

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

FINDINGS OF FACT

1. On January 8, 2002, the AHP Settlement Trust ("Trust") denied the claim of Ezra Morris for Matrix Compensation Benefits.
2. On _____ 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 _____ the claim of _____ was referred by the Court to Arbitration pursuant to Sections 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 _____ an Arbitration Hearing was held concerning the claim of _____

ANALYSIS

1. Pink Form (Questions 8 and 9) states that he ingested Redux (Dexfenfluramine) for 61 days or more. This is confirmed by pharmacy records which confirm that [REDACTED] was prescribed 180 Redux (a 90-day supply) between [REDACTED]

2. [REDACTED] has submitted two Green Forms. The first, received by the Trust on [REDACTED] resulted in the Trust's [REDACTED] denial of Matrix Compensation Benefits and is the subject of this Arbitration. The second Green Form, received by the Trust on [REDACTED] has not been the subject of a final determination by the Trust and is not the subject of this Arbitration.

3. Though he sought compensation, [REDACTED] did not specify in his [REDACTED] Green Form which Matrix he believed applied to him or which Matrix-Level Benefits he sought. (See 2001 Green Form Questions 5 and 6). In his Arbitration Statement of the Case, [REDACTED] requested compensation for four items: 1) the purchase price of the Redux; 2) a privately-obtained echocardiogram; 3) periodic future tests to identify any damage caused by Redux; and 4) damage suffered because of his ingestion of Redux.

4. The first three items for which [REDACTED] seeks compensation are not governed by the Arbitration process. The Nationwide Class Action Settlement Agreement, as amended (the "Settlement Agreement") established two funds, Fund A and Fund B. (Settlement Agreement, section III.A.1; Memorandum and Pretrial Order No. 1415 (August 28, 2000)). Fund A provides compensation for certain out-of-pocket expenses and other specified benefits, including certain drug and echocardiogram reimbursement. (Settlement Agreement, section

IV.A; Memorandum and Pretrial Order No. 1415 (August 28, 2000)). Fund B provides compensation for specified physical injuries if the claimant is entitled to Matrix benefits.

5. The arbitration appeals process applies only to determinations made regarding Fund B. (See Rules Governing Arbitration Process 5.) Requests for compensation for the purchase price of the Redux, a privately-obtained echocardiogram and periodic future tests to identify any damage caused by Redux do not pertain to Fund B benefits. Therefore, I lack authority to address them in connection with this arbitration.

6. claim for compensation for damage done because of his ingestion of Redux is a Fund B matter appropriately raised in an Arbitration appeal. However, did not meet the requirements for Matrix Compensation Benefits.

7. In order to obtain Matrix Compensation Benefits, a claimant who ingested diet drugs must be first eligible and then 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 within a specified time period; or (2) Diet Drug Recipients diagnosed by a Qualified Physician as having Endocardial Fibrosis and who have registered for Fund B Benefits within a specified time. (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.)

8. Green Form, signed by Board-Certified Cardiologist did not indicate that had any level of either mitral regurgitation or aortic regurgitation. (See Green Form Questions C.3.A. and C.3.B.) In

support of his claim, submitted an echocardiogram dated It stated that had no valvular regurgitation. During the teleconference, expressed concern that had been both the doctor prescribing Redux as well as the doctor evaluating echocardiogram. offered no evidence, however, that report was invalid. Therefore, based on the information contained in his Green Form and echocardiogram, there was no evidence that any of the conditions that would place him within the first category of eligibility for Matrix Compensation benefit.

9. Also in Green Form, stated that not have Endocardial Fibrosis. (See Green Form, Question L.6.) Therefore, there was no evidence that suffered any condition that would place him within the second category of eligibility for Matrix Compensation benefits. Because there is no basis on which to conclude that is eligible for Matrix Compensation benefits, he cannot be qualified to receive Matrix-Level benefits.

CONCLUSIONS

1. Appellant raised three matters that are not the proper subject of arbitration appeals: compensation for 1) the purchase price of the Redux; 2) a privately-obtained echocardiogram; and 3) periodic future tests to identify any damage caused by Redux. As arbitrator, I lack jurisdiction to address these claims.

2. submitted no basis on which to conclude that he 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.

3. Based upon the findings above, _____ 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. (Settlement Agreement at sections IV.B.2.c.(1), (2), (3), (4), and (5)).

5/17/04

DATE

Arbitrator