

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 :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 [redacted] 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]. At the Arbitration Hearing, [redacted] was represented by [redacted].

ANALYSIS

1. Although Claimant initially sought benefits pursuant to Matrix A, Level I (*see* GREEN Form, Questions 5 and 6), during the Arbitration Hearing claimant confirmed that her appeal seeks benefits pursuant to Matrix B, Level I. *See* Settlement Agreement Section IV.B.2.c.(1); *see also* Appellant's Statement of the Case, dated

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. *See* BLUE Form, Questions 7 and 8. This is confirmed by pharmacy and physician records which reflect that was prescribed Pondimin (Fenfluramine) at a dose of one pill per day starting on and ending on

4. claim for compensation is supported by a GREEN Form, completed by a Board Certified Cardiologist. The GREEN Form is in turn

supported by an echocardiogram report dated [REDACTED] file contains three additional echocardiogram reports: one dated [REDACTED] one dated [REDACTED] and one dated [REDACTED]. Question C.3.A. of [REDACTED] GREEN Form states that [REDACTED] suffered from mild mitral regurgitation. A diagnosis of mild mitral regurgitation is consistent with findings reported on claimant's [REDACTED] and [REDACTED] echocardiogram reports. Because [REDACTED] was diagnosed with mild mitral regurgitation before January 3, 2003, and 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. [REDACTED] seeks Benefits at Level I of Matrix B (the reduced compensation Matrix) based on three factors:

- 1) she was diagnosed with mild mitral regurgitation;
- 2) she suffers from abnormal left atrial supero inferior systolic or abnormal left atrial antero-posterior systolic dimension; and
- 3) the Appendix to the GREEN Form states that Diet Drug Recipients who are eligible for matrix payments and who were diagnosed as having Mild Mitral Regurgitation receive payments on Matrix B-1.

6. Diagnosis of Mild Mitral Regurgitation.

During the Arbitration Hearing, claimant stressed the fact that the Settlement Agreement states that "The following Class Members . . . shall be entitled to the compensation benefits from Fund B ("Matrix Compensation Benefits"): Diet Drug Recipients who have been diagnosed by a Qualified Physician as . . . having Mild Mitral Regurgitation". In further support of her position, claimant emphasized the Settlement Agreement's use of the word "shall". See Settlement Agreement, Section IV.B.1.a.

Section IV.B.1 does not provide entitlement to Matrix compensation. It defines those *eligible* to receive Matrix compensation. A diagnosis of mild mitral regurgitation is indeed sufficient to render a claimant eligible for Matrix-level benefits, but it is sufficient only for eligibility. Section IV.B.2 specifies which eligible diet drug recipients are in turn qualified to receive Matrix-Level benefits. Settlement Agreement, Section IV.B.2.b. The only eligible diet drug recipients who are qualified to receive Matrix compensation are those who suffer from severe valvular heart disease as defined in Matrix Levels I through V. *See* Settlement Agreement Section IV.B.2.c.(1)-(5).

Claimant seeks benefits pursuant to Matrix B, 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.

7. Abnormal left atrial supero inferior systolic or abnormal left atrial antero-posterior systolic dimension.

cardiologist, answered "yes" to GREEN Form Question F.5., which asks, "To the best of your knowledge, has the above-named Diet Drug Recipient developed the following conditions after the date on which the patient first used Pondimin and/or Redux: Abnormal left atrial supero inferior systolic dimension >5.3 cm (apical four chamber view) or abnormal left atrial antero-posterior systolic dimension >4.0 cm (parasternal long-axis view) measured by 2-D directed M-mode or 2-D echocardiography with normal sinus rhythm

using sites of measurement recommended by the American Society of Echocardiography?"

Claimant asserts that this fact, along with _____ conclusion that she suffered from mild mitral regurgitation, qualifies her for Matrix-level benefits. A positive response to Question F.5. qualifies a Diet Drug recipient for Matrix-level benefits only if the claimant first demonstrates that she suffered from moderate or severe mitral regurgitation. *See* Settlement Agreement, Section IV.B.2.c.(2)(b)(ii). Since claimant's cardiologist did not state that she suffered from moderate or severe mitral regurgitation (see GREEN Form, Question C.3.A.), claimant's abnormal left atrial supero inferior systolic dimension or abnormal left atrial antero-posterior systolic dimension does not alone qualify her for Matrix-Level benefits.

8. Reference in Appendix to Eligibility for Matrix B-1.

Claimant is correct that the Appendix to the GREEN Form states, in part:

D. The circumstances which determine whether "Matrix A-1" or "Matrix B-1" is applicable are as follows:

2. For Matrix B-1: Diet Drug Recipients who are eligible for matrix payments and to whom one or more of the following conditions apply, receive payments on Matrix B-1:
 - For claims as to the mitral valve, Diet Drug Recipients who were diagnosed as having Mild Mitral Regurgitation (regardless of the duration of ingestion of Pondimin and/or Redux). Appendix to GREEN Form, Paragraph D.2.

This provision, however, specifies the circumstances that determine whether a qualifying illness is compensated pursuant to the "A" Matrix or the "B" Matrix. It is not a statement of entitlement to a specific amount of compensation, nor indeed to any compensation, unless the Diet Drug Recipient developed serious levels of valvular heart disease, thereby qualifying for

one of the five levels of Matrix compensation. See Settlement Agreement, Section IV.B.2.c.(1)-(5) and Appendix to GREEN Form, paragraph B.

9. Matrix Level II benefits require moderate regurgitation of the mitral or aortic valve along with other complicating factors, including but not limited to, pulmonary hypertension or 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). 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 these conditions. Therefore, claimant is not now qualified to receive benefits at Matrix Levels II, III, IV or V.

10. It is possible, though not to be hoped, that in the future [redacted] will develop conditions that will entitle her to recovery of Matrix Benefits. Because [redacted] 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 [redacted] 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