

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

IN RE: DIET DRUGS (PHENTERMINE /
FENFLURAMNE/DEXFENFLURAMINE)
PRODUCTS LIABILITY LITIGATION

MDL DOCKET NO.
2 :15 MD1203

SHEILA BROWN, ET AL.
v.
AMERICAN HOME PRODUCTS
CORPORATION

CIVIL ACTION
99-20593

Appellant:
Arbitration No.:
Claim No.: 183/00

REPORT AND AWARD
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 the decision of the Trust denying Matrix A Level I 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. Claimant seeks benefits pursuant to Matrix A Level I. *See* Settlement Agreement Section IV.B.2.c.(1).

2. In order to receive compensation from either Matrix A or Matrix B, 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. In her BLUE Form, _____ states that she ingested Pondimin (Fenfluramine) for sixty-one days or more. This is confirmed by pharmacy records which reflect that _____ was dispensed Pondimin (Fenfluramine) on eight dates starting on _____ and ending on _____.

4. _____ claim for compensation is supported by a GREEN Form, completed by Board Certified Cardiologist _____. The GREEN Form is in turn supported by an echocardiogram report dated _____. _____ file also contains an earlier echocardiogram report, dated _____. _____ Questions C.3.A. and C.3.B.

of GREEN Form state that suffered from mild mitral and mild aortic regurgitation. A diagnosis of mild mitral regurgitation is consistent with claimant's echocardiogram reports, both of which state that suffered from mild mitral regurgitation. Neither echocardiogram contains a finding that she suffered from any form of aortic regurgitation. This omission is not significant. Because registered for settlement benefits by May 3, 2003, the existence of mild mitral regurgitation is sufficient to render her 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. seeks 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, is not now qualified to receive Matrix Level I benefits.

6. During the Arbitration Hearing, expressed concerns regarding the cost and availability of health insurance. That issue is not properly raised in Arbitration. See Rule 5 of the Rules Governing Arbitration Process, Pretrial Order No 2153. In addition, stated that since submission of her GREEN Form her aortic valve has deteriorated, and she therefore expressed concern about her future health. The Arbitration process is limited to whether the Trust properly evaluated the material submitted by claimant in accordance with the terms of the Settlement Agreement. No new evidence may be considered. *Id.*, Rule 9.

Accordingly, I am not permitted to consider . description of the current state of her aortic valve. It is possible, though not to be hoped, that in the future will develop conditions that will entitle her to recovery of Matrix Benefits. Because has registered the fact that she suffers from mild mitral valve regurgitation, she is an eligible class member (though not now qualified for benefits). If she develops conditions in the future that qualify her for recovery of Matrix Benefits, she is entitled between now and December 31, 2015, to apply for Matrix Benefits by submitting a new GREEN Form.

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)).

Accordingly, based on all of the above, I find that is not presently entitled to any Matrix Compensation Benefits.

October 25, 2005

DATE

Arbitrator