

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

IN RE: DIET DRUGS (PHENTERMINE/ FENFLURAMINE/DEXFENFLURAMINE)	:	MDL DOCKET NO. 2 :15MD1203
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SHEILA BROWN, ET AL.	:	
v.	:	
AMERICAN HOME PRODUCTS CORPORATION	:	CIVIL ACTION NO. 99-20593
-----	:	
Appellant:	:	
Arbitration No.:	:	REPORT AND AWARD
Claim NO.: 183/00	:	OF ARBITRATOR
	:	

FINDINGS OF FACT

1. On [REDACTED] the AHP Settlement Trust denied the claim of [REDACTED] 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. 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 [REDACTED] an Arbitration Hearing was held concerning the claim of [REDACTED]

### ANALYSIS

1. According to Questions 8 and 9 of Pink Form, answered that he took Diet Drugs for 61 days or more.
2. Claimant submitted one complete original form dated and a Supplemental Part II of the Green Form dated The physician filling out the original Green Form is not a Level II trained Board Certified Cardiologist. The supplemental Green Form was completed by a Level II trained Board Certified Cardiologist.
3. The answers to questions C.3.A and C.3.B on page 8 of Part II of the original Green Form show that the claimant has mild mitral valve regurgitation and no aortic valve regurgitation.
4. The answers to questions C.3.A and C.3.B on page 8 of Part II of the supplemental Green Form show that the claimant has mild mitral valve regurgitation and no aortic valve regurgitation.
5. Both Green Forms were based on an echocardiogram dated
6. The claimant has stated his belief that he qualifies for Matrix Level B IV.

### CONCLUSIONS

1. The Trust findings are not clearly erroneous as set forth in Rule 5 of the Rules Governing Arbitration Process.
2. has demonstrated mild mitral regurgitation.
3. Based upon the findings above, is not entitled to any Matrix Benefits at this time because the conditions that are prerequisite 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))

4. In order to be eligible for any level Matrix compensation, a claimant must be FDA positive.

5. Per the Settlement Agreement, Section 1.22, pages 5-6, "FDA Positive" is defined as follows:

A. With respect to a diagnosis based on an echocardiogram conducted between the commencement of diet drug use and September 30, 1999, FDA positive is a condition in which the cardiologist interpreting the echocardiogram, in the ordinary course of medical treatment, has issued a written report which clearly states that the individual has mild or greater regurgitation of the aortic valve and/or moderate or greater regurgitation of the mitral valve; provided however, that this definition shall be applicable only to qualification of a diet drug recipient for fund A benefits. In order to qualify for Matrix compensation benefits, a diet drug recipient must present evidence that he or she had an echocardiogram prior to the end of the screening period that meets the requirements of Section 1.22.B below.

B. With respect to a diagnosis based on an echocardiogram conducted after September 30, 1999, FDA positive is defined as mild or greater regurgitation of the aortic valve of the heart and/or moderate or greater regurgitation of the mitral valve of the heart as these levels are defined in Singh 2 (1999) and measured by an echocardiographic examination performed and evaluated by qualified medical personnel following the protocol as outlined in Feigenbaum (1994) or Weyman

(1994).

6. The degrees of regurgitation are determined as follows:
  - A. Aortic Valve – mild or greater regurgitation, defined as regurgitant jet diameter in the parasternal long-axis view (or in the apical long-axis view, if the parasternal long-axis view is unavailable), equal to or greater than ten percent (10%) of the outflow tract diameter (JH/LVOTH).
  - B. Mitral Valve – moderate or greater regurgitation, defined as regurgitant jet area in any apical view equal to or greater than twenty percent (20%) of the left atrial area (RJA/LAA).
7. Under the terms of the Settlement agreement, as amended, a claimant qualifies for Matrix Compensation Benefits if, inter alia, he or she satisfies the conditions for, at least, one of the five (5) Matrix Levels identified in the Settlement agreement. (Settlement Agreement, as amended, section IV.B.2.c., page 39). Matrix Level I benefits must be based on severe mitral regurgitation (Settlement Agreement as amended, (*Id.*, section IV.B.2.c(1)(b), page 36). Matrix Level II benefits must be based on, at least, moderate mitral valve regurgitation. (*Id.*, section IV.B.2.c(2), page 38). Matrix level III benefits must be based on valvular surgery, the need for valvular surgery or a stroke. (*Id.*, section IV.B.2.(c)(3), page 42). The conditions that are prerequisite to recovery of Matrix Levels IV and V benefits are also not present in this claim. (*Id.*, section IV.B.2.c(4),(5)).
8. Accordingly, under the terms of the Settlement Agreement, a diagnosis of mild mitral regurgitation is, by itself, insufficient to establish entitlement to any level of Matrix

Compensation Benefits under either Matrix. (See Arbitration Decisions Nos. 1, 3-7, 9-11 & 22 available at <http://www.settlementdietdrugs.com/index.cfm/fuseaction/sdd.notices/index.cfm>).

Thus, because \_\_\_\_\_ does not satisfy the conditions for any of the five (5) Matrix levels identified in the Settlement Agreement, \_\_\_\_\_ is not entitled to Matrix Compensation Benefits.

9. As an eligible class member, should his mitral valve condition change in the future, demonstrated by a qualifying Echocardiogram and medical documentation, \_\_\_\_\_ may be entitled between now and December 31, 2015 to apply for Matrix-Level Benefits by submitting a Supplemental GREEN Form.

10. Based upon all of the above, \_\_\_\_\_ is not presently entitled to any Matrix Benefits.

DATE

4/22/04

ARBITRATOR