

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.:

: REPORT AND AWARD  
: OF ARBITRATOR  
:

FINDINGS OF FACT

1. On \_\_\_\_\_, the AHP Settlement Trust ("Trust") issued a Final Determination denying the claim of \_\_\_\_\_ for Matrix Compensation Benefits.
2. On \_\_\_\_\_, \_\_\_\_\_ 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 \_\_\_\_\_, the claim of \_\_\_\_\_ 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 \_\_\_\_\_, an Arbitration Hearing was held concerning the claim of \_\_\_\_\_.

5. The Trust determined that [redacted] was not entitled to any Matrix Compensation Benefits on the basis that [redacted] failed to supply the documentation required to establish Diet Drug ingestion.

6. In [redacted] statement of the case, [redacted] requests benefits based on alleged medical symptoms and conditions purportedly caused by the use of the Diet Drugs. In [redacted] Green Form, [redacted] indicates that [redacted] believes [redacted] is entitled to Matrix B-1 Benefits with severity level III. See Green Form, Part I, page 4, questions 5 and 6.

### ANALYSIS

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

1. The Settlement Agreement provides for two funds, Funds A and B, which were established to provide benefits to class members. See 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 refunds and echocardiogram reimbursement. See Settlement Agreement, Section IV.A; Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62. Fund B provides funding for Matrix Compensation Benefits. See Settlement Agreement, Section IV.B; Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62.

2. The arbitration process only covers determinations made regarding Fund B and 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

1. 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).

2. 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).

3. submitted a Green Form dated

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

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

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

7. submitted a Blue Form dated

8. According to questions 7 and 8 of Blue Form, answered that took Pondimin for 60 days or less.

9. failed to submit any 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; failed to submit a copy of any medical records prescribing or dispensing the drugs; and failed to submit any 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 Settlement Agreement § VI.C.2.d.(3).

10. In statement of the case, states that never obtained diet drugs from a pharmacy and therefore, no pharmacy records are available. In statement of the case, also states that was treated by at

in \_\_\_\_\_ and that \_\_\_\_\_ received Pondimin directly from \_\_\_\_\_ or \_\_\_\_\_ staff. However, the statement also indicates that the records for \_\_\_\_\_ are unavailable.

11. \_\_\_\_\_ submitted an affidavit, dated \_\_\_\_\_, stating that \_\_\_\_\_ attended \_\_\_\_\_ in the years \_\_\_\_\_ and \_\_\_\_\_, for the purpose of losing weight. In the affidavit \_\_\_\_\_ described pills \_\_\_\_\_ received at \_\_\_\_\_; and states that \_\_\_\_\_ believed \_\_\_\_\_ received Pondimin from staff members because \_\_\_\_\_ received a handout regarding Pondimin. However, this affidavit does not constitute 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 Settlement Agreement § VI.C.2.d.(3).

12. During the Arbitration hearing, counsel for \_\_\_\_\_ conceded that no pharmacy records were submitted, and that no affidavit under penalty of perjury from the prescribing physician was submitted. \_\_\_\_\_ argued, however, that certain records which were submitted, constituted medical records and satisfied the medical records requirement of the Settlement Agreement to establish diet drugs usage. These records are attached to the Appellant's Statement of the Case and are identified as a membership application and agreement (Exhibit A), a coronary risk profile (Exhibit B), medication therapy instruction pages (Exhibit C) and a magazine article (Exhibit D). Assuming these records were to be classified as medical records in the general sense, they do not satisfy the medical records requirements of the Settlement Agreement to establish diet drugs usage. These records do not identify the prescribing physician, including the prescribing physician's name, address

and telephone number, nor do these records show the prescribing or dispensing of diet drugs to [redacted]. See Settlement Agreement § VI.C.2.d.(2).

13. [redacted] also submitted an under oath video taped statement of [redacted], the owner and director of [redacted] when it was located in [redacted] in [redacted] and [redacted] stated that, from [redacted] review of Exhibits A through D to Appellant's Statement of the Case, it appeared that [redacted] attended [redacted] in [redacted] and/or in [redacted]. [redacted] also stated that since [redacted] prescribed Pondimin to clients of the [redacted] in [redacted] and [redacted], and since [redacted] attended the [redacted] believed that [redacted] was administered Pondimin by [redacted]. However, [redacted] had no personal knowledge of the same.

14. In [redacted] statement, [redacted] affirms that the medical records regarding [redacted] are unavailable and that [redacted] was not the dispensing physician. The statement fails to contain any of the other information required by the Settlement Agreement. In particular, the statement fails to set forth any dosages of the diet drug allegedly dispensed. The statement also fails to set forth any of the dates on which the diet drugs were dispensed, other than alleging that [redacted] was a member of the [redacted] in [redacted] and/or [redacted]. This description of usage, however, does not provide quantity, frequency or the number of prescriptions or refills of the diet drug as required by the Settlement Agreement. See id. § VI.C.2.d.(3). Therefore, [redacted]'s statement does not constitute 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 Settlement Agreement § VI.C.2.d.(3).

15. As a result, the Trust determined that \_\_\_\_\_ failed to supply the required documentation needed to establish that \_\_\_\_\_ had ingested diet drugs. 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.