

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
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SHEILA BROWN, ET AL.	:	CIVIL ACTION NO.
v.	:	99-20593
AMERICAN HOME PRODUCTS CORPORATION	:	
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Appellant: _____	:	REPORT AND AWARD OF ARBITRATOR
Arbitration No.: _____	:	
Claim No.: 183/00	:	

FINDINGS OF FACT

1. On _____, the AHP Settlement Trust ("Trust") issued a Final Determination denying the claim of _____ for Matrix Compensation Benefits.
2. On _____, _____ filed an appeal from the denial of benefits by the Trust, requesting that the United States District Court ("Court") refer this matter to Arbitration.
3. On _____, the claim of _____ was referred by the Court to Arbitration pursuant to VI.C.4(h) & (i) or VI.D.1.(f) & (g) of the Nationwide Class Action Settlement Agreement with American Home Products Corporation.
4. On _____, an Arbitration Hearing was held concerning the claim of _____.

5. The Trust determined that [redacted] was not entitled to any Matrix Compensation Benefits on the basis that [redacted] failed to supply the documentation required to establish Diet Drug ingestion.

6. In Green Form, [redacted] indicates that [redacted] believes [redacted] is entitled to Matrix B-1 Benefits with severity level III. See Green Form, Part I, page 4, questions 5 and 6.

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, Section III.A.1; Memorandum and Pretrial Order No. 1415 (August 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, Section IV.A; Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62. Fund B provides funding for Matrix Compensation Benefits. See Settlement Agreement, Section IV.B; Memorandum and Pretrial Order No. 1415 (August 28, 2000) 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 claimants who: (1) have been diagnosed timely as FDA

Positive; (2) ingested the 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 claimants 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 the diet drugs for sixty (60) days or less; or (3) were diagnosed timely as FDA Positive, ingested the 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 the claimant's heart problems. See id. § IV.B.2.d.(2).

2. In determining the length of diet drug usage, Section VI.C.2.d of the Settlement Agreement requires the claimant to submit documentary proof concerning the period of time the diet drugs were ingested. Specifically, the claimant must submit pharmacy records documenting the claimant's name, prescribing physician information, diet drug name, date(s) prescribed, dosage and duration the drug was prescribed or dispensed. If a physician or weight loss clinic prescribed the diet drugs directly, or pharmacy records are unobtainable, a claimant must identify the prescribing physician, including the prescribing physician's name, address and telephone number, and submit a copy of the medical records prescribing or dispensing the drugs. If the pharmacy records and medical records are unobtainable, a claimant must submit an affidavit under penalty of perjury from the prescribing physician or dispensing pharmacy identifying the claimant, the drug prescribed or dispensed, the date(s), quantity, frequency, dosage and number of prescriptions or refills of the diet drug(s) to document ingestion. See id. § VI.C.2.d.(3).

3. Under the Settlement Agreement, the burden of proving diet drug ingestion remains with the claimant. See PTO 7779 at 6.

4. submitted a Green Form dated

5. In the Green Form, reference is made to an echocardiogram which was performed on I . (See Green Form, Part II, page 8, questions C.1 and C.2).

6. The Green Form submitted by reports moderate mitral valve regurgitation and Moderate aortic valve regurgitation. (See Green Form, Part II, page 8, question C.3). The Green Form also reports surgery to repair or replace the mitral valve. (See Green Form, Part II, page 11, question 9).

7. The answers to the questions in Part II of Green Form were completed by physician, I , a Board-Certified Cardiologist. (See Green Form, Part II, page 7, Section A).

8. submitted an amended Green Form, Part II, dated

9. In the amended Green Form, reference is made to an echocardiogram which was performed on . (See amended Green Form, Part II, page 8, questions C.1 and C.2).

10. The amended Green Form submitted by I reports severe mitral valve regurgitation and no aortic valve regurgitation. (See amended Green Form, Part II, page 8, question C.3). The amended Green Form also reports surgery to repair or replace the mitral valve. (See amended Green Form, Part II, page 11, question 9).

11. The answers to the questions in Part II of . amended Green Form were completed by physician, , M.D., a Board-Certified Cardiologist. (See Green Form, Part II, page 7, Section A).

12. [redacted] submitted a Blue Form dated [redacted].

13. According to questions 7, 8 and 9 of [redacted] Blue Form, [redacted] answered that [redacted] took Pondimin for 61 days or more.

14. [redacted] failed to submit any pharmacy records documenting the claimant's name, prescribing physician information, diet drug name, date(s) prescribed, dosage and duration the drug was prescribed or dispensed.

15. [redacted] submitted several handwritten documents which appear to be medical records from [redacted], from [redacted], in support of [redacted] claim that [redacted] took Pondimin for 61 days or more. However, the Trust found the records to be illegible, as was conceded by the Appellant during the Arbitration Hearing. Being illegible, the medical records do not support the prescribing or dispensing of diet drugs.

16. [redacted] also submitted a 2-page letter from [redacted] dated [redacted], in support of [redacted] claim that [redacted] took Pondimin for 61 days or more. However, the letter was not prepared under oath, there is no indication that [redacted] ever prescribed diet drugs for the Appellant, and the letter contains no information regarding the prescribing of diet drugs for Appellant. Therefore, this letter does not constitute an affidavit under penalty of perjury from the prescribing physician identifying the claimant, the drug prescribed or dispensed, the date(s), quantity, frequency, dosage and number of prescriptions or refills of the diet drug(s) to document ingestion. See Settlement Agreement, § VI.C.2.d.(3).

17. [redacted] also submitted four notarized letters to the Trust, from Appellant, from [redacted], from [redacted] and from [redacted]. The Trust was not required to consider these letters since the medical records were not unobtainable. See id. However, even if the medical records were unobtainable, these four

letters cannot support diet drug use as they are not pharmacy or medical records, nor are they affidavits from the prescribing physician or the dispensing pharmacy. See id.

18. The Trust determined that [redacted] failed to supply the required documentation needed to establish that [redacted] had ingested diet drugs. I conclude that the Trust's analysis and determination were not clearly erroneous.

CONCLUSIONS

1. The Claimant has not met [redacted] burden of providing documentary proof of diet drug ingestion to the Trust as required by the Settlement Agreement.
2. 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.
3. The final determination of the Trust is affirmed.

September 24, 2019


LUTHER E. WEAVER, III, ESQUIRE
ARBITRATOR