

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 _____ (“Claimant” or “Appellant”; sometimes referred to as _____) for severity level V 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. At the Arbitration Hearing, _____ was assisted by _____ cousin,
Jules Henshell, Esquire, represented the Trust.

ANALYSIS

1. This Arbitration is based on a GREEN Form received by the Trust in _____ (GREEN Form). The GREEN Form was signed by _____ a Board-Certified Cardiologist. In the GREEN Form, Claimant sought benefits pursuant to Matrix A-1, Level V. *See* GREEN Form, Part I, Questions 5 and 6.
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 V Matrix Benefits.¹
3. On _____ the Trust received a BLUE Form that Claimant had signed on _____. At the Arbitration Hearing, Claimant conceded that _____ did not opt out of the Seventh Amendment. As such, _____ is a Category Two Class Member.
4. In _____ GREEN Form, Claimant's Attesting Physician stated that _____ has severe mitral regurgitation, an ejection fraction of <30%, New York Heart Association Functional Class IV Symptoms, and ventricular fibrillation or sustained ventricular tachycardia which results in hemodynamic compromise. *See* GREEN Form, Questions C.3.a., F.8., G.4. and L.5.
5. As a Seventh Amendment class member, Claimant is entitled to seek Matrix

¹ Because the Trust concluded that Claimant's GREEN Form did not state a claim for Matrix Level benefits, the Trust did not refer the claim for Audit. Accordingly, no findings have

Level benefits, but only if [redacted] can establish that [redacted] had a qualifying medical condition. To qualify for Matrix Level V benefits, Claimant must have experienced a “High Matrix Level Qualifying Factors” that were diagnosed and occurred no later than December 31, 2011. *See* Seventh Amendment §§ IX.A.1.a. and IX.A.3.

6. Matrix Level V is defined, in pertinent part, as “[t]he individual 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.” *See* Settlement Agreement at § IV.B.2.c.(5)(d).

7. Appellant asserts that [redacted] suffers from ventricular tachycardia but concedes that, despite [redacted] assertion in GREEN Form Question L.5., [redacted] did not suffer hemodynamic compromise. [redacted] argument is that [redacted] condition would have resulted in hemodynamic compromise were it not for the defibrillator implant [redacted] received. *See* Appellant’s Statement of the Case, page 2. The problem with Appellant’s argument is that the Settlement Agreement, as amended, provides compensation for qualifying medical conditions actually experienced, not those avoided. *See* PTO 8546 (Sept. 28, 2010). Even if Appellant were correct that without insertion of a defibrillator [redacted] may have suffered hemodynamic compromise before the December 31, 2011 deadline (*see* Response to Notice of Tentative Denial, dated [redacted]), the fact is that [redacted] received a defibrillator and did not suffer hemodynamic compromise before December 31, 2011. During the Arbitration Hearing, the Trust acknowledged the regrettable report from Appellant that [redacted] overall health has declined. The Settlement Agreement as amended, however, was never intended to compensate every health issue or to compensate [redacted]

been made regarding Claimant’s eligibility for Matrix Level benefits.

specified health events with no regard to when the event occurred. In the end, Appellant's problem is one of timing. [redacted] claim that [redacted] is entitled to Level V Matrix benefits cannot succeed because there is no evidence that Appellant experienced a "High Matrix Level Qualifying Factor[]" that was diagnosed and occurred no later than December 31, 2011. *See* Seventh Amendment §§ IX.A.1.a. and IX.A.3.

8 Appellant also asserts that [redacted] is not, and never will be, a candidate for valvular surgery. *See* Appellant's Statement of the Case at page 1. Under the Settlement Agreement, ineligibility for recommended surgery may be relevant to a claim for Level III Matrix benefits. Section IV.B.2.c.(3)(b) of the Settlement Agreement states that Matrix Level III of the Settlement Agreement includes the presence of ACC/AHA Class I indications for valvular surgery, and a statement from a qualified physician regarding the recommendations made to the patient, with the reason why the surgery is not being performed. The Seventh Amendment, however, established stricter requirements in order for a Claimant to meet the definition of ineligibility for recommended surgery, adding a medical basis for the ineligibility as proven by contemporaneous medical records. *See* Seventh Amendment § I.B.30.b. The Seventh Amendment also narrowed the scope of § IV.B.2.c.(3)(b) of the Settlement Agreement: "High Matrix level qualifying factors' do not include the circumstances described in section IV.B.2.c(3)(b) of the Settlement Agreement except to the extent necessary to qualify for Matrix compensation at Level IV or V, as limited by I.B.30.b." *See id.*, § I.B.30.c. This amendment means that ineligibility for recommended surgery can no longer, by itself, provide a basis for Matrix Level compensation. *Id.* While ineligibility for recommended surgery may be relevant to establish a Level IV or Level V claim, Appellant's GREEN Form did not make out a timely case

for a Level V claim. Accordingly, ineligibility for valvular surgery does not qualify for Matrix Level benefits, either by itself or as a prerequisite for Level V compensation.

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 Appellant, has not established the conditions required for recovery of Matrix Level V Benefits, as described in the Settlement Agreement as modified by the Seventh Amendment. *See* Settlement Agreement, § IV.B.2.c.(5)(d) as amended by Seventh Amendment to the Nationwide Class Action Settlement Agreement, § I.B.30.c.

DATE

Arbitrator