

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. 1203

_____ :
SHEILA BROWN, et al. :

v. :

AMERICAN HOME PRODUCTS
CORPORATION, et al. :

CLAIMANT: HEIDI HULL :

CIVIL ACTION NO. 99-20593

MEMORANDUM AND PRETRIAL ORDER NO. *Bartle* 3193

Bartle, J.

January 7, 2004

Before the court is an appeal of Heidi Hull under § VI.C.4.i. and l. of the Nationwide Class Action Settlement Agreement ("Settlement Agreement") in this diet drug litigation from the report and award of an arbitrator denying her certain benefits from the AHP Settlement Trust (the "Trust").

Under the Settlement Agreement, any class member such as Ms. Hull may appeal the Trust's final determination of benefits to a single arbitrator appointed by the court. Any party may then appeal the report and award of the arbitrator to the court whose decision is "final and binding." See Settlement Agreement § VI.C.4.h.-l.

The Settlement Agreement provides for levels of so-called matrix benefits, depending on the age of the class member and the seriousness of the injury from ingesting Wyeth's diet drugs Pondimin and/or Redux. Ms. Hull claims that the arbitrator erred in denying her Matrix Level V benefits which she seeks under § IV.B.2.c.(5)(d) of the Settlement Agreement. It reads in relevant part:

(5) **Matrix Level V** is defined as:

...

(d) The individual otherwise qualifies for payment at Matrix Level II, III, or IV and suffers from ventricular fibrillation ...

The controversy here centers on the interpretation of this provision of the Settlement Agreement and its application to the facts, which are not in dispute. Our review is de novo.

Ms. Hull qualified for Matrix Level II benefits and indeed was awarded \$524,135.¹ On May 16, 1998 she experienced an acute inferior wall myocardial infarction with associated ventricular fibrillation and cardiac arrest. The cardiac catheterization performed on May 16, 1998 showed no mitral valve regurgitation. It was not until her June 28, 1998 echocardiogram that Ms. Hull qualified for Matrix Level II benefits when she was found to have mild to moderate mitral valve regurgitation, mild aortic regurgitation, and an ejection fraction of 40 - 49%.

1. Four derivative claimants were also awarded \$3,529.35 to be apportioned according to state law.

The issue before the court is whether the criteria qualifying Ms. Hull for Matrix Level II payments must co-exist with the ventricular fibrillation. The Trust contends that the words "and suffers from ventricular fibrillation" in the definition for Matrix Level V benefits mean that the criteria for Matrix Level II payments must occur or exist simultaneously with ventricular fibrillation. The Trust maintains that the definition for Matrix Level V cannot be stretched to allow for benefits if Ms. Hull's episode of ventricular fibrillation concluded before she experienced the other conditions necessary to qualify under subsection (5)(d). Ms. Hull, on the other hand, argues that as long as she suffered ventricular fibrillation at any time she is entitled to the contested benefits.

The Settlement Agreement, as noted above, uses the present tense of the verbs "qualifies" and "suffers" and joins them with the conjunction "and." Settlement Agreement § IV.B.2.c.(5)(d). The plain meaning of this language is that the criteria for Matrix Level II benefits and her ventricular fibrillation must exist concurrently if benefits under subsection 5(d) are to be paid. We cannot change the present tense of the verb "suffers" to the past or perfect tense. See Bowersox Truck Sales and Servs., Inc. v. Harco Nat. Ins. Co., 209 F.3d 273, 279-80 (3d Cir. 2000). The words of the contract must be given their plain meaning, unless to use the plain meaning would lead to an unreasonable or absurd result. See Bohler-Uddeholm Am., Inc. v.

Ellwood Group, Inc., 247 F.3d 79, 97 (3d Cir. 2001) (citation omitted).

Since Ms. Hull's ventricular fibrillation occurred and ended before the existence of factors qualifying her for Matrix Level II payments, she is not now entitled to compensation under § IV.B.2.c.(5)(d) of the Settlement Agreement. We will deny her appeal and affirm the decision of the arbitrator.

