

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.
2:15MD1203

SHEILA BROWN, ET AL.

CIVIL ACTION NO.

v.

99-20593

AMERICAN HOME PRODUCTS
CORPORATION

Appellant:
Arbitration No.:
Claim No.: 183/00

REPORT AND AWARD
OF ARBITRATOR

FINDINGS OF FACT

1. On [redacted] the AHP Settlement Trust ("Trust") issued a Final Determination denying the claim of [redacted] for Matrix Compensation Benefits.

2. On [redacted] filed an appeal from the denial of benefits by the Trust, requesting that the United States District Court ("Court") refer this matter to Arbitration.

3. On [redacted] the claim of [redacted] was referred by the Court to Arbitration pursuant to VI.C.4(h) & (i) or VI.D.1.(f) & (g) of the Nationwide Class Action Settlement Agreement with American Home Products Corporation.

4. On [redacted] an Arbitration Hearing was held concerning the claim of [redacted]

5. The Trust determined that _____ was not entitled to any Matrix Compensation Benefits on the basis that _____ failed to supply the documentation required to establish Diet Drug ingestion.

6. In _____ Statement of the Case, _____ requests benefits based on alleged medical symptoms and conditions purportedly caused by the use of the Diet Drugs. In _____ Green Form, _____ indicates that _____ believes _____ is entitled to Benefits on Matrix A-1 with severity level II. (See Green Form, Part I, page 4, questions 5 and 6).

ANALYSIS

FUND A ISSUES NOT COVERED BY ARBITRATION PROCESS

1. The Settlement Agreement provides for two funds, Funds A and B, which were established to provide benefits to class members. See Settlement Agreement § III.A.1. Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62. Fund A provides funding only for non-Matrix specified benefits and expenses, e.g., drug refunds and echocardiogram reimbursement. See Settlement Agreement § IV.A. Memorandum and Pretrial Order (“PTO”) No. 1415 (August 28, 2000) at 62. Fund B provides funding for Matrix Compensation Benefits. See Settlement Agreement § IV.B. Memorandum and PTO No. 1415 (August 28, 2000) at 62.

2. The arbitration process only covers determinations made regarding Fund B and the eligibility of claimants to receive Matrix Compensation Benefits and/or the amount of Matrix Compensation Benefits they are entitled to receive.

MATRIX ELIGIBILITY AND QUALIFICATION

1. Under the Settlement Agreement, Matrix Compensation Benefits are paid according to two matrices. See Settlement Agreement § IV.B.2.d. The A Matrix, or the full

compensation matrix, applies to claimants who: (1) have been diagnosed timely as FDA Positive; (2) ingested the diet drugs for sixty-one (61) or more days; and (3) have no conditions requiring a reduced payment under the terms of the Settlement Agreement. See id. § IV.B.2.d.(1). The B Matrix, or the reduced compensation matrix, applies to claimants who: (1) have been diagnosed timely with Mild Mitral Regurgitation (regardless of the duration of ingestion of the diet drugs); or (2) were diagnosed timely as FDA Positive and ingested the diet drugs for sixty (60) days or less; or (3) were diagnosed timely as FDA Positive, ingested the 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).

2. In determining the length of diet drug usage, Section VI.C.2.d. of the Settlement Agreement requires the claimant to submit documentary proof concerning the period of time the diet drugs were ingested. Specifically, the claimant must submit pharmacy records documenting the claimant's name, prescribing physician information, diet drug name, date(s) prescribed, dosage and duration the drug was prescribed or dispensed. If a physician or weight loss clinic prescribed the diet drugs directly, or pharmacy records are unobtainable, a claimant must identify the prescribing physician, including the prescribing physician's name, address and telephone number, and submit a copy of the medical records prescribing or dispensing the drugs. If the pharmacy records and medical records are unobtainable, a claimant must submit an affidavit under penalty of perjury from the prescribing physician or dispensing pharmacy identifying the claimant, the drug prescribed or dispensed, the date(s), quantity, frequency, dosage and number of prescriptions or refills of the diet drug(s) to document ingestion. See id. § VI.C.2.d.(3).

3. Under the Settlement Agreement, the burden of proving diet drug ingestion remains with the claimant. See PTO 7779 at 6.

4. submitted a Green Form dated

5. In the Green Form, reference is made to an echocardiogram that was performed on (See Green Form, Part II, page 8, at questions C.1 and C.2).

6. The Green Form submitted by reports moderate mitral valve regurgitation and no aortic valve regurgitation. (See Green Form, Part II, page 8, question C.3).

7. The answers to the questions in Part II of Green Form were completed by physician, a Board-Certified Cardiologist. (See Green Form, Part II, page 7, Section A).

8. submitted a Blue Form dated

9. According to questions 7 and 8 of Blue Form, answered that took Pondimin for 61 days or more.

10. During the Arbitration Hearing, the Claimant and the Trust stipulated that failed to submit any pharmacy records documenting the claimant's name, prescribing physician information, diet drug name, date(s) prescribed, dosage and duration the drug was prescribed or dispensed; failed to submit a copy of any medical records prescribing or dispensing the drugs; and failed to submit any affidavit under penalty of perjury from the prescribing physician or dispensing pharmacy identifying the claimant, the drug prescribed or dispensed, the date(s), quantity, frequency, dosage and number of prescriptions or refills of the diet drug(s) to document ingestion. See Settlement Agreement § VI.C.2.d.(3).

11. In Statement of the Case, states that has been unable to supply the documentary proof of diet drugs ingestion required by Section § VI.C.2.d.(3) of the Settlement Agreement because the physician who supplied with the diet drugs is deceased and records cannot be located.

12. In support of claim of diet drug use, submitted an affidavit, dated stating that received Pondimin from at for three months, attached to the Affidavit cancelled checks, dated and payable to and a check register for the period through showing the notations " (Phen-fen)" for the entries of and However, this affidavit, including the attachments, does not constitute an affidavit under penalty of perjury from the prescribing physician or dispensing pharmacy identifying the claimant, the drug prescribed or dispensed, the date(s), quantity, frequency, dosage and number of prescriptions or refills of the diet drug(s) to document ingestion. See Settlement Agreement § VI.C.2.d.(3).

13. In further support of claim of diet drug use, also submitted an affidavit, dated from the current owner of located in In the affidavit, states that used to practice medicine at the location where is currently located. further states that is deceased and that has been unable to locate any medical or pharmacy records relating to However, the affidavit of does not constitute an affidavit under penalty of perjury from the dispensing pharmacy identifying the claimant, the drug prescribed or dispensed,

the date(s), quantity, frequency, dosage and number of prescriptions or refills of the diet drug(s) to document ingestion. See Settlement Agreement § VI.C.2.d.(3).

14. also submitted affidavits from a personal friend, dated and from mother, dated

Both affidavits state that received prescriptions for and ingested Pondimin for approximately three months in However, these affidavits also do not constitute affidavits under penalty of perjury from the prescribing physician or dispensing pharmacy identifying the claimant, the drug prescribed or dispensed, the date(s), quantity, frequency, dosage and number of prescriptions or refills of the diet drug(s) to document ingestion. See Settlement Agreement § VI.C.2.d.(3).

15. In Statement of the Case, Appellant contends that the affidavits submitted by may be considered as proof of diet drug usage pursuant to Section VI.C.4.b of the Settlement Agreement, which permits "other supporting documentation" to be submitted with the claim for Matrix Compensation Benefits. However, Appellant's reliance on Section VI.C.4.b. is misplaced. Section VI.C.4.a. of the Settlement Agreement enumerates the documentation required to establish the medical condition of a claimant that forms the basis for the claim, e.g., hospital records, echocardiogram reports, tapes, etc. Section VI.C.4.b. of the Settlement Agreement then provides that where a Claimant "is unable to obtain the documentation described above through the exercise of reasonable efforts," that the Trust "shall have the right to consider other supporting documentation." (Emphasis added.) The provision of Section VI.C.4.b., which permits the Trust to consider "other supporting documentation," applies only to that documentation described in Section VI.C.4.a., being documentation required to establish the medical condition of a claimant. The Trust has no

discretion to consider "other supporting documentation" of Diet Drug use other than as set forth in Section VI.C.2.d.(3). See Settlement Agreement § VI.C.2.d.(3); PTO No. 7779 at 7, n. 6.

16. During the Arbitration Hearing, counsel for the Claimant conceded that § VI.C.4.b. of the Settlement Agreement does not apply to the determination of diet drug usage.

17. As a result, the Trust determined that [redacted] failed to supply the required documentation needed to establish that [redacted] had ingested diet drugs. I conclude that the Trust's analysis and determination were not clearly erroneous.

CONCLUSIONS

1. The Claimant failed to provide documentary proof of diet drug ingestion to the Trust as required by the Settlement Agreement.

2. Based on the above, the findings of the Trust are not clearly erroneous as set forth in Rule 5 of the Rules Governing the Arbitration Process.

3. The final determination of the Trust is affirmed.