

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

IN RE: DIET DRUGS (PHENTERMINE /	:	MDL DOCKET NO.
FENFLURAMNE/DEXFENFLURAMINE)	:	2 :15 MD1203
PRODUCTS LIABILITY LITIGATION	:	
-----	:	
	:	
SHEILA BROWN, ET AL.	:	
v.	:	CIVIL ACTION
AMERICAN HOME PRODUCTS	:	99-20593
CORPORATION	:	
-----	:	
	:	
Appellant:	:	
Arbitration No.:	:	REPORT AND AWARD
Claim No.: 183/00	:	OF ARBITRATOR
	:	

FINDINGS OF FACT

1. On [REDACTED] the AHP Settlement Trust (“Trust”) issued a Final Determination, denying the claim of [REDACTED] (“Claimant”) for Matrix Compensation Benefits.
2. On [REDACTED] an appeal was filed on behalf of [REDACTED] from [REDACTED] the decision of the Trust denying Matrix A Level II Benefits, requesting that the United States District Court (“Court”) refer this matter to Arbitration. The appeal was assigned docket number [REDACTED].
3. On [REDACTED] the claim of [REDACTED] was referred by the Court to Arbitration pursuant to VI. C. 4 (h) & (i) of the Nationwide Class Action Settlement Agreement with American Home Products Corporation.
4. On [REDACTED] an Arbitration Hearing was held concerning the claim of [REDACTED].

ANALYSIS

1. In support of her claim, submitted three GREEN Forms. One is undated, one was received by the Trust on and one was received on . The GREEN Form was completed by a Board-Certified Cardiologist, and was the only one of the three GREEN Forms to comply with the requirement that it be completed by a Board-Certified Cardiologist or a Board-Certified Cardiothoracic Surgeon. The GREEN Form [hereinafter "GREEN Form"] was the basis of the Trust's decision and was accordingly the one that was at issue in the Arbitration. In the GREEN Form, Claimant sought benefits pursuant to Matrix A Level I. *See* GREEN Form, Question 6, and *see* Settlement Agreement Section IV.B.2.c.(1).

2. In order to receive Matrix Compensation, a Claimant must be both eligible and qualified to receive Matrix-Level Benefits. In order to be eligible, a Diet Drug Recipient must fit within one of two categories: (1) Diet Drug Recipients diagnosed by a Qualified Physician as FDA Positive or as having mild mitral regurgitation by an echocardiogram performed on or before January 3, 2003, provided the Diet Drug Recipient registered for settlement benefits by May 3, 2003; or (2) Diet Drug Recipients who by September 30, 2005 have been diagnosed by a Qualified Physician as having Endocardial Fibrosis and who have registered for Fund B Benefits by January 31, 2006. *See* Settlement Agreement, Section IV.B.1. In order to be diagnosed as FDA Positive, a Diet Drug Recipient must suffer mild or greater aortic valve regurgitation and/or moderate or greater mitral valve regurgitation. *Id.* at Section I.22.

3. There appears to be no dispute that Claimant was a diet drug recipient. The Claimant's PINK and BLUE Forms state that ingested Pondimin (Fenfluramine) for

sixty-one days or more. This is supported by [REDACTED] which show that [REDACTED] was dispensed Pondimin on four occasions, starting on [REDACTED] and ending on [REDACTED]. During the Arbitration Hearing, [REDACTED] stated that she had ingested diet drugs for approximately ten months. This length of ingestion is not supported by the applicable pharmacy records, but the absence of additional records is immaterial.

[REDACTED] pharmacy records support her claim that she ingested diet drugs for sixty-one days or more.

4. In [REDACTED] GREEN Form, Dr. [REDACTED] stated that his answers were based on an [REDACTED] Echocardiogram. Based on that echocardiogram, [REDACTED] stated that [REDACTED] suffered from mild mitral regurgitation and mild aortic regurgitation. *See* GREEN Form Questions C.3.A. and C.3.B. This conclusion is confirmed by [REDACTED] and [REDACTED] Echocardiogram Reports, though according to the GREEN Form, Dr. [REDACTED] relied only on the latter. Based on the GREEN Form and supporting Echocardiogram Reports, there is a sufficient basis to conclude that [REDACTED] is FDA positive and is therefore eligible to receive Matrix-Level benefits.

5. In addition to being eligible for Matrix benefits, in order to receive Matrix compensation a claimant must also have a qualifying disease. At the time [REDACTED] submitted her claim, she sought Benefits at Matrix Level I. Matrix Level I is severe left sided valvular heart disease without complicating factors, which is defined as severe aortic regurgitation and/or severe mitral regurgitation or FDA Positive valvular regurgitation with bacterial endocarditis contracted after commencement of diet drug use. Settlement Agreement, Section IV.B.2.c.(1).

GREEN Form states that she did not suffer from severe aortic regurgitation, severe mitral regurgitation or FDA Positive valvular regurgitation with bacterial endocarditis. See GREEN Form, Questions C.3.A., C.3.B. and F1. Therefore, GREEN Form does not establish that she is qualified to receive Matrix-Level benefits. During the Arbitration Hearing, expressed a desire to have her claim considered for Matrix B benefits. The Arbitration process is limited to whether the Trust acted in accordance with the terms of the Settlement Agreement in evaluating the material submitted by claimant. No new evidence may be considered. See Rule 9 of the Rules Governing Arbitration Process, Pretrial Order No 2153. Accordingly, I am not permitted to consider request to recalculate her qualification for Matrix-Level benefits on the B Matrix rather than on the A Matrix.

6. Echocardiogram Report (in which she is diagnosed as suffering from mild mitral regurgitation and mild aortic regurgitation) along with the filing of her BLUE Form in render her an eligible class member (though not now qualified for benefits). If develops conditions in the future that entitle her to recovery of Matrix Benefits, she is entitled to apply for Matrix Benefits by submitting a new GREEN Form between now and December 31, 2015.

CONCLUSIONS

1. The findings of the Trust are not clearly erroneous, as set forth in Rule 5 of the Rules Governing Arbitration Process.
2. Based upon the findings above, the claimant is not currently entitled to Matrix-Level Benefits because the conditions that are required for recovery of Matrix Level I, II, III, IV or V Benefits are not present in this claim. (Settlement Agreement, Sections IV.B.2.c. (1), (2), (3), (4) and (5)).

REDACTED

Accordingly, based on all of the above, I find that
entitled to any Matrix Compensation Benefits.

is not presently

October 25, 2005

DATE

Arbitrator