presence of mild mitral regurgitation between Diet Drug use and the close of the Screening Period ( ) and the Green Form representation of mitral valve prolapse was confirmed by the medical documentation as required by the Settlement Agreement § IV.B.2.d.(2)(a) and IV.B.2.d.(2)(c)ii)b).

9. In response to the Trust's Determination, the Claimant submitted a letter dated , to the Trust asking it to reconsider the documentation submitted and to change payment to benefits payable according to Matrix A-1.

10. On , Claimant filed an appeal from the denial of benefits by the Trust and requested that the United States District Court ("Court") refer this matter to Arbitration.

11. On , the claim of was referred by the Court to Arbitration pursuant to Sections VI.C.4(h) & (i) or VI.D.1.(f) & (g) of the Settlement Agreement with American Home Products Corporation.

12. On at an Arbitration Hearing was held concerning the claim of . was not represented by counsel.

13. During the Arbitration Hearing, confirmed the date filed appeal, the correctness of the medical information submitted, and the information stated on the Gray Form, including that had an Echocardiogram on which demonstrated only mild mitral regurgitation between the time started taking Redux and the end of the Screening Period.

ANALYSIS

1. Under the Settlement Agreement, persons who are part of the Settlement Class consist of persons who ingested Pondimin ("Fenfluramine") and/or Redux ("Dexfenfluramine") (hereinafter both Pondimin and Redux are referred to as "Diet Drugs") and their Representative or Derivative Claimants. See Settlement Agreement § II.B.

2. Matrix Compensation Benefits are paid according to two matrices. See Settlement Agreement § IV.B.2.d. Matrix A, or the full compensation matrix, applies to claimants who: (a) have been diagnosed timely as FDA positive; (b) ingested Diet Drugs for

sixty-one (61) days or more; and (c) have no conditions requiring a reduced payment under the terms of the Settlement Agreement. See id. § IV.B.2.d.(1). Matrix B, or the reduced compensation matrix, applies to claimants who: (a) have been diagnosed timely with Mild Mitral Regurgitation (regardless of the duration of ingestion of the Diet Drugs); or (b) were diagnosed timely as FDA Positive and ingested Diet Drugs for sixty (60) days or less; or (c) were diagnosed timely as FDA Positive, ingested Diet Drugs for sixty-one (61) or more days, and have certain conditions, identified in the Settlement Agreement, that may have caused or contributed to the claimant's heart problems. See id. § IV.B.2.d.(2).

3. To qualify for any benefits due to the ingestion of Diet Drugs, a claimant must submit "documentary proof" regarding the ingestion of Diet Drugs, as defined by the Settlement Agreement. See Settlement Agreement § VI.C.2.d.

4. If the Diet Drugs were dispensed by a pharmacy, a claimant must prove the identity of the prescribing pharmacy and the records corroborating the dispensing of Diet Drugs. See id. § VI.C.2.d.(1). If the Diet Drugs were dispensed directly by a physician or weight loss clinic, or the pharmacy record is unobtainable, the claimant must provide the identity of the prescribing physician and a copy of the medical record prescribing or dispensing the Diet Drugs. Those medical records must identify the Diet Drug Recipient, the name of the Diet Drugs, the date(s) prescribed, the dosage, and the duration that the Diet Drugs were prescribed or dispensed. See id. § VI.C.2.d.(2). If the pharmacy and medical records are unavailable, the Settlement Agreement allows for the submission of an affidavit under penalty of perjury from the prescribing physician or dispensing pharmacy, identifying the Diet Drug Recipient, the Diet Drugs prescribed or dispensed, the date(s), quantity, frequency, dosage and number of

prescriptions or refills of Diet Drugs. See id. § VI.C.2.d.(3). No alternate forms of proof are allowed under the Settlement Agreement.

5. Claimant seeks Matrix A Benefits based upon Green Form indicating affirmative answers which are based upon a echocardiogram. relies upon the answers in Green Form, Part II, regarding severe mitral regurgitation, mitral valve prolapse, enlarged left atrium, enlarged left ventricle, ejection fraction of 40-49%, surgery to the mitral valves, and New York Heart Association Functional Class I Symptoms. See Green Form, Part II, Answers to **Questions C.3.a, D.7, F.5, F.6, F.8, F.9, and G.1.** The Green Form was completed by Dr. and signed on .

6. Claimant's reliance upon the echocardiogram is misplaced for Matrix A benefits. The Echocardiogram which qualifies Claimant for any Matrix Benefits during the Screening Period is the Echocardiogram study performed on (the "eligibility echo").

7. The Trust explained this to the Claimant in its Final Determination Letter. Specifically, it explained to the Claimant that is entitled to Matrix B benefits as the eligibility echo and the Gray #2 Form, which was signed by Dr. on , indicates that Claimant suffered from mild mitral regurgitation with a RJA/LAA ratio of 12%. See Echocardiogram Report dated .

8. The scope of this Report is limited to one issue, whether the Trust placed Claimant in the correct Matrix for benefits.

9. There is no dispute about the medical records and the results of the various echocardiograms Claimant submitted to the Trust, including the diagnosis of mitral valve prolapse.

10. The Trust properly placed Claimant in Matrix B for benefits based upon the medical documentation and the Claimant's Gray Form. diagnosis of mild mitral regurgitation by an Echocardiogram performed between the commencement of Diet Drug use and the end of the screening period by Dr. clearly places in Matrix B irrespective of the mitral valve prolapse as stated in the Settlement Agreement. § IV.B.2.d.(2)(a).

CONCLUSIONS

11. Based upon the medical information provided to the Trust on behalf of the Claimant concerning medical conditions, ingestion of Diet Drug is not at issue under the Settlement Agreement. The Trust properly determined that Claimant is entitled to Matrix B benefits and paid accordingly.

12. Based on the above, the finings of the Trust are not clearly erroneous as set forth in the Rules Governing Arbitration Process.

6/24/2010
Date:

James C. Schwartzman
Arbitrator