

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.
: 2:15MD1203
:

SHEILA BROWN, ET AL.

: CIVIL ACTION NO.

v.

: 99-20593
:

AMERICAN HOME PRODUCTS
CORPORATION

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

: REPORT AND AWARD
: OF ARBITRATOR
:

FINDINGS OF FACT

1. On [REDACTED] the AHP Settlement Trust ("Trust") denied the claim of [REDACTED] for Matrix Compensation Benefits.

2. On [REDACTED] filed an appeal from the denial of benefits by the Trust, requesting that the United States District Court ("Court") refer this matter to Arbitration.

3. On [REDACTED] the claim of [REDACTED] was referred by the Court to Arbitration pursuant to VI.C.4(h) & (i) or VI.D.1.(f) & (g) 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

FUND A ISSUES NOT COVERED BY ARBITRATION PROCESS

1. The Settlement Agreement provides for two funds, Funds A and B, to be established to provide benefits to class members. (Settlement Agreement, Section III.A.1; Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62). Fund A provides funding only for non-Matrix specified benefits and expenses, e.g., drug and echocardiogram reimbursement. (Settlement Agreement, Section IV.A; Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62). Fund B provides funding for Matrix Benefits. (Settlement Agreement, Section IV.B; Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62).

2. The arbitration appeals process only covers determinations made regarding Fund B, specifically, the eligibility of claimants to receive Matrix Compensation Benefits and/or the amount of Matrix Compensation Benefits they are entitled to receive.

3. In her statement of the case, requests benefits based on alleged medical symptoms and conditions allegedly caused by the use of the Diet Drugs. On her Green form, indicates that she believes she is entitled to Level II Benefits on the Fund B Matrix. (Green Form, Part I, page 4, questions 5 and 6).

FUND B MATRIX ELIGIBILITY AND QUALIFICATION

4. The Pharmacy records of indicate that she took Pondimin and Redux for 61 days or more.

5. According to questions 7, 8 and 9 of Blue Form, dated answered that she took Pondimin and Redux for 61 days or more.

6. submitted a Green Form dated

7. In the Green Form, reference is made to an echocardiogram which was performed on _____ (See the Green Form, Part II, page 8, at questions C.1 and C.2).

8. The Green Form submitted by _____ reports mild mitral valve regurgitation and mild aortic valve regurgitation. (See Green Form, Part II, page 8, question 3).

9. Both _____ echocardiogram and Green Form indicate that she is FDA positive. (Settlement Agreement, Section 1.22(a)).

10. The answers to the questions in Part II of _____ Green Form were completed by her physician, _____ a Board-Certified Cardiologist. (See Green Form, Part II, page 7, Section A).

CONCLUSIONS

1. The Trust findings are not clearly erroneous as set forth in Rule 5 of the Rules Governing the Arbitration Process.

2. The Settlement Agreement discusses the difference between eligibility as a class member and qualification for benefits availability based upon the severity of the disease. (Settlement Agreement, Section 1V.B.1 and B.2).

3. Based upon the above findings, _____ is not qualified for any Matrix Benefits because:

a. Matrix Level I Benefits must be based on severe aortic regurgitation and/or on severe mitral regurgitation, neither of which conditions exist in this case, (Id., Section IV.B.2.c(1)(a)), or based on other conditions that are not present in this case. (Id., Section IV.B.2.c.(1)(b)).

b. Matrix Level II Benefits must be based, at a minimum, on moderate or severe aortic regurgitation, or on moderate or severe mitral regurgitation, neither of which condition exist in this case. (Id., Section IV.B.2.c.(2)).

c. The conditions that are prerequisite to recovery of Matrix Levels III, IV and V Benefits are also not present in this claim. (Id., Section IV.B.2.c(3), (4) and (5)).

4. Based upon all of the above, the Appellant is not entitled to any Matrix Benefits.

5. may later qualify for Matrix Level benefits if her condition becomes more severe in ways that are defined by the Settlement Agreement. If an echocardiogram, taken and reviewed by a qualified physician as defined by the Settlement Agreement, reveals a Matrix Level condition, then may apply for benefits between now and December 31, 2015 by following the procedures stated in the Settlement Agreement which would include the submission of a new Green Form.

11/30/05