

5. In Statement of the Case, requested Seventh Amendment Matrix Compensation Benefits based on alleged medical symptoms and conditions purportedly caused by the use of Diet Drugs ("Matrix Qualifying Events"). In Green Form, indicates that believes is entitled to benefits on Matrix A-1 with severity Level IV. See Green Form, Part I, page 4, questions 5 and 6.

6. The Trust determined that was not entitled to any Seventh Amendment Matrix Compensation Benefit and did not submit claim to Audit. The Trust made this determination on the basis that was more than 79 years of age at the time of the alleged Matrix Qualifying Events and therefore is not eligible for Matrix Compensation Benefits. This is the sole issue presented in the appeal.

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.; PTO No. 1415 (Aug. 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.; PTO No. 1415 at 62. Fund B provides funding for Matrix Compensation Benefits. See Settlement Agreement § IV.B.; PTO No. 1415 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 Diet Drug Recipients who: (1) have been diagnosed timely as FDA Positive; (2) ingested 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 Diet Drug Recipients 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 Diet Drugs for sixty (60) days or less; or (3) 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 his or her heart problems. See id. § IV.B.2.d.(2).

2. Each Matrix describes the amount that an eligible Class Member is entitled to recover based on (1) the level of severity of a Diet Drug Recipient's disease and (2) the age at which the Diet Drug Recipient is first diagnosed as suffering from that level of disease severity. See id. § IV.B.2.b.

3. For each Matrix, age limitations were established for a claimant to qualify for benefits at the time he or she experienced the Matrix Qualifying Events. For each Matrix, the age limitations are from 24 years or less to age 79. No provisions were made for those 80 years of age and older. See id. § IV.B.2.a.; Green Form Appendix, Section C (Age at Diagnosis Tables).

4. did not opt out of the Seventh Amendment to the Settlement Agreement and was designated a Category One Class Member.

5. In , Appellant submitted a claim for Seventh Amendment Matrix Compensation Benefits. In order to qualify for such benefits under the Seventh Amendment, a class member must meet the requirements for Matrix Compensation Benefits as set forth in the original Settlement Agreement and the Seventh Amendment. See Seventh Amendment § IX.A.1.b.

6. Audit Rule 3 directs that the Trust refer to Audit only claims which "from the face of the GREEN Form submitted, allege a medical condition for which the Claimant may be entitled to Matrix Compensation Benefits." See PTO 2807 at 4 (Mar. 26, 2003).

7. According to Green Form was born on

See Green Form, Part I, page 1.

8. The representations in the Green Form as to medical conditions are based on an echocardiogram that was performed on See Green Form, Part II, page 8, at questions C.1. and C.2.

9. Green Form reports severe mitral regurgitation; severe aortic regurgitation; pulmonary hypertension secondary to severe aortic regurgitation; pulmonary hypertension secondary to moderate or greater mitral regurgitation; left atrial enlargement; arrhythmias; an ejection fraction of 50% to 60%; surgery to repair/replace the mitral and/or aortic valves following Diet Drug use; New York Heart Association Functional Class III symptoms; a second surgery through the sternum within 18 months

of the initial surgery due to prosthetic valve malfunction, poor fit, or complications reasonably related to the initial surgery; and irreversible pulmonary hypertension secondary to valvular heart disease defined as peak-systolic pulmonary artery pressure > 50 mm Hg, at rest, following repair or replacement surgery of the aortic and/or mitral valve(s). See Green Form, Part II, pages 8-13, questions C.3.a., C.3.b., F.2., F.3., F.5., F.7., F.8., F.9., G.3., J. and L.2.

10. The Trust conceded that _____ Green Form alleged medical conditions for which _____ may receive Matrix Level IV and/or Matrix Level V benefits. See AHP Settlement Trust's Response to Appellant's Statement of the Case.

11. The Matrix Level IV Claim is based upon a _____ surgery to repair/replace the aortic/mitral valves following Diet Drug use and a second surgery. See Green Form, Part II, pages 11 and 13, questions F.9. and J. The Matrix Level V Claim is based upon the _____ surgery to repair/replace the aortic/mitral valves following Diet Drug use and irreversible pulmonary hypertension secondary to the valvular heart disease following surgery. See Green Form, Part II, pages 11 and 13, questions F.9. and L.2. These are the Matrix Qualifying Events relevant to this claim.

12. 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.

13. At the time of these Matrix Qualifying Events, _____ was _____ years of age. Therefore, the Trust concluded that, based upon the Settlement Agreement,

was not eligible for Matrix Compensation Benefits. See Settlement Agreement § IV.B.2.a.

CONCLUSIONS

1. The Trust findings of fact are not clearly erroneous as set forth in Rule 5 of the Rules Governing the Arbitration Process.

2. Based upon the above findings, is not entitled to Matrix Benefits because:

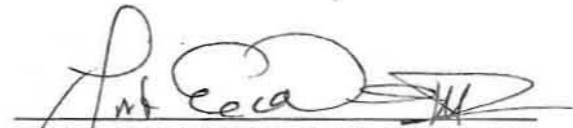
a. The Settlement Agreement, as amended, states that a Claimant must be diagnosed with the relevant Matrix Qualifying Events prior to the age of 80. Settlement Agreement, Section IV.B.2.a.; Green Form Appendix, Section C (Age at Diagnosis Tables);

b. The Matrix Qualifying Events in this claim were a surgery to repair/replace the aortic/mitral valves following Diet Drug use; a second surgery; and irreversible pulmonary hypertension secondary to the valvular heart disease following surgery. Green Form, Part II, pages 11 and 13, questions F.9., J. and L.2.

c. At the time of these Matrix Qualifying Events, was years of age. (Green Form, Part I, page 1, question 1).

3. Based upon all of the above, I conclude that the Appellant is not entitled to any Matrix Compensation Benefits.

4-25-13



LUTHER E. WEAVER, III, ESQUIRE
ARBITRATOR