

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
SHEILA BROWN, ET AL. v. AMERICAN HOME PRODUCTS CORPORATION -----	:	CIVIL ACTION NO. 99-20593
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] for Matrix Compensation Benefits.
2. On [redacted] [redacted] filed an appeal from the denial of benefits by the [redacted] 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 [redacted] 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 [redacted] an Arbitration Hearing was held concerning the claim of [redacted]

ANALYSIS

1. Pink Form (Questions 8 and 9) states that she ingested Pondimin (Fenfluramine) and Redux (Dexfenfluramine) each for 61 days or more. The Pondimin usage is confirmed by pharmacy records which show that [REDACTED] was prescribed 1080 Pondimin between [REDACTED] and [REDACTED]. The pharmacy records show that [REDACTED] was prescribed 60 Redux (a 30-day supply) on [REDACTED].

2. In her Green Form, [REDACTED] seeks Level II Matrix Compensation Benefits on the A-1 Matrix (See Green Form Questions 5 & 6). During the teleconference, [REDACTED] stated that she sought benefits both for existing damage done as a result of taking diet drugs as well as for potential illnesses in the future.

3. The arbitration process is designed to provide claimants with an appeal process from decisions of the Trust. To the extent that [REDACTED] is concerned about future illnesses, those matters have not been the subject of a determination by the Trust, and thus are not within my authority as arbitrator.

4. With respect to [REDACTED] claim for existing damage, in order to obtain Matrix Compensation Benefits, a claimant who ingested diet drugs must first be eligible and then be qualified to receive Matrix-Level Benefits. In order to be eligible for Matrix Compensation Benefits, a claimant 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.

5.                    is eligible for Matrix Compensation Benefits. Her Green Form, dated                    and completed by Board-Certified Cardiologist                    stated that                    had moderate aortic regurgitation but no mitral regurgitation. See Green Form Questions C.3.A. and C.3.B. This conclusion is confirmed by                    echocardiogram report.                    submitted two echocardiogram reports in support of her claim. The first echocardiogram report was                    It stated that                    had moderate regurgitation of the aortic valve but only trace regurgitation of the mitral valve. It did not show that                    had mild or greater mitral regurgitation, and thus formed the basis of conclusion that                    did not have mitral regurgitation as that term is defined for purposes of the Settlement Agreement. See Green Form Questions C.2., C.3.A. and C.3.B.

                  Gray Form, dated                    stated that                    had mild mitral regurgitation and moderate aortic regurgitation. This conclusion is supported by second echocardiogram report, dated                    That report stated that                    had mild mitral regurgitation, mild to moderate tricuspid regurgitation and moderate aortic insufficiency, and formed the basis of                    conclusion in                    Gray Form that she suffered mild mitral regurgitation and moderate aortic regurgitation, as those terms are defined in the Settlement Agreement. See Gray Form Questions 6.a. and 6.b. Therefore, based on the information contained in her Green Form, Gray Form and two echocardiogram reports, is FDA Positive and thus meets the eligibility requirements for Matrix Compensation Benefits.

6.            Even if a claimant is FDA Positive and thus eligible for Matrix Compensation Benefits, in order to obtain benefits a claimant must suffer from a qualifying condition. On her Green Form,                    stated that she sought Matrix Level II benefits. See Green Form

Question 5. Matrix Level II is left sided valvular heart disease, defined as either moderate mitral regurgitation or moderate aortic regurgitation, plus other complicating factors. Moderate or severe aortic regurgitation requires one or more of the following: pulmonary hypertension; left ventricular end-systolic dimension greater than 50 mm or left ventricular end-diastolic dimension greater than 70 mm; or an ejection fraction less than 50%. Moderate or severe mitral regurgitation requires one or more of the following: pulmonary hypertension; left atrial supero-inferior systolic dimension greater than 5.3 cm or left atrial antero-posterior systolic dimension greater than 4.0 cm; left ventricular end-systolic dimension greater than or equal to 45 mm; an ejection fraction of less than or equal to 60%; or cardiac arrhythmias. Settlement Agreement at Section IV.B.2.c.(2).

7. On her Green Form, [REDACTED] board-certified cardiologist, stated that although [REDACTED] had moderate aortic regurgitation, she did not have left ventricular end-systolic dimension greater than 50 mm or left ventricular end-diastolic dimension greater than 70 mm; she did not have left atrial supero-inferior systolic dimension greater than 5.3 cm or left atrial antero-posterior systolic dimension greater than 4.0 cm; she did not have left ventricular end-systolic dimension greater than or equal to 45 mm; she did not have cardiac arrhythmias; and [REDACTED] had normal ejection fractions ( $\geq 60\%$ ). See Green Form Question F 1-8. On [REDACTED] Gray Form, [REDACTED] reported that she suffered from mild mitral regurgitation, but he did not report the presence of any conditions required for Level II Matrix Benefits.

8. Nor does [REDACTED] have any conditions which would entitle her to benefits on Matrix Levels I, III, IV or V. Matrix Level I is severe left-sided valvular heart disease without complicating factors, requiring one of the following: severe mitral or aortic regurgitation or FDA

positive valvular regurgitation plus bacterial endocarditis. Green Form stated that she had neither severe mitral or aortic regurgitation or bacterial endocarditis. See Green Form Questions C.3.A. and E.3. Matrix Level II is left sided valvular heart disease requiring surgery, a need for surgery, or where the claimant has suffered a stroke. Green Form stated that she had not had surgery and did not meet the defined need for surgery; nor had she suffered a stroke. See Green Form Questions F.9-11. Matrix Level IV requires that the claimant have qualified for Matrix Level I, II or III plus suffer from additional complicating factors defined as a stroke, a peripheral embolus, or severe permanent impairment to the kidneys, abdominal organs or extremities. Because [redacted] had not qualified for Matrix Level I, II or III, she did not qualify for Matrix Level IV. Matrix Level V is defined as qualification for a lower Matrix Level, plus complicating factors or death. Because [redacted] had not qualified for a lower Matrix level, she did not qualify for Matrix Level V Benefits.

### CONCLUSIONS

1. Appellant submitted no basis on which to conclude that she is both 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).

5/26/04

DATE

Arbitrator