

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.:

REPORT AND AWARD
OF ARBITRATOR

FINDINGS OF FACT

1. On [REDACTED] the AHP Settlement Trust ("Trust") made a final determination that [REDACTED] qualified for Matrix Compensation Benefits on Matrix B, with a date of diagnosis of [REDACTED] but denied the claim of [REDACTED] for Matrix Compensation Benefits on Matrix A, and denied the claim of [REDACTED] that the correct date of diagnosis was [REDACTED]

2. On [REDACTED] [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 Tuesday, _____ an Arbitration Hearing was held concerning the claim of _____

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 his statement of the case, _____ requests benefits based on alleged medical symptoms and conditions allegedly caused by the use of the Diet Drugs. On his Green form, _____ indicates that he believes he is entitled to Level V Benefits on Matrix B. (Green Form, Part I, page 4, questions 5 and 6). On his Green form, _____ indicates that he believes that the proper date of diagnosis is _____ the date of the echocardiogram relied upon. (Green Form, Part I, page 4, question 7).

FUND B MATRIX ELIGIBILITY AND QUALIFICATION

4. The Pharmacy records of indicate that he took Redux for 61 days or more.

5. submitted a Blue Form dated

6. According to questions 7, 8 and 9 of Blue Form, answered that he took Redux for 61 days or more. (See the Blue Form, dated , page 4, at questions 7, 8 and 9).

7. submitted a Green Form dated

8. 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).

9. The Green Form submitted by reports severe mitral valve regurgitation and no aortic valve regurgitation. (See Green Form, Part II, page 8, question 3).

10. Both echocardiogram and Green Form indicate that he is FDA positive. (Settlement Agreement, Section 1.22(a)).

11. The Green Form submitted by also reports that suffers from mitral valve prolapse and from mitral angular calcification. (See Green Form, Part II, page 9, questions D-7 and D-9).

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

13. submitted a Gray Form dated , which makes reference to an echocardiogram performed on (See Gray Form, page 1, questions 4 and 5).

14. The Gray Form submitted by reports severe mitral valve regurgitation and no aortic valve regurgitation. (See Gray Form, page 2, question 6 and Echocardiography Report).

15. The answers to the questions on page 1 of Gray Form were completed by a Board-Certified Cardiologist. (See Gray Form, page 1, questions 1 and 2).

16. The Operative Report of indicates that surgery was performed on to replace the mitral valve.

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 sets forth criteria for determining whether a claim is payable on Matrix A or Matrix B. (Settlement Agreement, Section IV.B.2b.d). If certain medical conditions are present, as outlined in the Settlement Agreement, the claim shifts from Matrix A to Matrix B.

3. Among the medical conditions which would place a claim on Matrix B are mitral valve prolapse (Settlement Agreement, Section IV.B.2b.2.(2)(c)(ii)(b)) and mitral angular calcification (Settlement Agreement, Section IV.B.2b.2.(2)(c)(ii)(d)). The presence of either condition, among others, would place the claim on Matrix B.

4. Since the Green Form submitted by reports that he suffers from mitral valve prolapse and from mitral angular calcification, (See Green Form, Part II, page 9, questions D-7 and D-9), is entitled to Matrix B benefits only.

5. During the arbitration hearing, argued that the results of a Screening echocardiogram, dated , which was performed by supports his argument that his claim should be on Matrix A. However, only participated in the Fund A Screening Benefit Program established by the Settlement Agreement, and not in the Fund B Matrix benefit program. Further, Gray Form, completed by addressed only levels of mitral and aortic valve regurgitation, and did not include any evaluation of other medical conditions which might indicate Matrix or severity level. (See Gray Form, page 2, question 6).

6. The Trust determined that qualifies for Matrix Level III benefits in that underwent surgery to replace the mitral valve following the use of Redux. (Settlement Agreement, Section IV.B.2.c.(3)(a)). contends that the proper date of diagnosis is , the date of the echocardiogram referred to in his Green Form. (See the Green Form, Part II, page 8, at questions C.1 and C.2). The Trust made a final determination that qualified for Matrix Compensation Benefits on Matrix B, with a date of diagnosis of

7. Pursuant to the Settlement Agreement, a claimant is entitled to recover benefits based upon his or her age at the time of the first diagnosis or the occurrence of the event upon which they rely to qualify for benefits. (Settlement Agreement, Section IV.B.2.(a)&(b)).

8. qualifies for Matrix Level III benefits based on the surgery performed on. . (Settlement Agreement, Section IV.B.2.c.(3)(a)). Therefore, the proper date of diagnosis/event for this claim is , when was years old.

9. Based upon all of the above, the Appellant is entitled to benefits on Matrix Level III on the B Matrix.

December 26, 2005