

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

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. The [DATE] appeal was assigned docket number [REDACTED]. On [DATE], a second appeal was docketed by the Court and was assigned docket number [REDACTED]. The content of the appeal filed on [DATE] is identical to the appeal filed on [DATE].
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) and (g) of the Nationwide Class Action Settlement Agreement with American Home Products Corporation.
4. On [DATE], an Arbitration Hearing was held concerning the claim of [REDACTED].

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ANALYSIS

1. [REDACTED]'s Pink Form claims usage of Pondimin (Fenfluramine) for approximately three months and Redux (Dexfenfluramine) for approximately nine months. [REDACTED] stated during the arbitration teleconference that these representations are accurate. [REDACTED]'s ingestion of Pondimin is not corroborated by pharmacy records, but this fact is immaterial because pharmacy records do confirm that [REDACTED] was dispensed more than sixty-one days worth of Redux (Dexfenfluramine). According to the pharmacy records, [REDACTED]'s Redux prescriptions were filled between [DATE] and again [DATE].

2. [REDACTED] Green Form, duly completed by [REDACTED], a Board-Certified Cardiologist, reports mild mitral valve regurgitation and mild aortic valve regurgitation. (See Green Form, page 8). [REDACTED] claims that one or both of these conditions should qualify him for Matrix B-1 Benefits.¹

3. With regard to his mitral valve regurgitation, [REDACTED] bases his claim on the following language in the Appendix to Green Form at D.2:

For Matrix B-1: Diet Drug Recipients who are eligible for matrix payments and to whom one or more of the following conditions apply, receive payments on Matrix B-1:

- For claims as to the mitral valve, Diet Drug Recipients who were

¹On his Green Form, [REDACTED] checked the box for Matrix A-1 Benefits (Green Form, Question 5). During the teleconference, however, he acknowledged that he might not be eligible for Matrix A-1 Benefits and asked that his eligibility be evaluated under both Matrix A-1 and B-1. The arbitration is limited to a review of the Trust's determination, but because he does not presently qualify for benefits, [REDACTED] was not prejudiced by virtue of having failed to check the box for Matrix B-1 Benefits.

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diagnosed as having Mild Mitral Regurgitation (regardless of the duration of ingestion of Pondimin and/or Redux).

4. With regard to his aortic valve regurgitation, [REDACTED] bases his claim on the language in the Official Court Notice (Section 2, page 5) which defines FDA Positive regurgitation as a phrase which means mild, moderate or severe regurgitation of the aortic valve and moderate or severe regurgitation of the mitral valve.

5. Although [REDACTED] does have mild mitral valve regurgitation and mild aortic regurgitation, his Green Form does not indicate that [REDACTED] has any of the medical conditions that would qualify him for Matrix-Level Benefits. In order to qualify for Matrix-Level I Benefits, a claim must be based on severe aortic regurgitation or severe mitral regurgitation (Settlement Agreement, Section IV.B.2.c.(1)(a)) or on other conditions not presented in this claim (Id., Section IV.B.2.c.(1)(b)). Matrix-Level II Benefits must be based on moderate or severe aortic regurgitation or moderate or severe mitral valve regurgitation with complicating factors (Id., Section IV.B.2.c.(2)). Further, the conditions prerequisite to recovery of Matrix-Level III, IV and V Benefits are not present in this claim. (Id., Section IV.B.2.c.(3), (4) and (5)).

6. During the teleconference, a representative of the Trust explained to [REDACTED] that receipt of Matrix compensation requires compliance with a two-step process. The first step requires qualifying as an eligible class member. (Id., Section IV.B.1). The second step requires qualifying for payment. (Id., Section IV.B.2). Because [REDACTED] took the diet drugs in excess of sixty-one days and suffers from mild mitral valve regurgitation and mild aortic valve regurgitation, he is considered an eligible class member. Without

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complicating conditions, neither mild aortic regurgitation nor mild mitral regurgitation qualify a person for Matrix Compensation Benefits.

7. During the teleconference, [REDACTED] asked the representative of the Trust if the two-step process was made clear to claimants who elected to participate in the non-litigation settlement. The Trust representative explained that the process was fully outlined in the Appendix to Green Form, on pages 16-32. [REDACTED] stated that he did not have a copy of those pages but could not swear he did not receive them. He stated that whatever he received he relied on. Although [REDACTED] submitted Green Form pages 1-15 (the only pages which are required), there is reason to believe he received the remainder of the Green Form because [REDACTED] attached the first page of the Appendix to Green Form, bearing the designation Green Form - 16, to his Statement of the Case.

8. It is possible that in the future [REDACTED] will develop conditions that will entitle him to recovery of Matrix Benefits. Because [REDACTED] has registered the fact that he suffers from mild mitral valve regurgitation and mild aortic valve regurgitation, he is an eligible class member (though not now qualified for benefits). If his condition should change in the future, he may apply for Matrix Benefits by submitting a Supplemental Green Form between now and December 31, 2015.

CONCLUSIONS

1. The conditions required for recovery of Matrix-Level Benefits are not present in this claim.

2. The findings of the Trust are not clearly erroneous, as set forth in Rule 5 of the Rules Governing Arbitration Process.

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3. Based upon the findings above, [REDACTED] is not currently entitled to any Matrix Benefits because the conditions that are required for recovery of Matrix-Level I, II, III, IV or V Benefits are not present in this claim. (Settlement Agreement, Sections IV.B.2.c.(1), (2), (3), (4) and (5)).

Accordingly, based on all of the above, I find that [REDACTED] is not presently entitled to any Matrix Compensation Benefits.

June 4, 2002

DATE

[REDACTED]
Arbitrator