

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

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

IN RE: DIET DRUGS (PHENTERMINE /  
FENFLURAMNE/DEXFENFLURAMINE)  
PRODUCTS LIABILITY LITIGATION

MDL DOCKET NO.  
2 :15 MD1203

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SHEILA BROWN, ET AL.  
v.  
AMERICAN HOME PRODUCTS  
CORPORATION

CIVIL ACTION  
99-20593

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Appellant:  
Arbitration No.:  
Claim No.:

REPORT AND AWARD  
OF ARBITRATOR

**FINDINGS OF FACT**

1. On [REDACTED], the AHP Settlement Trust ("Trust") denied the claim of [REDACTED] [sometimes hereinafter "Claimant"] for Matrix Compensation Benefits.
2. On [REDACTED], [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 [REDACTED], the claim of [REDACTED] was referred by the Court to Arbitration pursuant to VI. C. 4 (h) & (l) or VI. D. 1. (f) and (g) of the Nationwide Class Action Settlement Agreement with American Home Products Corporation ("Settlement Agreement").
4. On [REDACTED], an Arbitration Hearing was held concerning the claim of [REDACTED].

ANALYSIS

1. [REDACTED] Pink Form (Questions 8 and 9) states that she ingested Pondimin (Fenfluramine) and Redux (Dexfenfluramine) each for 61 days or more. [REDACTED] reiterated this contention during the Arbitration Hearing. Pharmacy records from H-E-B Pharmacy confirm that [REDACTED] was dispensed 90 Pondimin on [REDACTED]. The same records show that 23 days later, on [REDACTED] received 60 Redux. The H-E-B Pharmacy records do not show that [REDACTED] received any additional diet pills. The pharmacy records thus establish that [REDACTED] was the recipient of diet drugs; the records do not confirm that she took diet drugs in excess of 60 days.

Asserting that the length of diet drug usage is irrelevant for present purposes, the Trust has not taken a position on whether [REDACTED] took diet drugs for more than 60 days. Establishing whether [REDACTED] took diet drugs in excess of 60 days would matter if she sought compensation on the A-1 matrix. In her Green Form (Question 6) and during the Arbitration Hearing, [REDACTED] indicated that she sought benefits on the B-1 Matrix, thus rendering irrelevant the absence of proof of her having ingested diet drugs in excess of 60 days.

2. In her Green Form, and during the Arbitration Hearing, [REDACTED] stated that she seeks Level II and Level III benefits. In her Statement of Appeal, and during the Arbitration Hearing, [REDACTED] stated that she bases her claim for Level II and Level III benefits on having been diagnosed as having mild mitral regurgitation.

3. In order to receive Matrix Compensation, a Claimant must be both eligible and qualified to receive Matrix-Level Benefits. In order to be eligible for Matrix Compensation Benefits, a Diet Drug Recipient must fit within one of two categories: (1) Diet Drug Recipients

diagnosed by a Qualified Physician as FDA Positive or as having mild mitral regurgitation by an echocardiogram performed on or before January 3, 2003, provided the Diet Drug Recipient registered for settlement benefits by May 3, 2003; or (2) Diet Drug Recipients who by September 30, 2005 have been diagnosed by a Qualified Physician as having Endocardial Fibrosis and who have registered for Fund B Benefits by January 31, 2006. Settlement Agreement, Section IV.B.1. In order to be diagnosed as FDA Positive, a Diet Drug Recipient must suffer mild or greater aortic valve regurgitation and/or moderate or greater mitral valve regurgitation. *Id.* at Section I.22.

3. Part II of [REDACTED] Green Form was completed by Board-Certified Cardiologist [REDACTED] and was signed on [REDACTED]. In it, [REDACTED] states that [REDACTED] had an echocardiogram on [REDACTED]. Based on a review of [REDACTED] echocardiogram, [REDACTED] states that while [REDACTED] had no aortic regurgitation, she did have mild mitral regurgitation as those terms are defined by the Settlement Agreement. (See Green Form Questions C.3.A. and C.3.B.). [REDACTED] also submitted a Grey Form #2, signed by [REDACTED] and dated [REDACTED]. In [REDACTED] Grey Form, [REDACTED] reports mild mitral regurgitation. The Grey Form #2 is based on a echocardiogram conducted on [REDACTED] the report of which notes valvular insufficiency and a mildly reduced ejection fraction (54%), but does not note the presence of any valvular regurgitation. Because [REDACTED] Green Form, which reports mild mitral regurgitation, was received before May, 2003, she is eligible to receive Matrix-level benefits.

4. Even if a claimant is eligible to receive Matrix compensation, in order to receive benefits a claimant must prove that she suffers from a qualifying condition. Matrix-level

benefits, and the requirements that must be proved in order to receive them, were agreed to by parties to the litigation and are described in Settlement Agreement, Section IV.B.2.c.(1)-(5).

To receive Matrix Level II benefits, a claimant must suffer moderate or greater mitral or aortic regurgitation plus other complicating factors. Neither [REDACTED] Green Form nor the

[REDACTED] Echocardiogram Report states that she suffers from either of these conditions.

(See Green Form Questions C.3.A. and C.3.B., and "2-D, M-Mode and Doppler Evaluation

Summary Report", dated [REDACTED] bearing patient name [REDACTED] Matrix Level III requires either valvular repair surgery, a proven yet unfulfilled need for such surgery or a stroke.

[REDACTED] Green Form states that she has not had valvular surgery, does not need such surgery, nor has she suffered a stroke. (See Green Form Questions F.9., F.10., F.11. and H.)

5. In the absence of a Level II or Level III medical condition as defined in the Settlement Agreement, Section IV.B.2.c.(2) and 3), [REDACTED] is not qualified to receive Matrix-level benefits.

6. Because [REDACTED] suffers from mild mitral regurgitation and has registered for benefits, she is eligible to apply for Matrix Benefit Compensation if, within fourteen years after Final Judicial Approval (or 12/31/15, whichever date is sooner) she substantiates that her condition has progressed to a Matrix Level Condition.

### CONCLUSIONS

1. The conditions required for recovery of Matrix Level Benefits are not present in this claim. Claimant submitted no basis on which to conclude that she is eligible and qualifies for Matrix-Level Benefits. Accordingly, the findings of the Trust are not clearly erroneous, as set

forth in Rule 5 of the Rules Governing Arbitration Process.

2. Based upon the findings above, [REDACTED] is not entitled to any Matrix Benefits because the conditions required for recovery of Matrix-Level I, II, III, IV or V Benefits are not present. *Id.* at 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.

10/28/04

DATE

[REDACTED SIGNATURE]

Arbitrator