

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
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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 compensation for ingesting Pondimin (Fenfluramine) and Redux (Dexfenfluramine) (hereinafter “diet drugs”). *See* Settlement Agreement Sections I.21. and IV.B.2.c.

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) and Redux (Dexfenfluramine) for sixty-one days or more. *See* BLUE Form, Questions 7 and 8.

_____ pharmacy records confirm that she was dispensed Redux (Dexfenfluramine) on four occasions in _____ but the records do not show in what months the diet drugs were dispensed. During the Arbitration Hearing, however, the Trust stated that it did not dispute that _____ diet drug usage exceeded 60 days.

4. _____ claim for compensation is supported by a GREEN Form,

completed by a Board Certified Cardiologist. Question C.3.A. of GREEN Form states that she suffered from mild mitral regurgitation. The GREEN Form states that it was based on a echocardiogram. file does not contain the echocardiogram report, but it does contain an echocardiogram report dated The echocardiogram report confirms that suffered mild mitral regurgitation. Thus, because was diagnosed with mild mitral regurgitation by an echocardiogram performed on or before January 3, 2003, and because she registered for settlement benefits by May 3, 2003, she is 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 unspecified Matrix-Level Benefits. 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.

Matrix Level II benefits must be based on moderate regurgitation of the mitral or aortic valve along with other complicating factors, including but not limited to, abnormal left ventricular end-systolic dimension. Settlement Agreement, Section IV.B.2.c.(2). Matrix Level III benefits must be based on valvular surgery, the presence of certain indications for surgery, or a stroke. *Id.*, Section IV.B.2.c.(3). Matrix Level IV benefits require, in addition to other

complicating factors, qualification for certain other Matrix levels, surgery or a stroke. *Id.*, Section IV.B.2.c.(4). GREEN Form does state that she suffers from Class I New York Heart Association Functional Class Symptoms. *See* GREEN Form, Question G.1. That condition is significant only if claimant is seeking benefits at Matrix Level IV *and* suffers from the corresponding Matrix Level IV medical conditions. *See* Settlement Agreement, Section IV.B.2.c.(4)(c). did not allege qualification for Matrix Level IV benefits, and her physician did not indicate that she suffers from Matrix Level IV medical conditions. *See* GREEN Form, Questions F-K. Matrix Level V benefits must be based on death, Endocardial Fibrosis with complicating factors, or qualification for other Matrix levels with additional complicating factors. *Id.*, Section IV.B.2.c.(5). Claimant does not allege that she suffers from any of the conditions specified in Matrix Levels II, III, IV or V. Therefore, although she is eligible, claimant is not now qualified to receive benefits at Matrix Levels II, III, IV or V.

6. Because has registered the fact that she suffers from mild mitral valve regurgitation, she remains an eligible class member. 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
any Matrix Compensation Benefits.

is not presently entitled to

11/29/05

DATE