

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.	:	CIVIL ACTION
AMERICAN HOME PRODUCTS CORPORATION	:	99-20593
-----	:	
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 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) and GREEN Form Questions 5 and 6.

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. In her BLUE Form, \_\_\_\_\_ states that she ingested Pondimin (Fenfluramine) for sixty-one days or more. *See* BLUE Form, Questions 7 and 8. This is confirmed by pharmacy and physician records which reflect that \_\_\_\_\_ was dispensed 30 Pondimin (Fenfluramine) on four occasions between \_\_\_\_\_ and \_\_\_\_\_

4. \_\_\_\_\_ claim for compensation is supported by a GREEN Form, \_\_\_\_\_ completed by \_\_\_\_\_ a Board Certified Cardiologist. \_\_\_\_\_ stated that answers in \_\_\_\_\_ GREEN Form were based on an echocardiogram report dated \_\_\_\_\_ file also contains an echocardiogram report dated \_\_\_\_\_ In answer to Questions C.3.A. and C.3.B. of \_\_\_\_\_ GREEN Form, \_\_\_\_\_ stated that

suffered from mild mitral regurgitation and mild aortic regurgitation. file  
also contains a GRAY Form, received by the Trust on On  
GRAY Form, Board-Certified Cardiologist stated that based on a  
echocardiogram, it was his conclusion, too, that suffered from mild mitral and  
mild aortic regurgitation. See GRAY Form Questions 5, 6.a and 6.b. Neither nor  
conclusion is supported by echocardiogram reports. Both her  
and echocardiogram reports state that she had no mitral  
regurgitation and no aortic regurgitation. This lack of corroboration is immaterial, however,  
because during the Arbitration Hearing counsel for the Trust stated that the Trust did not dispute  
GREEN Form assertion that suffered from both mild mitral and mild  
aortic regurgitation and that she is therefore eligible for Matrix compensation.

5. Even if were found to be eligible for Matrix benefits, in order to  
receive Matrix compensation a claimant must also have a qualifying disease. seeks  
Benefits at Level I of Matrix A (the full compensation Matrix). 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. GREEN Form does state that she has an ejection fraction of  
between 50% and 60%, and Class II New York Heart Association Functional symptoms. *Id.* at  
Questions F.8. and G. These conditions alone, however, do not qualify for Matrix-

Level benefits, and her GREEN Form does not state that she suffers from any other conditions that would qualify her for Matrix compensation. *See id.* at Questions F-L.

7. During the Arbitration Hearing, expressed concern about shortness of breath. The Trust, however, is legally permitted to compensate people only for conditions included in the Settlement Agreement. While shortness of breath is lamentable, it is not a condition for which the Settlement Agreement provides compensation. *See* Settlement Agreement, Section IV.B.2.(c).

During the Arbitration Hearing, also expressed concern about increased out-of-pocket expenses she has faced, particularly since her prior health insurer went out of business. The Settlement Agreement, as amended, established two funds, Fund A and Fund B. Settlement Agreement, Section III.A.1; Memorandum and Pretrial Order No. 1415 (August 28, 2000). Fund A provides compensation for certain out-of-pocket expenses and other specified benefits, including certain drug and echocardiogram reimbursement. Settlement Agreement, Section IV.A; Memorandum and Pretrial Order No. 1415 (August 28, 2000). Fund B provides compensation for specified physical injuries if the claimant is entitled to Matrix benefits. *Id.* The arbitration appeals process applies only to determinations made regarding Fund B. *See* Rule 5, Rules Governing Arbitration Process, Pretrial Order No. 2153. Thus, I lack jurisdiction to consider claims about out-of-pocket expenses.

8. Because the Trust does not dispute eligibility for Matrix-Level benefits, and because she registered for settlement benefits by May 3, 2003, if condition should progress to a Matrix-Level condition, she has until December 31, 2015 to submit a Claim for Matrix Compensation 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.

11/29/05

DATE

Arbitrator