

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

IN RE: DIET DRUGS (PHENTERMINE/
FENFLURAMINE/DEXFENFLURAMINE)
PRODUCTS LIABILITY LITIGATION

SHEILA BROWN, ET AL.

v.

AMERICAN HOME PRODUCTS
CORPORATION

Appellant:
Arbitration No.:
Claim No.: 183/00

: MDL DOCKET NO.
: 2:15MD1203
:

: CIVIL ACTION NO.

: 99-20593
:

: 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 Supplemental Seventh Amendment Matrix Compensation Benefits.

2. On [redacted] filed an appeal from the denial of Supplemental Seventh Amendment Matrix Compensation Benefits by the Trust, requesting that the United States District Court ("Court") refer this matter to Arbitration.

3. On [redacted] the claim of [redacted] 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").

4. On [redacted] an Arbitration Hearing was held concerning the claim of [redacted]

5. In Statement of the Case, the Claimant contends that is entitled to Supplemental Seventh Amendment Matrix Compensation Benefits at Severity Level IV or V. See Appellant's Statement of the Case.

6. The Trust determined that the Claimant is not entitled to any Supplemental Seventh Amendment Matrix Compensation Benefits on the basis that neither the Claimant's Green Form, nor the combination of conditions asserted in a letter by the Claimant's physician, describe any condition or event at Matrix Severity Levels IV or V, or at any other severity level. This is the sole issue in this 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. It is undisputed that _____ did not opt out of the Seventh Amendment and was designated a Category Two Class Member as defined by the Seventh Amendment. See Seventh Amendment § III.A.2.

3. In support of _____ initial claim, _____ submitted a Blue Form dated _____

4. In _____ following a medical audit, _____ was awarded benefits in the amount of _____ on the A Matrix at Severity Level III, based upon having had surgery to _____ aortic valve.

5. Class Members subject to the Seventh Amendment may be entitled to the payment of additional compensation by the AHP Settlement Trust if:

a. _____ the Class Member has or had High Matrix Level Qualifying Factors that were diagnosed and occurred by the earlier of: (i) December 31, 2011; or (ii) 15 years after the date of the Diet Drug Recipient's last ingestion of Diet Drugs as established by the

proof of Diet Drug use submitted to the Trust in accordance with Section VI.C.2.d. of the Settlement Agreement; and

b. if the Class Member (i) has submitted a properly completed Green Form and other documentation and materials necessary to support a claim for Seventh Amendment Matrix Compensation Benefits; (ii) qualifies for the payment of benefits on Matrix Levels III, IV or V under the terms of the Settlement Agreement as it existed before the Execution Date; and (iii) qualifies as having the High Matrix Level Qualifying Factors on the same Matrix Level for which the Class Member qualifies for benefits under the Settlement Agreement as it existed before the Execution Date. See Seventh Amendment § IX.A.1.a & b.¹

6. In _____ submitted a Green Form (“_____ Green Form”) seeking additional Seventh Amendment Matrix Compensation Benefits, asserting that _____ had suffered a worsened medical condition. See Green Form, Part I, page 2, question 2.

7. In the _____ Green Form, reference is made to an echocardiogram that was performed on _____ See _____ Green Form, Part II, page 8, questions C.1. and C.2.

8. The _____ Green Form reported no mitral valve regurgitation and no aortic valve regurgitation. See _____ Green Form, Part II, page 8, question C.3.

¹High Matrix Level Qualifying Factors were originally defined in § IV.B.2.c.(3), (4) and (5) of the Settlement Agreement. These definitions were modified and/or clarified by the Seventh Amendment. See Seventh Amendment § I.B.30.

9. The Green Form reported that Claimant suffered aortic stenosis. See Green Form, Part II, page 9, question D.4.

10. 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.

11. By letter dated the Trust issued a Tentative Denial of the claim of stating that the conditions asserted in the Claimant's Green Form do not state a cognizable claim for Matrix Benefits at any of the severity levels described by the Settlement Agreement. The letter further stated that the Claimant had the right to contest the Tentative Denial by, within 30 days, mailing to the Trust a written explanation as to why the Trust should change the Tentative Denial together with any additional information or documents for the Trust to consider.

12. By letter dated the Claimant submitted a letter contesting the Tentative Determination of the Trust along with a letter dated from personal physician, of in support of supplemental claim.

13. In letter of states that the Claimant suffers from asthma, congestive heart failure, abnormal coagulopathy, cardiac stenting, acute peritonitis and perforated bowel ulcer.

14. The Trust issued a Final Determination denying additional Matrix Compensation Benefits on finding that the conditions described by also did not state a cognizable claim for Matrix Benefits at any of the severity levels described by the Settlement Agreement.

15. Because [redacted] was awarded benefits on the A Matrix with Severity Level III in 2009, [redacted] would have to demonstrate that [redacted] subsequently suffered from worsening conditions that would entitle [redacted] to benefits on the A Matrix at Severity Level IV or V in order for [redacted] to qualify for supplemental Matrix Compensation Benefits. See Settlement Agreement § IV.C.3; Seventh Amendment §§ VIII.D. and IX.E.

16. The conditions described in the Claimant's [redacted] Green Form, and as described in the [redacted] letter from [redacted] do not describe conditions that would qualify the Claimant for benefits on the A Matrix at Severity Level IV or V. See Settlement Agreement §§ IV.B.2.c.(4) & (5).

17. For these reasons, I conclude that the Trust's analysis and determination were not clearly erroneous.

CONCLUSIONS

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

2. Based upon the above findings, the Claimant is not currently entitled to additional Matrix Compensation Benefits because the conditions that are required for Matrix Compensation Benefits at Severity Levels IV or V as described in the Settlement Agreement, as modified by the Seventh Amendment, are not present in this claim.

3. Accordingly, based upon all the above, I find that the Claimant is not presently entitled to any additional Matrix Compensation Benefits.

ARBITRATOR