

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 [redacted] the AHP Settlement Trust (Trust) issued a Final Determination on the claim of [redacted] for Matrix Compensation Benefits (Matrix Benefits), denying claim for Matrix Benefits.

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

3. [redacted] 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 [redacted] an Arbitration Hearing was held on [redacted] claim.

5. In her Statement of the Case, requests 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 several Levels of Matrix Benefits, including Levels I, II, and III.

6. In support of her claim, has submitted several Green Forms and echocardiogram reports. most recent Green Form, received by the Trust on is based on an echocardiogram conducted on . That Green Form reports that suffers from mild mitral valve regurgitation and mild aortic valve regurgitation. Green Form at question C.3. None of 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 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 diagnosis of mild mitral valve regurgitation and mild aortic valve

regurgitation, without further complicating factors, are sufficient to qualify her for Matrix Benefits under one of the five Matrix Levels identified in Settlement Agreement Section IV.B.2.c et seq.

3. Matrix Level I Benefits must be 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). 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 a stroke. Id. § IV.B.2.c.(4) et seq. Matrix Level V Benefits must be based on 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. was diagnosed with mild mitral valve regurgitation and mild aortic valve regurgitation. Green Form at question C.3. She thus does not qualify for Matrix Level I under Section IV.B.2.c(1)(a), which requires severe aortic or mitral valve regurgitation. 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 commencement of Diet Drugs use. Question F.1 of Green Form indicates that she does not suffer from bacterial endocarditis associated with valvular regurgitation. Thus, despite being FDA Positive, does not qualify for Level I benefits because that condition is not coupled with bacterial endocarditis.

5. also does not qualify for Matrix Benefits at any other Level. does not qualify for Matrix Level II benefits because she has not been diagnosed with moderate or severe regurgitation of the mitral or aortic valve or with any relevant complicating factors. does not qualify for Matrix Level III benefits because she has not experienced valvular surgery or a stroke, and because she has not been diagnosed with ACC/AHA Class I indications for surgery. Similarly, 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.

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