

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 Nos.:  
Claim No.:

REPORT AND AWARD  
OF ARBITRATOR

FINDINGS OF FACT

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

2. On \_\_\_\_\_, \_\_\_\_\_ filed an appeal from the denial of benefits by the Trust, requesting that the United States District Court ("Court") refer this matter to Arbitration.<sup>1</sup>

3. 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 Nationwide Class Action Settlement Agreement with American Home Products Corporation ("Settlement Agreement").

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<sup>1</sup>The Claimant disputed the Final Determination of the Trust, but submitted an appeal form to the Trust only. No copy was sent to the District Court. The Trust subsequently notified the Chair of the Arbitration Panel of the un-docketed appeal, after which the appeal form was docketed with the Court on \_\_\_\_\_.

4. On \_\_\_\_\_, at \_\_\_\_\_, an Arbitration Hearing was held concerning the claim of \_\_\_\_\_

5. \_\_\_\_\_ Green Form requested benefits on Matrix A-1 with severity Level II. See Green Form, signed \_\_\_\_\_, Part I, page 4, questions 5 and 6. In Statement of the Case dated \_\_\_\_\_ requests benefits based on alleged medical symptoms and conditions purportedly caused by the use of Diet Drugs at severity Level V. However, during the Arbitration Hearing, \_\_\_\_\_ modified \_\_\_\_\_ Statement of the Case by asserting \_\_\_\_\_ final position that \_\_\_\_\_ was entitled to benefits at severity Level II.<sup>2</sup>

6. The Trust determined that \_\_\_\_\_ is not entitled to any Matrix Compensation Benefits. The Trust made this determination on the basis that the record failed to establish that \_\_\_\_\_ qualified for Matrix Compensation Benefits at any severity Level. 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

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<sup>2</sup>In any event, \_\_\_\_\_ has not submitted a new Green Form asserting that \_\_\_\_\_ suffered death resulting from a condition caused by valvular heart disease or valvular repair/replacement surgery which occurred post-Diet Drug use, nor has \_\_\_\_\_ submitted a statement from the attending Board-Certified Cardiothoracic Surgeon or Board-Certified Cardiologist supported by medical records, all of which are required by the Settlement Agreement to support a claim at that Level. See Settlement Agreement § IV.B.2.c.(5)(c).

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. A Blue Form dated \_\_\_\_\_ was submitted.

3. According to questions 7 and 8 of the Blue Form, \_\_\_\_\_ took Pondimin for 61 days or more. See Blue Form, page 4, questions 7 and 8.

4. A Green Form dated \_\_\_\_\_ was submitted.

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. This Green Form reports mild mitral valve regurgitation and mild aortic valve regurgitation. See Green Form, Part II, page 8, question C.3.

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

8. I find that the record establishes, and the Trust conceded during the Arbitration Hearing, that was FDA Positive. See Settlement Agreement § 1.22(a). Therefore, was an Eligible Class Member entitled to Matrix Compensation Benefits as defined by the Settlement Agreement. See id. § IV.B.1. However, an Eligible Class Member may only qualify for the receipt of Matrix Compensation Benefits if the record establishes that his or her medical conditions resulting from the use of Diet Drugs meet the severity levels set forth in the Settlement Agreement. See id. § IV.B.1. and B.2.

9. Matrix Level I Benefits must be based, at a minimum, on severe aortic regurgitation and/or on severe mitral regurgitation, neither of which condition exist in this case, (id., Section IV.B.2.c(1)(a)), or based on other conditions that are not present in this case. (id., Section IV.B.2.c(1)(b)).

10. Matrix Level II Benefits must be based, at a minimum, on moderate or severe aortic regurgitation, or on moderate or severe mitral regurgitation, neither of which condition exist in this case. (id., Section IV.B.2.c(2)).

11. The conditions that are prerequisite to recovery of Matrix Levels III, IV and V Benefits are also not present in this claim. (id., Section IV.B.2.c(3), (4) and (5)).

12. A claimant may also qualify for Matrix Compensation Benefits at severity Level V if the claimant otherwise qualifies for payment at Matrix Level II, III, or IV, and suffers from ventricular fibrillation or sustained ventricular tachycardia which results in hemodynamic compromise. id., Section IV.B.2.c.(5)(d).

13. Although [redacted] did report in the Green Form that [redacted] suffered from ventricular fibrillation or sustained ventricular tachycardia which resulted in hemodynamic compromise (See Green Form, Part II, page 14, question L.5.), the Green Form does not assert the conditions required to qualify for Matrix Compensation Benefits at Matrix Levels II, III, or IV.

14. Based upon all of the above, [redacted] is not entitled to any Matrix Compensation Benefits.

#### CONCLUSIONS

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

2. The final determination of the Trust denying [redacted] claim for Matrix Compensation Benefits was not clearly erroneous as a matter of law.

3. Based upon all of the above, [redacted] is not entitled to any Matrix Compensation Benefits.

DATE