

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

SHEILA BROWN, ET AL.

CIVIL ACTION NO.

v.

99-20593

AMERICAN HOME PRODUCTS CORPORATION

REPORT AND AWARD  
OF ARBITRATOR

Appellant:  
Arbitration No.:  
Claim No.: 183/00

**FINDINGS OF FACT**

1. On \_\_\_\_\_ the AHP Settlement Trust ("Trust") denied the claim of \_\_\_\_\_ for Matrix Benefits.

2. On \_\_\_\_\_ requested that the United States District Court refer this matter to arbitration. \_\_\_\_\_ appeal was filed with the District Court on \_\_\_\_\_

3. On \_\_\_\_\_ claim was referred by the District Court for arbitration from the Trustees and/or claims administrator's denial of benefits

4. On \_\_\_\_\_ a hearing was held on \_\_\_\_\_ arbitration claim.

**ANALYSIS**

FUND B MATRIX ELIGIBILITY AND QUALIFICATION

1. \_\_\_\_\_ pharmacy records reflect that he was dispensed more than 61 (sixty-one) days' worth of Pondimin® and Phentermine.

2. stated on his Pink Form that he ingested Pondimin® (Fenfluramine) and Redux™ (Dexfenfluramine) for 61 days or more.

3. GREEN Form indicates that it was completed by an Emergency Medicine Physician who was neither a Board-Certified Cardiologist nor a Board-Certified Cardiothoracic Surgeon. (Question II.A.) The GREEN Form also indicates that the physician has not received level 2 training in echocardiography. (*Id.*)

4. Under the terms of the Settlement Agreement, Matrix Benefits are only permitted based upon GREEN Form answers supplied by a Board-Certified Cardiologist or Cardiothoracic Surgeon who completes the GREEN Form based upon the review of a claimant's Echocardiogram and supporting medical information. (Settlement Agreement, Section VI.C.4).

5. Since GREEN Form was not completed by a Board-Certified Cardiologist or Cardiothoracic Surgeon, GREEN Form is deficient and violates the requirements of the Settlement Agreement.

6. At the arbitration hearing, argued that his physician completed the GREEN Form based upon the results of an Echocardiogram performed by a cardiologist.

7. The Trust must adhere to the terms of the Settlement Agreement and is precluded from making an award based upon a non-qualified physician, regardless of whether the physician relied on information provided by a cardiologist.

8. Therefore, the GREEN Form submitted by cannot form the basis for an award of Matrix Benefits. Moreover, the answers provided in Part II of GREEN Form do not support such an award.

9. GREEN Form and Echocardiogram report indicate that he had an Echocardiogram conducted on

10. Question C.3(A) of GREEN Form states that he has mild mitral valve regurgitation.

11. GREEN Form indicates that he does not have an ejection fraction of less than 60%. (Question F.8). Echocardiogram report indicates that he has trace mitral regurgitation with an estimated ejection fraction of 50-55%.

12. Neither GREEN Form nor Echocardiogram report indicates any aortic valve regurgitation.

13. The Settlement Agreement discusses the distinction between eligibility as a Class Member and qualification for Matrix Benefits. (Settlement Agreement, Section IV.B.1 and B.2). During the arbitration hearing, the Representative for the Trust explained the requirements for eligibility and qualification for benefits to

14. took the Diet Drugs for 61 or more days and has a trace level of mitral valve regurgitation. These factors do not make him eligible as a Class Member or qualify him for Matrix Benefits at this time.

15. Matrix Level I Benefits must be based on severe aortic regurgitation and/or severe mitral regurgitation without complicating factors as defined in the Settlement Agreement or on other conditions which are not indicated by GREEN Form or Echocardiogram report. (Settlement Agreement, Section IV.B.2.c (1)). There are also no conditions indicated which are prerequisite to recovery of Matrix Level II, III, IV, or V Benefits. (*Id.* at IV.B.2.c(2), (3), (4), and (5)).

16. During the hearing, the Representative for the Trust explained that was eligible for a screening Echocardiogram which would be paid for by the Trust. responded that he had already had the Echocardiogram provided by the Trust but that he never

received a copy of the results.                      also stated that he had had this Echocardiogram performed on                      of                      Hospital in West Virginia.

17. Neither the GRAY Form nor the Echocardiogram report by                      is part of the current record.

18. The GRAY Form and the Echocardiogram report indicating the results of the Echocardiogram performed by                      will be sent to                      the Trust. If the results of that Echocardiogram (or a future privately-obtained Echocardiogram) indicate a change in                      medical condition between now and January 3, 2003, he may be eligible to qualify for benefits in the future.<sup>1</sup>

19. If eligible, should                      condition reach a level that would qualify him for Matrix Benefits, he has until December 31, 2015, to apply for benefits by submitting another GREEN Form accompanied by a confirming Echocardiogram.

FUND A ISSUES NOT COVERED BY ARBITRATION PROCESS

20. The Settlement Agreement establishes two funds, Funds A and B, to provide benefits to Class Members. (Settlement Agreement, Sections III.A.1, VI.A. and VI.C; Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62). Fund A provides funding for medical monitoring and refund benefits. (Settlement Agreement, Section IV.A; Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62). Fund B provides funding for Matrix Benefits. (Settlement Agreement, Section IV.B; Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62).

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<sup>1</sup>                      has another privately obtained Echocardiogram prior to January 3, 2003, which indicates a change of condition such as the presence of mild mitral regurgitation or an FDA Positive level of regurgitation, he should preserve his right to seek Matrix Level Benefits in the future by submitting a GRAY Form promptly following his echocardiogram.

21. raised the issue of whether he will be reimbursed for prescription costs and for his privately-obtained Echocardiogram and stress test performed on

22. The arbitration appeal process only pertains to determinations regarding claims for Fund B Benefits, and costs related to Fund A are not part of this appeals process. The Arbitrator refers to contact the Trust at 1-800-386-2070 to inquire whether he is entitled to receive reimbursement for his prescription costs, diagnostic testing, and/or his privately-obtained Echocardiogram. In addition, may also submit a question to the Trust through its web site, [www.settlementdietdrugs.com](http://www.settlementdietdrugs.com). additional information by consulting the summary of Settlement Benefits on page 13 of the Official Notice of Final Judicial Approval which was recently mailed to all Claimants.

### CONCLUSIONS

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

2. GREEN Form was not completed by a Board-Certified Cardiologist or Cardiothoracic Surgeon as required by the terms of the Settlement Agreement.

3. Echocardiogram Report indicates he has trace mitral regurgitation and no aortic regurgitation.

4. Based upon the findings above, is not entitled to any Matrix Benefits at this time because the conditions that are prerequisites 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)).

5. may be eligible for Matrix Benefits in the future if, by January 3, 2003, he has an Echocardiogram confirming the presence of mild mitral regurgitation or an FDA Positive level of regurgitation. would then need to preserve his rights by filing a GRAY Form

indicating his eligibility. Once eligible, if [REDACTED] medical condition reaches a Matrix Level by December 31, 2015, he may apply for benefits by filing another GREEN form completed by a Board-Certified Cardiologist or a Board-Certified Cardiothoracic Surgeon with level 2 training in echocardiography.

Date: July 30, 2002

ARBITRATOR