

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

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

FINDINGS OF FACT

1. On [redacted] the AHP Settlement Trust (“Trust”) issued a Final Determination, denying the claim of [redacted] (“Claimant”) for Matrix Compensation Benefits.

2. On [redacted] Claimant filed an appeal from the denial of benefits by the Trust, and requested 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 Sections VI. C. 4 (h) & (i) of the Nationwide Class Action Settlement Agreement with American Home Products Corporation.

4. On [redacted], an Arbitration Hearing was held concerning the claim of [redacted]

ANALYSIS

1. Claimant seeks benefits at Level II on Matrix A-1. In order to be compensated at Matrix Level II, a claimant must first demonstrate eligibility for compensation and then establish that she is qualified to receive benefits at Level II. It appears that _____ is eligible for compensation. Based on the answers in _____ Green Form, however, _____ is not qualified for any level of Matrix benefits.

2. The parties do not dispute that _____ is a Diet-Drug Recipient. In her BLUE Form, _____ stated that she ingested Pondimin (Fenfluramine) in excess of 60 days. (See BLUE Form, Question 7). That assertion is corroborated by Claimant's Pharmacy records, which show that she was dispensed Pondimin on seven occasions between March 25, 1996 and December 3, 1996.

3. Based on the answers in _____ Green Form, it appears that _____ is an eligible Diet Drug Recipient. In order to be eligible, a Diet Drug Recipient must fit within one of two categories: (1) Diet Drug Recipients diagnosed by a Qualified Physician as FDA Positive or as having mild mitral regurgitation by an echocardiogram performed on or before January 3, 2003, provided the Diet Drug Recipient registered for settlement benefits by May 3, 2003; or (2) Diet Drug Recipients who by September 30, 2005 have been diagnosed by a Qualified Physician as having Endocardial Fibrosis and who have registered for Fund B Benefits by January 31, 2006. See Settlement Agreement, Section IV.B.1. In order to be diagnosed as FDA Positive, a Diet Drug Recipient must suffer mild or greater aortic valve regurgitation and/or moderate or greater mitral valve regurgitation. *Id.* at Section I.22.

GREEN Form was completed by _____ : Board-certified cardiologist. It was received by the Trust on November 26, 2002. In response to GREEN Form Questions C.3.a and C.3.b., _____ stated that _____ suffered from mild mitral

regurgitation and from mild aortic regurgitation, conditions which would establish as an eligible Diet Drug Recipient. *See* GREEN Form, Questions C.3.a. and C.3.b.

4. In order for _____ receive Matrix Level II benefits, she must establish, in addition to being an eligible Diet Drug Recipient, that she suffered from a Matrix Level II condition. Matrix Level II is left sided valvular heart disease with complicating factors, which is defined as: (1) moderate or severe aortic regurgitation with pulmonary hypertension secondary to severe aortic regurgitation with certain peak systolic pulmonary artery pressures, abnormal left ventricular end-systolic dimension, and/or an ejection fraction of <50%; and/or (2) moderate or severe mitral regurgitation with pulmonary hypertension secondary to valvular heart disease with certain peak systolic pulmonary artery pressures, abnormal left atrial supero-inferior systolic dimension >5.3 cm or abnormal left atrial antero-posterior systolic dimension >4.0 cm, abnormal left ventricular end-systolic dimension \geq 45 mm, an ejection fraction of \leq 60%, and/or cardiac arrhythmias. Settlement Agreement, Section IV.B.2.c.(2). Stated simply, Matrix Level II benefits are available only if a claimant suffers from moderate or greater regurgitation of either the aortic or mitral valve and one of the corresponding complicating factors outlined above.

5. _____ GREEN Form disclosed that she suffered from regurgitation, but the regurgitation of the mitral valve was mild. So was the regurgitation of the aortic valve. *See* GREEN Form Questions C.3.A. and C.3.B. Therefore, she did not meet the initial criterion for a Level II condition, which is moderate or severe valvular regurgitation. Moreover, the questions pertaining to the presence of Matrix Level II conditions, which could have established

_____ qualification for Matrix Level II benefits, are GREEN Form Questions F.2 through F.8. On Claimant's GREEN Form, _____ answered every one of these questions in the negative. Thus, Claimant's GREEN Form gave the Trust no basis for concluding that Claimant

suffered from a qualifying Matrix Level II medical condition.

6. During the Arbitration Hearing, [redacted] stated that she was entitled to Matrix Level II benefits in part because the Echocardiogram Report (dated October 1, 2002) revealed a disagreement between the technician and the physician. According to the Echocardiogram Report, the technician calculated [redacted] aortic insufficiency at 28% but [redacted] re-calculated it at 20%. This disagreement, assuming there is one, is immaterial. As stated above, even if [redacted] had demonstrated the presence of moderate aortic regurgitation (defined as 25-49% jet height (“JH”)/left ventricular outflow tract height (“LVOTH”)), her GREEN Form did not establish that she suffered from any of the complicating conditions for a Level II aortic valve claim. (See GREEN Form Questions F.2 through F.8).

During the Arbitration Hearing, [redacted] also expressed both frustration that five years have passed since her echocardiogram and concern that her condition may have worsened during that time. She thus asserted that the Trust had not done enough to justify denial of her claim for Matrix Compensation Benefits. As stated above, under the Settlement Agreement, Matrix Compensation Benefits are only available to eligible Diet Drug Recipients with certain medical conditions. There is simply no basis to provide such benefits if this criteria is not met. Moreover, if [redacted]’s condition worsens to a Matrix Level III, IV or V condition, she can seek compensation by complying with the provisions of the Seventh Amendment to the Settlement Agreement. See Seventh Amendment to the Nationwide Class Action Settlement Agreement.

7. By agreement of the parties settling the Diet Drug lawsuit, the Trust’s authority to compensate [redacted] is limited to the terms of the Settlement Agreement. [redacted] claim, however, did not meet the requirements set out in the Settlement Agreement. Though it appears that she is an eligible claimant, she provided no evidence that she was qualified for

Matrix compensation on any level. Accordingly, there was no basis on which the Trust could have, or should have, awarded her Matrix Compensation Benefits.

CONCLUSIONS

1. submitted no basis on which to conclude that she was qualified for Matrix Level Benefits. Accordingly, the findings of the Trust are not clearly erroneous, as set forth in Rule 5 of the Rules Governing Arbitration Process.

2. Based upon the findings above, Claimant is not entitled to any Matrix Compensation Benefits because the conditions required for recovery of Matrix Level I, II, III, IV or V benefits are not present. I make these conclusions based on the Settlement Agreement, Sections IV.B.2.c.(1), (2), (3), (4), and (5).

DATE

Arbitrator