

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

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

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SHEILA BROWN, ET AL.

v.

AMERICAN HOME PRODUCTS  
CORPORATION

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Appellant:  
Arbitration No.:  
Claim No.:

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 Matrix Compensation Benefits.

2. On [redacted] filed an appeal from the denial of Supplemental 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 Matrix Compensation Benefits on the A Matrix at Severity Levels III, IV, or V. See Appellant's Statement of the Case.

6. The Trust determined that the Claimant is not entitled to any Supplemental Matrix Compensation Benefits on the basis that the Claimant's Green Form does not describe any condition or event at Matrix Severity Levels III, IV, or V. 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. In support of initial claim for Matrix Compensation Benefits, submitted to the Trust a Green Form dated as well as a Pink Form dated

3. On the Trust issued a final determination on the initial claim awarding on the A Matrix, Severity Level II.

4. Although the Claimant previously received Matrix Compensation Benefits, the Settlement Agreement provides that may seek payment for a supplemental matrix claim. However, for the supplemental claim, the Claimant can only be paid the incremental dollar amount, if any, by which the Matrix payment for the higher Matrix-Level Condition exceeds the Matrix payment previously received. See Settlement Agreement § IV.C.3.

5. In 2015, submitted a Green Form ("2015 Green Form") seeking additional Matrix Compensation Benefits, asserting that had suffered a worsened medical condition. See 2015 Green Form, Part I, page 2, question 2.

6. In the 2015 Green Form, reference is made to an echocardiogram that was performed on \_\_\_\_\_ See 2015 Green Form, Part II, page 8, questions C.1. and C.2.

7. In the 2015 Green Form, the Attesting Physician answered that Claimant had moderate and severe mitral regurgitation and added a handwritten note stating "moderate to severe" mitral valve regurgitation. The 2015 Green Form also indicated that there was no aortic valve regurgitation. See 2015 Green Form, Part II, page 8, question C.3.

8. In addition, the 2015 Green Form also indicated that Claimant did not have severe regurgitation and the presence of ACC/AHA Class I indications for surgery to repair or replace the aortic and/or mitral valve(s) where the surgery was not performed, and therefore, there was no statement from the attending Board-Certified Cardiothoracic Surgeon or Board-Certified Cardiologist, supported by medical records, regarding the recommendations made to the patient concerning valvular surgery, with the reason why the surgery is not being performed. See 2015 Green Form, Part II, page 11, question F.10.

9. The answers to the questions in Part II of the 2015 Green Form were completed by the Claimant's physician, \_\_\_\_\_ a Board-Certified Cardiologist. See Green Form, Part II, page 7.

10. The Settlement Agreement, in pertinent part, defines Severity Level III as follows: "MATRIX LEVEL III is left sided valvular heart disease requiring surgery or conditions of equal severity, and is defined as: ... (b) Severe regurgitation and the presence of ACC/AHA Class I indications for surgery to repair or replace the aortic

and/or mitral valve(s) and a statement from the attending Board-Certified Cardiothoracic Surgeon or Board-Certified Cardiologist supported by medical records regarding the recommendations made to the patient concerning valvular surgery, with the reason why the surgery is not being performed." See Settlement Agreement § IV.B.2.c.(3).

11. I find that the conditions described in the Claimant's 2015 Green Form do not describe conditions that would qualify the Claimant for benefits on the A Matrix at Severity Level III, nor are any conditions described that would qualify the Claimant for benefits on the A Matrix at Severity Levels IV or V. See id. §§ IV.B.2.c.(3), (4) & (5).

12.                   concedes that                   does not meet the criteria in the Green Form for finding ACC/AHA Class I indications for surgery to repair or replace the aortic and/or mitral valve(s) because                   left ventricular ejection fraction is less than 30%. According to claimant,                   is nevertheless entitled to receive Matrix Benefits because                   lower ejection fraction is "more severe" than that which is specifically required by the Green Form.                   is incorrect.                   argument ignores the plain language of the Settlement Agreement, which states that a claimant requesting Matrix Level III benefits in the absence of surgery must have severe regurgitation and ACC/AHA Class I indications for surgery to repair or replace the aortic and/or mitral valve(s).                   cannot satisfy this unambiguous requirement. Compensation for a worsened medical condition is not based on the claimant's subjective evaluation of what conditions are worse than others. Instead, the Settlement Agreement has defined the range of compensable medical conditions, and claimant must meet one of those specific definitions to recover for a worsened medical condition.

13. Because \_\_\_\_\_ was awarded benefits on the A Matrix at Severity Level II in \_\_\_\_\_ would have to demonstrate that \_\_\_\_\_ subsequently suffered from worsening conditions that would entitle \_\_\_\_\_ to benefits on the A Matrix at Severity Levels III, IV, or V in order for \_\_\_\_\_ to qualify for Supplemental Matrix Compensation Benefits. See Settlement Agreement § IV.C.3.

14. Audit Rule 3 directs the Trust to refer to Audit only claims which "from the face of the GREEN Form submitted, allege a medical condition for which the Claimant may be entitled to Matrix Compensation Benefits." See PTO No. 2807 (Mar. 26, 2003) at 4.

15. 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 Supplemental Matrix Compensation Benefits, because the conditions that are required for Matrix Compensation Benefits at Severity Levels III, IV, or V as described in the Settlement Agreement are not present in this claim.

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

ARBITRATOR