

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
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SHEILA BROWN, ET AL.	:	CIVIL ACTION NO.
v.	:	99-20593
AMERICAN HOME PRODUCTS CORPORATION	:	
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Appellant: Arbitration No.: Claim No.: 183/00	:	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 II Compensation Benefits in the gross amount of [redacted] but determining that he did not qualify for Matrix A-1 Compensation Benefits.

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] 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 \_\_\_\_\_.

5. The Trust determined that \_\_\_\_\_ was entitled to Matrix B-1/Level II Compensation Benefits, but not Matrix A-1 Compensation Benefits. The Trust made this determination on the basis that the record established that Mr. Pratt ingested diet drugs for sixty (60) day or less, which qualifies him for Matrix B-1 Compensation Benefits only.

\_\_\_\_\_ contends that the record established that he ingested diet drugs for sixty-one (61) days or more, and therefore, that he qualifies for Matrix A-1 Compensation Benefits. This is the sole issue presented in the appeal.

### ANALYSIS

#### FUND A ISSUES NOT COVERED BY ARBITRATION PROCESS

1. The Settlement Agreement provides for two funds, Funds A and B, from which benefits are paid to eligible 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 purportedly caused by the use of the diet drugs. On his Green Form, \_\_\_\_\_ indicates that he believes he is entitled to Benefits on Matrix A-1. (Green Form, Part I, page 4, question 6).

#### MATRIX ELIGIBILITY AND QUALIFICATION

4. 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).

5. In determining the length of diet drug usage, Section VI.C.2.d of the Settlement Agreement requires the claimant to submit documentary proof concerning the period of time the diet drugs were ingested. Specifically, the claimant must submit pharmacy records documenting the claimant's name, prescribing physician information, diet drug name, date(s) prescribed, dosage and duration the drug was prescribed or dispensed. If a physician or weight loss clinic prescribed the diet drugs directly, or

pharmacy records are unobtainable, a claimant must identify the prescribing physician, including the prescribing physician's name, address and telephone number, and submit a copy of the medical records prescribing or dispensing the drugs. If the pharmacy records and medical records are unobtainable, a claimant must submit an affidavit under penalty of perjury from the prescribing physician or dispensing pharmacy identifying the claimant, the drug prescribed or dispensed, the date(s), quantity, frequency, dosage and number of prescriptions or refills of the diet drug(s) to document ingestion. See id. § VI.C.2.d.(3).

6.                    submitted pharmacy records showing that Pondimin was dispensed on .                    The pharmacy records state that the quantity of pills dispensed was one hundred (100) with an instruction for him to take one (1) tablet three (3) times per day. One hundred (100) pills taken three (3) times per day would constitute thirty-three (33) days of diet drug use.

7.                    The Settlement Agreement provides that in the event pharmacy records or medical records are unobtainable, which is not the case here, a class member may submit an affidavit under penalty of perjury from the prescribing physician or dispensing pharmacy identifying the claimant, the drug prescribed or dispensed, the date(s), quantity, frequency, dosage and number of prescriptions or refills of the diet drug(s) to document ingestion. See id. § VI.C.2.d.(3).

8.                    The only other evidence in the record submitted by                    in support of his position of diet drug use of greater than sixty (60) days are office notes of Dr.                    and a declaration, dated                    and signed by                    wherein states that he ingested Pondimin once daily for one hundred (100) days.

9. As the pharmacy records for [redacted] prescription were obtainable and submitted in support of this Matrix claim, the office notes of [redacted] and the signed declaration of [redacted] do not meet the requirements of the Settlement Agreement to establish the length of diet drug use. See id. § VI.C.2.d.(3).

10. Even if the office notes and the declaration were permitted to establish the length of diet drug usage, it should be noted that the office notes of [redacted] do not contradict the pharmacy records, and in his signed declaration, [redacted] he confirms that on [redacted] prescribed one hundred (100) pills of Pondimin to be taken three (3) times per day.

11. The Trust relied on the pharmacy records, and determined that there was an absence of any other credible proof to rebut the pharmacy records. The Trust therefore concluded that [redacted] had not established that he had ingested Pondimin for 61 days or more. I conclude that the Trust's analysis and determination were not clearly erroneous.

#### 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 [redacted] claim for Matrix Compensation Benefits to Matrix B-1/Level II was not clearly erroneous as a matter of law.

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

ARBITRATOR  
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