

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.	:	CIVIL ACTION NO.
v.	:	99-20593
AMERICAN HOME PRODUCTS CORPORATION	:	
	:	
	:	
Appellant:	:	REPORT AND AWARD OF
Arbitration No.:	:	ARBITRATOR
Claim No.: 183/00	:	

**FINDINGS OF FACT**

1. On [REDACTED] AHP Settlement Trust ("Trust") denied the claim of [REDACTED] for Matrix Compensation Benefits.
2. On [REDACTED] Appellant appealed the determination of the Trust and requested that the United States District Court for the Eastern District of Pennsylvania ("Trial Court") refer this matter to arbitration.
3. On [REDACTED] the pro se claim of [REDACTED] was referred by the Trial Court for arbitration of the appeal from the Trust's denial of benefits.
4. On [REDACTED] a hearing was held regarding Appellant's appeal.
5. Appellant presented no claim or argument that the Trust's determination was erroneous. Both her written and oral submissions acknowledge that she does not fall within the specific criteria for Matrix Compensation Benefits.

6. The Trust argued that the Appellant's claim was for Matrix-Level I Compensation Benefits; that the Settlement Fund can only be used to pay benefits in accordance with the specific terms of the Nationwide Class Action Settlement Agreement with American Home Products Corporation ("Settlement Agreement"); and that the information contained in the Appellant's Green Form and Gray Form (including the echocardiogram submitted in conjunction therewith) did not meet the criteria of the Settlement Agreement entitling her to compensation under Matrix-Level I.

7. Appellant's appeal is based primarily on her claim of a worsening heart condition, which she attributes to taking the drug Redux™. She described symptoms that occurred in the [REDACTED] and referred to an additional echocardiogram that was administered [REDACTED] which has not been provided to the Trust.

8. Appellant also raised the issue of her entitlement to compensation for medical expenses under Fund A.

9. This appeal is limited only to claims for Matrix-Level Compensation under Fund B.

## ANALYSIS

1. Under the terms of the Settlement Agreement, Matrix-Level Benefits may only be awarded based on the information contained in a Green Form and/or a Gray Form, based on the results of an echocardiogram. Matrix-Level I Benefits are available to claimants who are diagnosed with severe aortic or mitral regurgitation (Settlement Agreement, Section IV.B.2.c(1)(a)) or FDA Positive valvular regurgitation with bacterial endocarditis. (Settlement

Agreement, Section IV.B.2.c(1)(b)).

2. The Green Form submitted by Appellant refers to and reflects the results of an echocardiogram that was performed on [REDACTED]. Copies of the echocardiogram tape and report were not provided to the Trust. Appellant also received a free echocardiogram on [REDACTED] through the screening program under the Settlement Agreement. Copies of the echocardiogram tape and report were provided to the Trust, the results of which are reflected in the Appellant's Gray Form.

3. Appellant's Green Form and Gray Form, and the results of the echocardiogram, show that the Appellant has no mitral or aortic regurgitation, and no evidence of other health problems that would be compensable under the terms of the Settlement Agreement.

4. The distinction between eligibility and qualification for Matrix Compensation Benefits and the need for "empirical evidence" of compensable conditions was explained to Appellant during the hearing.

### CONCLUSIONS

1. Any new evidence, not presented to the Trust for consideration before the issuance of the Final Determination pertaining to Appellant's claim, cannot be considered on this appeal.

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

3. Based upon the findings set forth above, Appellant is not entitled to any Matrix-Level Benefits at this time because:

a. her Green Form and Gray Form contain no evidence of mitral or aortic

regurgitation or other conditions that must be present for Matrix-Level I Benefits (Settlement Agreement, Section IV.B.2.c(1)(b)); and

b. the conditions that are prerequisite to recovery of Matrix-Levels II, III, IV and V Benefits are also not present in this claim (Id., Section IV.B.2.c(2),(3), (4) and (5)).

4. Appellant may later qualify for Matrix-Level Benefits if her condition becomes more severe and she presents evidence that meets the criteria contained in the Settlement Agreement. She was advised at the hearing, and is advised again, that January 3, 2003 is the end of the screening program; that any new evidence of compensable conditions coming into existence prior to January 3, 2003 must be submitted by May 3, 2003; and that she should refer to the procedures contained in the Settlement Agreement, which is posted on the Trust's web site at [www.settlementdietdrugs.com](http://www.settlementdietdrugs.com).

Dated: October 10, 2002

ARBITRATOR "

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