

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:	:	REPORT AND AWARD
Arbitration No:	:	OF ARBITRATOR
Claim No.: 183.00	:	

FINDINGS OF FACT

1. On _____ the AHP Settlement Trust (Trust) issued a Final Determination on the claim of _____ for Matrix Compensation Benefits (Matrix Benefits), denying Skinner's claim for Matrix Benefits.

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

3. _____ claim was then 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 _____ an Arbitration Hearing was held on _____ claim.

5. In her Statement of Case, requests Matrix Benefits based on medical symptoms and conditions allegedly caused by extended use of the Diet Drugs. indicates that she believes that she is entitled to Matrix Level I Benefits.

6. In support of her claim, submitted a Green Form and a report of an echocardiogram conducted on

Green Form indicates moderate mitral valve regurgitation and no aortic valve regurgitation. Green Form at question C.3. The report of the echocardiogram also indicates that she has moderate mitral valve regurgitation. Other than noting that has Class I New York Heart Association Functional Class symptoms (Green Form at question G.1), none of her submissions allege the existence of any other condition that would be relevant to qualification for Matrix Benefits under the Settlement Agreement. Id. at questions D through L.

ANALYSIS

1. The determination of whether a Class Member is entitled to Matrix Benefits under the Settlement Agreement requires a two-step analysis. First, the Class Member must be *eligible* for Matrix Benefits under Section IV.B.1 of the Settlement Agreement. Second, the Class Member must *qualify* for one of the five Matrix Levels identified in section IV.B.2.c et seq. of the Settlement Agreement. Settlement Agreement §§ IV.B.2.a and IV.B.2.c.

2. Because has been diagnosed as having moderate mitral regurgitation by a timely echocardiogram, she is eligible for Matrix Benefits. Thus, the issue on appeal is whether diagnosis of moderate mitral regurgitation is sufficient to qualify her for one of the five Matrix Level Benefits specified in Settlement Agreement Section IV.B.2.e et seq.

3. Matrix Level I Benefits are based on severe regurgitation of the mitral or aortic valve, or FDA Positive valvular regurgitation with bacterial endocarditis. Settlement Agreement §§ IV.B.c.(1)(a) and (b). FDA Positive valvular regurgitation is defined in the Settlement Agreement as mild or greater regurgitation of the aortic valve and/or moderate or greater regurgitation of the mitral valve. Id. § I.22. Matrix Level II Benefits must be based on moderate regurgitation of the mitral or aortic valve along with other complicating factors. Id. § IV.B.2.c.(2) et seq. Matrix Level III Benefits must be based on valvular surgery, the presence of certain indications for surgery or a stroke. Id. § IV.B.2.c.(3) et seq. Matrix Level IV Benefits require, in addition to other complicating factors, qualification for certain other Matrix Levels, surgery or stroke. Id. § IV.B.2.c.(4) et seq. Matrix Level V Benefits are awarded only in cases of death or, in addition to other complicating factors, qualification for certain other Matrix Levels. Id. § IV.B.2.c.(5) et seq.

4. does not qualify for Matrix Level I Benefits because she has not been diagnosed with either severe mitral or aortic valve regurgitation or FDA Positive valvular regurgitation coupled with bacterial endocarditis. As stated in question C.3 of the Green Form, was diagnosed with moderate mitral valve regurgitation and mild aortic valve regurgitation. She thus does not qualify for Matrix Level I Benefits under Section IV.B.2.c(1)(a), which requires severe aortic and/or mitral regurgitation. does not qualify for Matrix Level I Benefits under Section IV.B.2.c(1)(b) because Green Form question F.1 indicates that she had not been diagnosed with bacterial endocarditis contracted after her commencement of Diet Drugs use. Thus, despite being FDA Positive, does not qualify for Matrix Level I Benefits under subsection (b) because that condition is not coupled with bacterial endocarditis.

5. [REDACTED] also does not qualify for Matrix Benefits at any other Level. [REDACTED] does not qualify for Matrix Level II Benefits because she has not been diagnosed with any of the required complicating factors. [REDACTED] does not qualify for Matrix Level III Benefits because her condition has not resulted in valvular surgery or a stroke, and because she has not been diagnosed with ACC/AHA Class I indications for surgery. Similarly, [REDACTED] does not qualify for Matrix Levels IV or V Benefits because her condition has not resulted in death, valvular surgery or a stroke, and because she does not qualify for benefits under Matrix Levels I, II or III. Although [REDACTED] Green Form indicates that she has Class I New York Heart Association Functional Class symptoms (Green Form at question G.1), which are relevant under Matrix Level IV (Settlement Agreement Section IV.B.2.c(4)(c)(ii)), she fails to meet the other requirements necessary for Matrix Level IV benefits.

6. While [REDACTED] is eligible to receive Matrix Benefits under Section IV.B.1.a of the Settlement Agreement, her Green Form does not report any condition or combination of conditions that would qualify her at this time for Matrix Benefits at any of the five Matrix Levels established by Settlement Agreement § IV.B.2.c et seq. Should her condition change during the time period specified by the Settlement Agreement in a manner that would qualify her for Matrix Benefits, she may apply for Matrix Benefits at that time.

7. [REDACTED] argued in her Statement of the Case and in the Arbitration Hearing that because she had not agreed to any amendments to the Settlement Agreement, she should be qualified for Matrix Benefits. There were, however, no amendments to the portions of the Settlement Agreement relevant to the determination of [REDACTED] claim. Her argument is thus of no relevance to her appeal of the Final Determination.

CONCLUSION

1. The Trust's Final Determination denying claim for Matrix Benefits is not clearly erroneous as a matter of law.
2. The Trust's Final Determination is hereby affirmed.

10.14.05

DATE

ARBITRATOR