

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.	:	
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 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. [REDACTED] has appealed the Trust's Final Determination that she is not at this time entitled to Benefits, asserting in her Statement of the Case that she is entitled to Matrix Level II Benefits on the basis of medical symptoms and conditions she claims caused by her use of the Diet Drugs.

6. In support of her claim, [REDACTED] has submitted several Green Forms based on a [REDACTED] echocardiogram. [REDACTED] most recent Green Form (dated [REDACTED]) states that she suffers from moderate mitral valve regurgitation and mild aortic valve regurgitation. Green Form at question C.3. Further, as mentioned in her Statement of the Case, [REDACTED] Green Form indicates abnormal left ventricular end-systolic dimension. Green Form at question F.4. None of [REDACTED] other submissions allege the existence of any other condition that would be relevant to her entitlement to 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 [REDACTED] has been diagnosed as being FDA Positive, she is eligible for Matrix Benefits under Section IV.B.1.a. 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. Thus, the issue on appeal is whether [REDACTED] diagnosis

of moderate mitral valve regurgitation and mild aortic valve regurgitation with abnormal left ventricular end-systolic dimension are sufficient to qualify her for Matrix Level II or any other Level Benefits specified in Settlement Agreement § IV.B.2.c et seq.

3. Matrix Level I Benefits are awarded only in cases of 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). Matrix Level II Benefits are awarded only when the Green Form establishes 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 require 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. Green Form establishes that she meets the Level II prerequisite of moderate mitral valve regurgitation, but it does not establish that the presence of any of the complicating factors that would qualify her for Matrix Level II Benefits. Settlement Agreement § IV.B.2.c(2)(b) et seq.; Green Form at questions F.3, F.5, F.6, F.8. The Green Form does establish that she has abnormal left ventricular end-systolic dimension, but it does not establish that she has moderate or severe aortic valve regurgitation. Green Form at question C.3. That type of regurgitation would have to be present in order for the left ventricular end-systolic abnormality to qualify her for Matrix Level II Benefits. Settlement Agreement § IV.B.2.c(2)(a)(ii).

5. also does not qualify for Matrix Level I Benefits. The Green Form does not indicate that she has met the threshold requirement of diagnosis with severe mitral or aortic regurgitation, or FDA Positive valvular regurgitation coupled with bacterial endocarditis. was diagnosed with only moderate mitral valve regurgitation and mild aortic valve regurgitation. Green Form, at question C.3. Accordingly, she does not qualify for Matrix Level I Benefits under Section IV.B.2.c(1)(a), which requires severe aortic and/or mitral regurgitation. also does not qualify for Matrix Level I Benefits under Section IV.B.2.c(1)(b) because she had not been diagnosed with bacterial endocarditis contracted after her commencement of Diet Drugs use. Green Form at question F.1. Thus, despite being FDA Positive, does not qualify for Matrix Level I Benefits under either subsections (a) or (b).

6. 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.

7. also does not qualify for Matrix Levels IV or V benefits because, among other things, 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.

8. While 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.

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