

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 issued a tentative Determination, denying his claim for Matrix Benefits. One of the reasons given for the tentative denial was the failure of _____ to provide adequate pharmacy or medical records actually detailing the prescription of the diet drug. There was no affidavit of a prescribing physician or pharmacist that would tend to prove drug use. In response to the tentative determination, _____ submitted additional information.

2. On _____ the AHP Settlement Trust ("Trust") denied the claim of _____ the grounds that her submissions were inadequate to support her claim.

3. On _____ filed an appeal with the District Court.

4. On _____ the Clerk of the Court referred the appeal to arbitration.

5. On _____ a telephone hearing was held on _____ claim. _____ was the Arbitrator. _____ participated, as well as a representative from the Trust.

6. At the hearing [REDACTED] contended that she had ingested the diet drugs for several years. She claimed that the trust lost her records that she submitted in support of her claim. The Trust representative contended [REDACTED] had submitted no documentation that she had purchased the drug during the years in question. [REDACTED] countered by stating she would forward the necessary documents.

7. At the hearing the arbitrator gave [REDACTED] additional time to submit the documents supporting her claim.

8. On [REDACTED] the Chair of the Arbitration Program gave [REDACTED] until [REDACTED] to submit a Petition For New Evidence, and the proposed new evidence showing proof of the ingested drugs. See Letter of [REDACTED] and [REDACTED]

9. By letter of [REDACTED] [REDACTED] replied to the Chair's letter of [REDACTED]. The Chair forwarded her letter to the Arbitrator on [REDACTED]

10. In her [REDACTED] letter, [REDACTED] stated that all the records of [REDACTED] Pharmacy had been destroyed.

11. Thus [REDACTED] has not supplied any additional evidence to support her claim.

ANALYSIS

Under the Settlement Agreement, the burden is on the claimant to submit documentary proof of the period of time for which the Diet Drugs were prescribed and dispensed to the claimant. This proof must include one of the following: (1) pharmacy records; (2) medical records prescribing or dispensing the Diet Drugs; or an affidavit, under penalty of perjury, from the prescribing physician or dispensing pharmacy. Settlement Agreement Section VI.C.2.d.(1)-(3) at 91.

The only materials submitted by [REDACTED] were two affidavits prepared by [REDACTED] on her own behalf. In the affidavits she claimed she obtained the drugs at the [REDACTED]

General Nutrition Center store in California. She also states that she purchased a one month supply of "another kind of fenphen" at a GNC store. This proof fails as Pondimin and Redux were available only by prescription

submissions fail to identify the pharmacy, physician, or weight loss clinic from which she obtained the drugs.

also submitted a patient intake form from a who performed an echocardiogram on her in In his intake notes, remarks that the reason for the study is "phen phen use." This statement is not sufficient to prove the prescription or ingestion of a diet drug for the prescribed period of time. The affidavit of the physician must describe the facts and circumstances of the recipient's ingestion for 61 days. The brief statement on the intake form does not satisfy this requirement.

contention that she had submitted the required records but that they were lost by the Trust is not credible. She has failed to identify even in cursory terms the documents that she claims were lost, and which would ostensibly identify the prescriptions and her use.

also requests reimbursement for the cost of the echocardiogram that she paid for personally. Pursuant to the Settlement Agreement, the Trust will pay for only one echocardiogram, either arranged by the Trust or by the claimant's own arrangement, not both. The Trust paid for one echocardiogram arranged for by the Trust.

CONCLUSIONS

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

2. has not submitted evidence that she ingested relevant diet drugs for 61 days.

3. claim that she submitted the proper records which would substantiate her claim, but were lost by the Trust is unsubstantiated.

4. The Trust provided with a free echocardiogram. It is not required to pay for another echocardiogram paid for by

5. The Trust properly denied claim for reimbursement.

Date: August 19, 2004

ARBITRATOR