

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

IN RE: DIET DRUGS (PHENTERMINE/ :
FENFLURAMINE/DEXFENFLURAMINE) : MDL DOCKET NO.
PRODUCTS LIABILITY LITIGATION : 2:15 MD 1203
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SHEILA BROWN, et al. :
 :
v. : CIVIL ACTION NO. 99-20593
 :
AMERICAN HOME PRODUCTS :
CORPORATION :
----- :
THIS DOCUMENT RELATES TO: :
 :
LULA BEACH :
CLAIM NUMBER 183/00 2436111 :
ARBITRATION NUMBER 129 :

MEMORANDUM AND PRETRIAL ORDER NO. 7091

Bartle, C.J.

April 5, 2007

Lula Beach ("Ms. Beach"), as executor of the estate of her son, James L. Beach, a class member under the Diet Drug Nationwide Class Action Settlement Agreement ("Settlement Agreement") with Wyeth, Inc.,¹ seeks benefits from the AHP Settlement Trust ("Trust"). The Trust denied Ms. Beach's claim for Matrix Compensation Benefits ("Matrix Benefits"). Matrix Benefits compensate claimants for medical conditions caused by the diet drugs Pondimin or Redux.² See Settlement Agreement

1. Prior to March 11, 2002 Wyeth was known as American Home Products Corporation.

2. Matrix Benefits are paid according to two benefit matrices (Matrix "A" and Matrix "B"), which generally classify claimants

(continued...)

§ IV.B. Ms. Beach appealed the Trust's adverse Final Determination, and the matter was referred to arbitration. See id. § IV.C.4.i. The Arbitrator issued a Report and Award affirming the Trust's determination.

Ms. Beach has now appealed to this court as permitted under the Settlement Agreement. See id. She argues that she has presented sufficient evidence to the Trust to prove that her son, James Beach, is eligible for Matrix Benefits. We apply a clearly erroneous standard of review to the Arbitrator's findings of fact and conduct a plenary review of conclusions of law. See First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 947-49 (1995). The decision of this court is final and binding. See Settlement Agreement at § IV.C.4.1.

We agree with the Arbitrator's findings of fact and conclusions of law but write to clarify the evidence that diet drug recipients may use to prove that they are eligible for

2. (...continued)

for compensation purposes based upon the severity of their medical conditions, their ages when they are diagnosed, and the presence of other medical conditions that also may have caused or contributed to a claimant's valvular heart disease ("VHD"). See Settlement Agreement §§ IV.B.2.b. and IV.B.2.d.(1)-(2). Matrix A-1 describes the compensation available to Diet Drug Recipients with serious VHD who took the drugs for 61 days or longer and who did not have any of the alternative causes of VHD that made the B matrices applicable. In contrast, Matrix B-1 outlines the compensation available to Diet Drug Recipients with serious VHD who were registered as having only mild mitral regurgitation by the close of the Screening Period or who took the drugs for 60 days or less or who had factors that would make it difficult for them to prove that their VHD was caused solely by the use of these diet drugs.

Matrix Benefits. On appeal, Ms. Beach argues that under the terms of the Settlement Agreement the Trust should consider pathological and post-mortem evidence that prove her son's medical condition leading up to his death made him eligible for Matrix Benefits. Ms. Beach specifically relies on § VI.C.4.A. of the Settlement Agreement, which provides:

a. To receive Matrix benefits, the Class Member must provide the Trustees and/or Claims Administrator(s) with appropriate documentation of the condition of the Diet Drug Recipient that forms the basis of the claim [S]uch documentation shall include:

(1) all hospital reports of the admitting history and physical examination of the Diet Drug Recipient, operative reports, pathology reports, Echocardiogram reports, cardiac catheterization reports, and discharge summaries which relate to the condition of the Diet Drug Recipient that forms the basis of the Claim;

(2) a copy of the videotape or disk of the Echocardiogram results which, in whole or in part, forms the basis for the Claim for Matrix Compensation Benefits;

...

b. If the Class Member seeking a Matrix payment is unable to obtain the documentation described above through the exercise of reasonable efforts, the Trustees and/or Claims Administrator(s) shall have the right to consider other supporting documentation including but not limited to declarations of other Qualified Physician(s) under penalty of perjury setting forth opinion(s) to a reasonable degree of medical certainty to support the claim that the Class Member's condition entitles him or her to a Matrix payment, subject to review by the Court as set forth in Section VIII.D. If this evidence establishes the Class Member's

condition to the satisfaction of the Trustees and/or Claims Administrator(s), the Class Member shall be entitled to receive the appropriate Matrix Compensation Benefits.

Settlement Agreement § VI.C.4.

This language does not, as Ms. Beach argues, obviate the requirement that diet drug recipients, including James Beach, first be deemed eligible for Matrix Benefits. Diet drug recipients are eligible for Matrix Benefits only if they are "diagnosed by a Qualified Physician as FDA Positive³ or as having Mild Mitral Regurgitation by an Echocardiogram" performed within a certain period or be "diagnosed by a Qualified Physician as having Endocardial Fibrosis." (emphasis added). Settlement Agreement § IV.B.1. It is undisputed that James Beach did not suffer from Endocardial Fibrosis. To be eligible for Matrix Benefits James Beach had to have been diagnosed with, at a minimum, mild aortic or mitral regurgitation in accordance with the Settlement Agreement. There is no evidence in the record of such a diagnosis.

The Settlement Agreement requires a two step process. James Beach must first be deemed eligible for Matrix Benefits and only then may the Trust consider whether James Beach qualifies for those benefits. Section VI.C.4 of the Settlement Agreement pertains only to the evidence that the Trust may consider when determining a claimant's qualification, not eligibility.

3. FDA Positive is defined as having mild or greater aortic regurgitation and/or moderate or greater mitral valve regurgitation.

Accordingly, Ms. Beach has not presented the necessary evidence that her son, James Beach, was eligible for Matrix Benefits.

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AND NOW, this *5th* day of April, 2007, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the Report and Award of the Arbitrator Joanne A. Epps is AFFIRMED and appellant, Lula Beach, as executor of the estate of James L. Beach, is not entitled to Matrix Level Benefits under the Diet Drug Nationwide Class Action Settlement Agreement.

BY THE COURT:


C.J.