

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

IN RE: DIET DRUGS (PHENTERMINE /	:	MDL DOCKET NO.
FENFLURAMNE/DEXFENFLURAMINE)	:	2:15 MD 1203
PRODUCTS LIABILITY LITIGATION	:	
-----	:	
	:	
SHEILA BROWN, ET AL.	:	
v.	:	CIVIL ACTION
AMERICAN HOME PRODUCTS	:	99-20593
CORPORATION	:	
-----	:	
	:	
Appellant:	:	
Arbitration No.:	:	REPORT AND AWARD
Claim No.:	:	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 decision of the Trustees and/or Claims Administrator(s) and requested that the United States District Court ("Court") refer this matter to Arbitration.

3. On the Court referred claim to Arbitration pursuant to §§ VI.C.4.(h) & (i) of the Nationwide Class Action Settlement Agreement with American Home Products Corporation.

4. On the undersigned held an Arbitration Hearing concerning claim. prior to the date of the Arbitration Hearing.

Elizabeth McGough, Esquire,

represented the Trust.

### ANALYSIS

1. Claimant seeks benefits pursuant to Matrix A-1, Level III. *See* GREEN Form (received on ) and Addendum to GREEN Form, Part I, Questions 5 and 6 (received on ).

2. In order to receive Matrix Benefits, a Claimant must be both eligible and qualified to receive Matrix Level Benefits. The issue in this Arbitration is whether the Claimant is eligible to receive Matrix Benefits. In order to be eligible, a Diet Drug Recipient must fit within one of two categories: (1) Diet Drug Recipients diagnosed by a Qualified Physician as FDA Positive or as having mild mitral regurgitation by an echocardiogram performed on or before January 3, 2003, provided the Diet Drug Recipient registered for settlement benefits by May 3, 2003; or (2) Diet Drug Recipients who by September 30, 2005 have been diagnosed by a Qualified Physician as having Endocardial Fibrosis and who have registered for Fund B Benefits by January 31, 2006. *See* Settlement Agreement, § IV.B.1. In order to be diagnosed as FDA Positive, a Diet Drug Recipient must suffer mild or greater aortic valve regurgitation and/or moderate or greater mitral valve regurgitation. *Id.* at § I.22.

3. In support of claim, submitted a report of an echocardiogram performed on (see Echocardiography Report dated ). The echocardiogram report stated that had moderate-to-severe mitral regurgitation. If this echocardiogram had been performed on or before January 3, 2003, it presented findings that would appear to have made eligible for Matrix Benefits.

4. In BLUE Form, Claimant stated that ingested Pondimin (Fenfluramine) for sixty-one days or more. See Blue Form, Questions 7- 9. This was confirmed by the Declaration of dated In Declaration, stated that dispensed a total of 540 Pondimin pills to between and

5. GREEN Form Addendum, received in was signed by a Board-Certified Cardiologist. It stated that suffered from pulmonary hypertension secondary to moderate or greater mitral regurgitation, arrhythmias, an ejection fraction between 40-49%, valvular surgery following use of Pondimin, Class IV New York Heart Association symptoms, irreversible pulmonary hypertension secondary to valvular heart disease, and ventricular fibrillation or sustained ventricular tachycardia resulting in hemodynamic compromise. See GREEN Form Addendum, Questions F.3., F.7., F.8., F.9., G.4., L.2. and L.5.

6. In the appeal and at the Arbitration Hearing, argued that did all that reasonably could do, given that the timing of the onset of symptoms did not give notice of the need for an echocardiogram prior to the end of the screening period. Accordingly, seeks mercy, arguing that because valvular damage does not occur overnight there is reason to believe the damage was present before the end of the screening period and that therefore the echocardiogram should render eligible for Matrix Benefits.

7. The Settlement Agreement is unambiguous in defining those who are eligible for Matrix Compensation Benefits. To be eligible, the Diet Drug Recipient must be diagnosed by a Qualified Physician as FDA Positive or as having mild mitral regurgitation by an echocardiogram

performed on or before January 3, 2003. *See* Settlement Agreement, § IV.B.1.

8. As an Arbitrator, I am bound by the terms of the Settlement Agreement and have no authority to modify its provisions. Accordingly, I lack the power to offer mercy in circumstances, such as here, where the claimant did not meet the defined terms of the Settlement Agreement.

### CONCLUSIONS

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

2. Based upon the findings above, the Claimant is not eligible to receive Matrix Level Benefits. *See* Settlement Agreement, § IV.B.1.

Accordingly, based on all of the above, I find that is not entitled to any Matrix Compensation Benefits.

DATE

Arbitrator