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

IN RE: DIET DRUGS (PHENTERMINE/ FENFLURAMINE/DEXFENFLURAMINE) PRODUCTS LIABILITY LITIGATION	:	MDL DOCKET NO. 2:15MD1203
SHEILA BROWN, ET AL. v. AMERICAN HOME PRODUCTS CORPORATION	:	CIVIL ACTION NO. 99-20593
Appellant: Arbitration No: Claim No.:	:	REPORT AND AWARD OF ARBITRATOR

FINDINGS OF FACT

1. On , the AHP Settlement Trust (Trust) issued a Final Determination—Denial of Matrix Compensation Benefits (Final Determination) on the Claim of (Claimant)* for Matrix Compensation Benefits.

2. On , Claimant filed an appeal from the Final Determination to the United States District Court (Court) requesting that the Court refer this matter to Arbitration.

3. On the Court referred the Claim 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. An Arbitration Hearing on Claimant's claim was held on . Claimant was not represented by Counsel.

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* is deceased. represents estate. The term Claimant as used herein to refer to both and representative, as may be indicated by the context.

5. In Green Form dated (Green Form), Claimant requests Matrix Compensation Benefits based on medical symptoms and conditions allegedly caused by use of Diet Drugs. The Green Form indicates that Claimant believes that is entitled to Matrix A-1, Level V Benefits. Green Form Part I, Questions 5-6.

6. Claimant based claim on an echocardiogram dated . The Attesting Physician stated that this echocardiogram showed that the Claimant had moderate mitral valve regurgitation. Green Form Part II, Question C.3.a. The Attesting Physician stated further that the echocardiogram also showed evidence of mitral annular calcification (Green Form Part II, Question D.9.), left atrial enlargement(Green Form Part II, Question F.5), arrhythmias (Green Form Part II, Question F.7), and an ejection fraction of 35-39% (Green Form Part II, Question F.8).

7. In a Blue Form signed . (Blue Form), Claimant represented that ingested Redux for over sixty days and that the Diet Drug was prescribed by "Shands Hospital Pharmacy." Blue Form, Questions 9-10. In support of her representation that she had used a Diet Drug, Claimant submitted various medical records from University Medical Center, along with a Medical Expenses Sheet from Winn Dixie Stores [sic] #76, reflecting that Claimant filled a prescription of thirty Fastin on (Medical Expenses Sheet).

8. The Final Determination stated that:

> Your GREEN Form facially demonstrates a Matrix Level condition. However, you have failed to supply the sufficient pharmacy records that prove you ingested Pondimin and/or Redux. Without adequate pharmacy records the Trust cannot further process your Claim. Accordingly, this Claim will not be subject to audit pursuant to Pretrial Order 2662.

Final Determination at 1.

ANALYSIS

1. Only persons who have ingested Pondimin and/or Redux are members of the Settlement Class and, if eligible, may submit a claim for Matrix Compensation Benefits. Settlement Agreement §II.B.

2. The Settlement Agreement provides that to sustain a claim for Matrix Compensation Benefits,

> each Class Member must submit documentary proof to the Trustees and or Claims Administrator(s) of the period of time for which the Diet Drugs Pondimin® and/or Redux™ were prescribed and dispensed to the Diet Drug Recipient.

Settlement Agreement §VI.C.2.d.

3. The Settlement Agreement contemplates that a Claimant will use pharmacy records or a physician's medical records as documentary proof of the period of ingestion of Diet Drugs, but recognizes that such records may be unobtainable. The Settlement Agreement thus provides that in those circumstances a Claimant may rely upon only the following documentation:

> If the pharmacy records and medical records are unobtainable, an affidavit under penalty of perjury from the prescribing physician or dispensing pharmacy identifying the Diet Drug Recipient, the drug(s) prescribed or dispensed, the date(s), quantity, frequency, dosage and number of prescriptions or refills of the Diet Drug(s).

Settlement Agreement §VI.C.2.d.(3).

4. Claimant argues that the following documents establish proof of Diet Drug use:

- A record from University Medical Center that includes the notation "3 mo. FEN/FEN then will have to examine switch to Redux if pt. desires to continue..." Record);
- The Medical Expenses Sheet documenting that Claimant received 30 Fastin on ; and
- A record from University Medical Center which

includes, under "Meds," "fenfen" (the Record).

5. These documents neither singly nor collectively, establish proof of Diet Drug Use.

6. The Record uses the generic term "FEN/FEN," and refers to "Redux," a Diet Drug, only as a prospective possibility "to examine/switch" for a future prescription. Section VI.C.2.d.(2) of the Settlement Agreement requires a medical record offered as proof of ingestion to "identify...the Diet Drug name..." The Settlement Agreement defines the Settlement Class as those persons who ingested Pondimin (Fenfluramine) and/or Redux (dexfenfluramine). Settlement Agreement §II.B. A reference to "FEN/FEN" is not necessarily a reference to Pondimin or Redux, the only Diet Drugs covered by the Settlement Agreement. Furthermore, the reference to Redux as a prospective possibility for a future prescription cannot be regarded as proof that Claimant had in fact been prescribed a Diet Drug. Finally, the Record does not indicate the dosage of whatever medication had been prescribed, as required by Section VI.C.2.d.(2).

7. The Medical Expenses Sheet documents only that Claimant was dispensed Fastin. That documentation does not establish that Claimant received Pondimin or Redux, as is specifically required by Section II.B of the Settlement Agreement. Furthermore, that Claimant was dispensed Fastin on the same day as the Record underlines the uncertainty over whether the reference in the Record to "FEN/FEN" was a reference to Diet Drugs.

8. The reference to "fenfen" in the record similarly fails to refer specifically to Pondimin or Redux as the medications prescribed to or ingested by Claimant.

9. Claimant argues further that medical records reporting valvular regurgitation establish Diet Drug use. That argument presumes that the Settlement Agreement's requirement of proof of ingestion would be satisfied whenever a claimant demonstrates a

Matrix Level condition of valvular regurgitation. There is no indication of any such intent in the Settlement Agreement. See 90th Report and Award of Arbitration. "[U]nder no aspect of the Settlement Agreement does the mere attestation that Claimant has conditions such as moderate mitral valve regurgitation and a 55% ejection fraction itself establish proof of ingestion." Id. At 6.

10. During the arbitration hearing Claimant argued that the Trust "knows" that Claimant ingested Diet Drugs because Claimant had received notice of the Class Action, and that received notice because was part of a "database" maintained by the Trust (or Wyeth) listing everyone who had been prescribed Diet Drugs. Claimant provided no foundation for this assertion of the existence of such a database and that such a database had been used to disseminate notice of the Class action. Information about the Class Action had been widely distributed and publicized, and anyone could request a copy of the notice. Moreover, the mere receipt of that notice is not evidence of ingestion of Diet Drugs, and does not represent an admission or concession by the Trust that proof of ingestion has been established. Nothing in the Settlement Agreement indicates such an intent. Acceptance of Claimant's argument, furthermore, would contradict the Settlement Agreement's explicit requirement of proof of ingestion.

11. Accordingly, Claimant has failed to establish a proof of ingestion of Diet Drugs as required under the Settlement Agreement.

CONCLUSION

1. The Trust's Final Determination is not clearly erroneous. The Claim thus should not be subject to audit pursuant to Pretrial Order 2662.

2. The Trust's Final Determination is Affirmed.

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DATE

ARBITRATOR