

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

IN RE: DIET DRUGS (PHENTERMINE/ : MDL DOCKET NO.
FENFLURAMINE/DEXFENFLURAMINE) : 2:15MD1203
PRODUCTS LIABILITY LITIGATION :
: :
-----: :
: :
SHEILA BROWN, ET AL. :
v. :
AMERICAN HOME PRODUCTS CORPORATION : CIVIL ACTION NO.
: :
-----: 99-20593
: :
Appellant: : REPORT AND AWARD
Arbitration No: : OF ARBITRATOR
Claim No.: 183.00 :

FINDINGS OF FACT

1. On December 16, 2004 the AHP Settlement Trust (Trust) issued a Final Determination on the claim of for Matrix Compensation Benefits (Matrix Benefits), denying claim for Matrix Benefits.
2. On filed an appeal from the Final Determination to this Court requesting that the United States District Court (Court) refer this matter to Arbitration.
3. On 2005 the Court referred s claim to Arbitration pursuant to sections VI.C.4.(h) & (i) or VI.D.1.(f) & (g) of the Nationwide Class Action Settlement Agreement with American Home Products Corporation (Settlement Agreement).
4. On an Arbitration Hearing was held on s claim.

5. In her Green Form dated January 16, 2003 (Green Form), requests Matrix Benefits based on medical symptoms and conditions allegedly caused by extended use of the Diet Drugs. indicates that she believes that she is entitled to Matrix A, Level II Benefits. Green Form at 8

6. 's Green Form indicated no mitral valve regurgitation and mild aortic valve regurgitation. Green Form at question C.3.b. In support of her claim, submitted a report of an echocardiogram conducted on . The report of that echocardiogram also indicated no mitral valve regurgitation and mild aortic valve regurgitation. None of her submissions allege the existence of any other condition that would be relevant to qualification for Matrix Benefits under the Settlement Agreement. Green Form at questions D through L.

7. In her Statement of the Case, dated and during the arbitration hearing, focused on her diagnosis of aortic sclerosis, which she believes entitles her to Matrix Benefits. In particular, she focused on Question D.3 of her Green Form. That question requires the attesting physician to indicate whether, after review of the echocardiogram tape or disk, the claimant had aortic sclerosis at the time first diagnosed with mild or greater aortic regurgitation, if the claimant was 60 or older at that time. Apparently misunderstanding the question, 's attesting physician answered this question as "yes," even though was not 60 or older at the time she was diagnosed with aortic sclerosis. Subsequently, in response to a Deficiency Notice from the Trust dated had her attesting physician provide a revised response to question D.3, indicating that the correct answer was "no." Appellant's Statement of the Case at 2. This change in an answer to s Green Form was not accompanied by a declaration under penalty of perjury from her attesting physician.

ANALYSIS

1. The determination of whether a Class Member is entitled to Matrix Benefits under the Settlement Agreement requires a two-step analysis. First, the Class Member must be eligible for Matrix Benefits under Section IV.B.1 of the Settlement Agreement. Second, the Class Member must qualify for one of the five Matrix Levels identified in Section IV.B.2.c et seq. of the Settlement Agreement. Settlement Agreement §§ IV.B.2.a and IV.B.2.c. has claimed qualification for Matrix Level II Benefits on Matrix A.

2. Because has been diagnosed as having mild aortic regurgitation by a timely echocardiogram, she is FDA Positive and hence eligible for Matrix Benefits under Section IV.B.1.a of the Settlement Agreement. Thus, the issue on appeal is whether diagnosis of mild aortic regurgitation and no mitral valve regurgitation is sufficient to qualify her for Matrix Benefits under Matrix Level II on Matrix A, as specified in the Section IV.B.2.c et seq. of the Settlement Agreement.

3. Matrix Level I Benefits must be based on either: (1) moderate or severe regurgitation of the aortic valve coupled with (a) pulmonary hypertension, (b) left ventricular end-systolic dimensions greater than 50 mm, (c) left ventricular end-diastolic dimensions greater than 70 mm or (d) ejection fractions less than 50%; or (2) moderate or severe regurgitation of the mitral valve coupled with (a) pulmonary hypertension, (b) left atrial superior-inferior systolic dimension greater than 5.3 cm, (c) left atrial antero-posterior systolic dimension greater than 4.0 cm, (d) left ventricular end-systolic dimension greater than or equal to 45 mm, (e) ejection fraction of less than or equal to 60%, (f) or arrhythmias. Settlement Agreement, § IV.B.2.c.(2)(a) & (b).

4. Because 's Green Form establishes that she has only mild

aortic valve regurgitation, she does not meet the threshold requirement of moderate or severe aortic valve regurgitation under Section IV.B.2.c.(2)(a) of the Settlement Agreement. Her Green Form also indicated that [redacted] has no mitral valve regurgitation. Therefore, [redacted] also does not meet the threshold requirement for Matrix Level II Benefits for moderate or severe mitral valve regurgitation under Section IV.B.2.c(2)(b) of the Settlement Agreement. There is also no indication on the Green Form of any of the other conditions specified under Section IV.B.2.c.(2) that would qualify her for Matrix Level II Benefits.

5. [redacted] argued in her Statement of the Case and during the arbitration hearing that because she was diagnosed with aortic sclerosis, and was under the age of 60 at the time of being diagnosed, she is entitled to benefits on the A Matrix. This argument is based on a misreading of the Settlement Agreement. The presence of aortic sclerosis in a person 60 years of age or older is merely a reduction factor -- it reduces a claim, otherwise payable, from the A Matrix to the B Matrix. Settlement Agreement § IV.B.2.d. Under the Settlement Agreement the presence of aortic sclerosis in a claimant under 60 years of age has no relevance to whether that claimant is qualified for Matrix Benefits. As stated in the preceding paragraph, [redacted] does not meet the conditions for threshold qualification for Matrix Level II Benefits on Matrix A; the presence or non-presence of a reduction factor such as aortic sclerosis is thus irrelevant to her claim.

6. Because her diagnosis of aortic sclerosis is irrelevant to her claim, it is also irrelevant whether her attesting physician originally answered Green Form question D.3 correctly. It is thus also not necessary to determine whether the corrected response to the question may be considered by the Trust in the absence of a new declaration under penalty of perjury.

7. is not qualified for Matrix Level II Benefits.

CONCLUSION

1. The Trust's Final Determination denying claim for Matrix Benefits is not clearly erroneous as a matter of law.
2. The Trust's Final Determination is hereby affirmed.

11.30.05
DATE

ARBITRATOR