

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

IN RE: DIET DRUGS (PHENTERMINE / FENFLURAMNE/DEXFENFLURAMINE) PRODUCTS LIABILITY LITIGATION -----	:	MDL DOCKET NO. 2:15 MD 1203
SHEILA BROWN, ET AL. v. AMERICAN HOME PRODUCTS CORPORATION -----	:	CIVIL ACTION 99-20593
Appellant: Arbitration No.: Claim No.:	:	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 severity level IV Matrix Compensation Benefits.

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

4. [redacted] passed away on [redacted]

5. On _____ the undersigned held an Arbitration Hearing concerning claim. At the Arbitration Hearing, _____ represented _____ Elizabeth McGough, Esquire, represented the Trust.

ANALYSIS

1. This Arbitration is based on a GREEN Form which Claimant signed on _____ and the Trust received on _____. In this GREEN Form, Claimant sought benefits pursuant to Matrix A-1, Level IV. *See* GREEN Form, received on _____ (GREEN Form).

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 qualified to receive Level IV Matrix Benefits. Of relevance here, Matrix Level IV benefits include situations where the individual has had valvular repair or replacement surgery and requires 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. *See* Settlement Agreement, § IV.B.2.c.(4)(g).

3. Before submitting the _____ GREEN Form, Claimant had submitted a GREEN Form on _____ in which _____ sought Matrix Compensation Benefits pursuant to Matrix A-1, Level II (_____ GREEN Form). Part II of the _____ GREEN Form was based on a _____ echocardiogram, and was signed by _____ a Board-Certified Cardiologist, on _____ On _____ the Trust notified the Claimant that _____ was entitled to payment pursuant to Matrix B-1, Level II, in the amount of _____. The Claimant accepted this determination.

4. On [redacted] Claimant submitted the [redacted] GREEN Form, seeking matrix compensation pursuant to Matrix A-1, Level IV. [redacted] stated that on the basis of a [redacted] echocardiogram, [redacted] had 1) heart valve surgery to repair or replace the mitral valve prior to Diet Drug use; 2) arrhythmias; 3) an ejection fraction between 40% and 49%; 4) surgery to repair or replace the aortic and mitral valves after Diet Drug use; 5) severe regurgitation and ACC/AHA Class I indications for surgery to repair or replace the aortic or mitral valve(s) where such surgery was not performed; 6) New York Heart Association Functional Class II symptoms; 7) and had required 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. See [redacted] GREEN Form, Questions E.1., F.7., F.8., F.9., F.10., G.2., and J. Claimant submitted medical records that establish that [redacted] underwent mitral and aortic valve replacement surgery on [redacted] See [redacted] Discharge Summary, signed on [redacted] by [redacted] Claimant submitted additional medical records that established that on [redacted] underwent a left thoracotomy and repair of left ventricular pseudoaneurysm and a right tube thoracosotomy. See [redacted] Operative Report, signed on [redacted] by [redacted] On [redacted] the Trust notified the Claimant that [redacted] was entitled to payment pursuant to Matrix B-1, Level III in the gross amount of [redacted] The Claimant accepted the determination, and on [redacted] the Trust mailed the Claimant payment reflecting the difference between the Level III benefits and the Level II payment already made.

5. On [redacted] the Trust issued a Tentative Denial of Matrix Compensation Benefits at severity Level IV on the basis that the [redacted] Operative Report stated that

underwent a Left Thoracotomy (not a sternotomy), and that Thoracotomy does not meet the Settlement Agreement's requirement of a second surgery through the sternum. See Settlement Agreement § IV.B.2.c.(4)(g). The Claimant contested the Tentative Denial. On [redacted] submitted a letter in which [redacted] conceded that [redacted] second heart surgery was not a sternotomy. Claimant also enclosed a [redacted] letter from [redacted] discussing the circumstances that led to [redacted] left thoracotomy. [redacted] nevertheless sought reconsideration of [redacted] claim for Level IV benefits on the grounds that the [redacted] surgery "was related to the first heart surgery, occurred within six months of the first heart surgery, and was medically necessary" On [redacted] the Trust issued a Final Determination, denying the claim for Matrix Compensation Benefits at severity Level IV on the basis that the requirement that a second surgery be "through the sternum" is unambiguous. See Final Denial of Matrix Claim Benefits, dated [redacted] and Settlement Agreement § IV.B.2.c.(4)(g).

Settlement Agreement § IV.B.2.c.(4)(g) provides:

The individual has had valvular repair or replacement surgery and requires a second surgery **through the sternum** within eighteen months of the initial surgery due to prosthetic valve malfunction, poor fit, or complications reasonably related to the initial surgery.

Emphasis supplied.

6. Of necessity, the Settlement Agreement included certain medical events that would be compensated and, inevitably, omitted others. I accept the Claimant's assertion that second heart surgery was related to the first heart surgery, occurred within six months of the first heart surgery, and was medically necessary. I also acknowledge the sadness at [redacted] loss. I find

no basis, however, to conclude that
is required for Level IV benefits.

surgery was “through the sternum,” which

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 qualified to receive Matrix Level Benefits at severity Level IV. *See* Settlement Agreement § IV.B.2.c.(4)(g).

Accordingly, based on all of the above, I find that the Claimant is not currently entitled to additional Matrix Compensation Benefits. This finding does not preclude from seeking additional Matrix Benefits based on events documented on one or more additional GREEN Forms, so long as those GREEN Forms are submitted within applicable filing deadlines.

DATE

Arbitrator