

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

IN RE: DIET DRUGS (PHENTERMINE/  
FENFLURAMINE/DEXFENFLURAMINE)  
PRODUCTS LIABILITY LITIGATION

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: 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 denying the claim of [redacted] for Matrix 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] 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, [redacted] at [redacted], an Arbitration Hearing was held concerning the claim of [redacted].

5. The Trust determined that \_\_\_\_\_ was not entitled to any Matrix Compensation Benefits on the basis that she failed to supply the required documentation to establish that she had ingested Pondimin and/or Redux.

6. In her statement of the case \_\_\_\_\_ requests benefits based on alleged medical symptoms and conditions allegedly caused by the use of the Diet Drugs. In her Green Form, \_\_\_\_\_ indicates that she believes she is entitled to Benefits on Matrix B-1. (Green Form, Part I, page 4, question 6).

### 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.

#### 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. 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).

5. [redacted] submitted a Pink Form dated [redacted].
6. According to questions 7, 8 and 9 of [redacted] Pink Form, dated [redacted], [redacted] answered that she took Pondimin for 61 days or more.
7. [redacted] submitted a Blue Form dated [redacted].
8. According to questions 7, 8 and 9 of [redacted] Blue Form, dated [redacted], [redacted] answered that she took Pondimin for 61 days or more.
9. The record establishes that [redacted] failed to submit to the Trust any pharmacy records, a copy of any medical records prescribing or dispensing the drugs, or 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 of diet drugs, as required by the Settlement Agreement. See id. § VI.C.2.d.(3).
10. In lieu of the pharmacy records, medical records or the affidavit of a physician or dispensing pharmacy, [redacted] submitted copies of checks made out to Nutrisystem, a letter from Nutrisystem stating that they are unable to supply any records, and an e-mail to CVS Pharmacy from [redacted], with a reply from CVS, reflecting an attempt to obtain records. These records do not constitute pharmacy records, nor the medical records of a physician who prescribed or dispensed diet drugs.
11. In addition, [redacted] submitted an affidavit from [redacted] stating that he was a witness to [redacted] ingesting Pondimin from [redacted]. The affidavit from [redacted] does not qualify as an affidavit under penalty of perjury from a 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.

12. As a result, the Trust determined that \_\_\_\_\_ failed to supply the required documentation to establish that she had ingested Pondimin and/or Redux. I conclude that the Trust's analysis and determination were not clearly erroneous.

### CONCLUSIONS

1. The Claimant failed to provide documentary proof of diet drug ingestion to the Trust as required by the Settlement Agreement.

2. 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.

3. The final determination of the Trust is affirmed.

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