

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.: 18300

REPORT AND AWARD  
OF ARBITRATOR

FINDINGS OF FACT

1. On [REDACTED], the AHP Settlement Trust ("Trust") issued a Final Determination on the claim of [REDACTED] affirming the determination that [REDACTED] qualified for Matrix B-1/Level III Compensation Benefits in the total amount of \$ [REDACTED] but determining that she did not qualify for Matrix A-1 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 Thursday, ~~April 2, 2009~~ an Arbitration Hearing was held concerning the claim of ~~Ms. [redacted]~~

5. The Trust determined that ~~Ms. [redacted]~~ was entitled to Matrix B-1/Level III Compensation Benefits, but not Matrix A-1 Compensation Benefits. In her statement of the case, ~~Ms. [redacted]~~ contends that, based on medical symptoms and conditions allegedly caused by the use of the Diet Drugs, she is entitled to Benefits on the A-1 Matrix. This is the sole issue presented in the appeal.

### ANALYSIS

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#### 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.

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#### MATRIX ELIGIBILITY AND QUALIFICATION

3. Under the Settlement Agreement, Matrix Compensation Benefits are paid according to two matrices. See Settlement Agreement § IV.B.2.d. The A Matrix, or the full

compensation matrix, applies to claimants who: (1) have been diagnosed timely as FDA Positive; (2) ingested the diet drugs for sixty-one (61) or more days; and (3) have no conditions requiring a reduced payment under the terms of the Settlement Agreement. See Id. § IV.B.2.d.(1). The B Matrix, or reduced compensation matrix, applies to claimants who: (1) have been diagnosed timely with Mild Mitral Regurgitation (regardless of the duration of ingestion of the diet drugs); or (2) were diagnosed timely as FDA Positive and ingested the diet drugs for sixty (60) days or less; or (3) were diagnosed timely as FDA Positive, ingested the diet drugs for sixty-one (61) or more days, and have certain conditions, identified in the Settlement Agreement, that may have caused or contributed to the claimant's heart problems. See id. § IV.B.2.d.(2).

4. The Pharmacy records of [REDACTED] indicate that she took Pondimin for 61 days or more.

5. [REDACTED] submitted a Blue Form, dated [REDACTED]. According to questions 7, 8 and 9 of [REDACTED] Blue Form, she answered that she took Pondimin for 61 days or more. (See the Blue Form, dated [REDACTED] page 4, at questions 7, 8 and 9).

6. [REDACTED] submitted a Green Form dated [REDACTED]

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

8. According to Part II of [REDACTED] Green Form, among other conditions, [REDACTED] suffers from aortic stenosis with an aortic valve area  $< 1.0$  square centimeter by the Continuity Equation. (See the Green Form, Part II, dated [REDACTED] page 9, at question D.5). Also, according to Part II of [REDACTED] Green Form, she suffers from mild or greater aortic

regurgitation confirmed by echocardiogram prior to Pondimin use (See the Green Form, Part II, dated ~~March 28, 2008~~, page 9, at question E.4).

9. The answers to the questions in Part II of ~~the~~ Green Form were completed by her physician, ~~Dr. [REDACTED]~~, a Board-Certified Cardiologist. (See Green Form, Part II, page 7, Section A).

10. The B Matrix, or the reduced compensation matrix, applies to claimants who were diagnosed timely as FDA Positive, ingested the diet drugs for sixty-one (61) or more days, and have certain conditions, identified in the Settlement Agreement, that may have caused or contributed to the claimant's heart problems. ~~See id. § IV.B.2.d.(2).~~ The record establishes that ~~Mr. [REDACTED]~~ suffers from two of these conditions: aortic stenosis with an aortic valve area  $< 1.0$  square centimeter by the Continuity Equation, ~~See id. § IV.B.2.d.(2)(c)(i)(e)~~, and mild or greater aortic regurgitation confirmed by echocardiogram prior to Pondimin use. ~~See id. § IV.B.2.d.(2)(c)(iii)(c).~~

### CONCLUSIONS

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

2. The final determination of the Trust assigning ~~the~~ claim for Matrix Compensation Benefits to Matrix B-1/Level III was not clearly erroneous as a matter of law.

3. The final determination of the Trust that ~~Mr. [REDACTED]~~ is not entitled to any Matrix A-1 Compensation Benefits was not clearly erroneous as a matter of law.