

REDACTED AS TO NAME(S) AND DATE(S)

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. 2:15MD1203
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SHEILA BROWN, ET AL.	:	
v.	:	
AMERICAN HOME PRODUCTS CORPORATION	:	CIVIL ACTION NO.
-----	:	99-20593
Appellant: [REDACTED]	:	REPORT AND AWARD
Arbitration No.: [REDACTED]	:	OF ARBITRATOR
Claim No.: 183/00 [REDACTED]	:	

FINDINGS OF FACT

1. On [DATE], the AHP Settlement Trust ("Trust") denied the claim of [REDACTED] for Matrix Compensation Benefits.

2. On [DATE], [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 [DATE], 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 [DATE], an Arbitration Hearing was held concerning

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the claim of [REDACTED].

**ANALYSIS**

1. According to Questions 8 and 9 of [REDACTED]'s Pink Form, [REDACTED] took Diet Drugs for 61 days or more. (See Pink Form, page 4).

2. Part II of the Green Form was completed by a Board-Certified Cardiologist, [REDACTED] (See Green Form, page 7).

3. The [DATE], Echocardiogram Report included in the Claim File was prepared by [REDACTED] and was based on an Echocardiogram performed on [DATE]. This [DATE] Echocardiogram was referenced in section C.2 of [DATE] [REDACTED]'s Green Form. (See Green Form, page 8).

4. The answers to the questions in Section C.3.A and C.3.B of the Green Form state that [REDACTED] has no mitral valve regurgitation and that she has moderate aortic valve regurgitation, making her FDA Positive. (See Green Form, page 8).

5. According to Section F.8, [REDACTED] has an ejection fraction of 50-60%. (See Green Form, page 11).

6. [REDACTED]'s Green Form does not indicate that she has any condition associated with her aortic or mitral valve that currently qualifies her for any Matrix-Level Benefits.

7. According to Questions 5 and 6 of the Green Form,

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[REDACTED] sought Matrix-Level IV Benefits on the A-1 Matrix.

(See Green Form, page 4).

8. According to the Appellant's Statement of the Case, [REDACTED]'s doctors "stated unequivocally that [REDACTED]'s valvular disease will cause at least one if not more" of the conditions described in Matrix-Level II Benefits.

**CONCLUSIONS**

1. Matrix-Level I Benefits must be based on severe aortic or mitral valve regurgitation, (See Settlement Agreement, Section IV.B.2.c(1)) or on other conditions that are not present in this matter.

2. Matrix-Level II Benefits must be based on moderate or severe aortic or moderate or severe mitral valve regurgitation combined with other specific conditions that are not present in this matter. (Id. at IV.B.2.c(2)).

3. The conditions that are pre-requisite to recovery of Matrix-Level III, IV and V Benefits are also not present in this matter. (Id. at IV.B.2.c(3-5)).

4. Section IV.B.2.c(2)(a) of the Settlement Agreement is at issue in this matter. That section provides in part:

(2) MATRIX LEVEL II is left sided valvular heart disease with complicating factors, and is defined as:

(a) Moderate aortic regurgitation (25%-49% JH/LVOTH) or Severe AR (>49% JH/LVOTH) with one or

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more of the following:

- i) Pulmonary hypertension secondary to severe aortic regurgitation with a peak systolic pulmonary artery pressure > 40 mm Hg measured by cardiac catheterization or with a peak systolic pulmonary artery pressure > 45 mm Hg measured by Doppler Echocardiography, at rest, utilizing standard procedures assuming a right atrial pressure of 10 mm Hg; [or]
- ii) Abnormal left ventricular end-systolic dimension > 50 mm by M-mode or 2-D Echocardiography or abnormal left ventricular end-diastolic dimension >70 mm as measured by M-mode or 2-D Echocardiography;
- iii) Ejection fraction of < 50%...

5. The language quoted in the preceding paragraph lists the conditions that qualify a Claimant for Matrix-payments Level II.

6. [REDACTED] sets forth in her Statement of the Case that because a letter from her physician states that she may in the future develop a compensable condition, she currently qualifies for Matrix-Level Benefits. During the course of the teleconference, her attorney stated that he agrees that pursuant to the Settlement Agreement she does not presently qualify for Matrix-Level Benefits.

7. Pursuant to the terms of the Settlement Agreement, Matrix-Level Benefits may only be awarded based on the answers supplied on a Green Form by a qualified cardiologist who by

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declaration, under the penalty of perjury, sets forth an opinion to a reasonable degree of medical certainty that the Diet Drug Recipient has the condition which qualifies the Class Member for a particular Matrix payment (Id. at VI.4.a.). Because [REDACTED]'s cardiologist did not conclude that she currently experiences any of the complicating conditions specified in addition to her moderate aortic regurgitation, she does not presently qualify, nor is she entitled to, Matrix-Level Benefits at this time. Specifically, [REDACTED] does not have an ejection fraction less than 50%, which would entitle her to Matrix-Level Benefits.

8. [REDACTED] argues that because it is possible that she will develop various medical conditions in the future that will entitle her to recovery of Matrix-Level Benefits, she is entitled to recovery now. That is contrary to the provisions of the Settlement Agreement. Specifically, in order for a claimant to recover Level II Matrix Benefits for an aortic valve claim, the Claimant's ejection fraction must be less than 50%.

9. [REDACTED] may later qualify for Matrix-Level Benefits if her aortic valve condition or her aortic valve progresses in ways that make her eligible for benefits under the Settlement Agreement. If an echocardiogram, taken and reviewed by a qualified physician as defined by the Settlement Agreement

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reveals a Matrix-Level condition on her aortic valve, then [REDACTED] may apply for benefits between now and December 31, 2015 by following the procedures set forth in the Settlement Agreement. Pursuant to these procedures, [REDACTED] may submit a Supplemental Green Form.

10. Finally, the Trust has made a request that the costs of the Arbitration, including the fees of the Arbitrator, be taxed against [REDACTED] pursuant to Rules 8(b) and 20, on the basis that the appeal was taken and maintained in violation of the standards set forth in Rule 8(b). I find that the appeal was not taken and maintained in violation of the standards set forth in Rule 8(b), as counsel for [REDACTED] made a colorable argument for Matrix-Level Benefits based upon her FDA Positive status and, therefore, I deny the request of the Trust that the costs of the Arbitration be taxed against [REDACTED].

May 30, 2002  
DATE

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[REDACTED]  
ARBITRATOR