

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

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

FINDINGS OF FACT

1. On [redacted] the AHP Settlement Trust ("Trust") denied the claim of [redacted] [sometimes hereinafter "Claimant"] for Matrix Compensation Benefits.
2. On [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. On [redacted] the claim of [redacted] was referred by the Court to Arbitration pursuant to VI. C. 4 (h) & (I) or VI. D. 1. (f) and (g) of the Nationwide Class Action Settlement Agreement with American Home Products Corporation ("Settlement Agreement").
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 Redux (Dexfenfluramine) (hereinafter “diet drug” or “diet drugs”) for 61 days or more, an assertion she reiterated during the Arbitration Hearing. In Question 10 of her Pink Form, provided the name, address and phone number of the pharmacy dispensing the diet drug. In that same question, checked the box stating that she did not have, or did not wish to obtain, a copy of the applicable pharmacy prescription dispensing records, and she completed the medical records authorization which authorized the Trust to obtain her medical and pharmacy dispensing records. The record contains no evidence that the Trust obtained, or sought to obtain, either.

2. Even if the Trust had undertaken this task and were found to have ingested diet drugs, in order to receive Matrix Compensation, a Claimant must be both eligible and 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 performed on or before January 3, 2003 provided the Diet Drug Recipient registered for settlement benefits by May 3, 2003; or (2) Diet Drug Recipients who by September 30, 2005 have been diagnosed by a Qualified Physician as having Endocardial Fibrosis and who have registered for Fund B Benefits by January 31, 2006. 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.

3. Part II of Green Form was completed by Board-Certified

Cardiologist and signed on In it, states that
three qualifying echocardiograms were performed on in

Based on a review of these echocardiograms, states that
had neither mitral nor aortic regurgitation as those terms are defined by the
Settlement Agreement. (See Green Form Questions C.3.A. and C.3.B.).

After its denial of claim, the Trust received additional information
regarding the echocardiogram. During the arbitration hearing, granted
permission for the Trust to submit a copy of that document to this arbitrator. I received and
reviewed the document, entitled "Echocardiogram Worksheet" bearing name and
dated The Echocardiogram Worksheet contains a conclusion that
has trivial mitral regurgitation.

Regurgitation at the trivial level does not satisfy the Settlement Agreement, which
requires at a minimum mild mitral regurgitation. As defined in the Settlement Agreement, mild
mitral regurgitation refers to that level of regurgitation as defined in Singh (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). That degree of
regurgitation is determined as follows: (1) either the Regurgitant Jet Area/Left Atrial Area
(RJA/LAA) ratio is more than five percent (5%) or the mitral regurgitant jet height is greater than
1 cm from the valve orifice, and (2) the RJA/LAA ratio is less than twenty percent (20%).

Settlement Agreement, I.38. Echocardiogram Worksheet both fails on its own to
establish a qualifying amount of valvular regurgitation and is fully supportive of
conclusion in claimant's Green Form that she does not suffer from the Settlement Agreement's

required levels of valvular regurgitation. (*See* Echocardiogram Worksheet and Green Form Questions C.3.A. and C.3.B.).

4. Even if _____ Green Form stated that she suffered from mitral or aortic regurgitation, she would not be entitled to Matrix Compensation unless her application included, *inter alia*, the written report and videotape or disk of the Echocardiogram results which relate to the condition for which she seeks compensation. (*See* Green Form, Part I, Question 10). In Question 10, however, _____ states that she yielded that assignment to the Trust, having signed a medical authorization to enable the Claims Administrator to obtain her medical records. As Green Form Question 10 requested, _____ provided the names and address of two physicians and a Medical Center whom _____ represented had pertinent medical records. (*See id.*) In addition, the Trust's file contains a copy of a letter (originally sent from the Trust to _____ in which _____ in response to a question soliciting her preference for how her records should be obtained, checked the box stating "I request that the claim processing company obtain my medical records." (*See* Form Number _____ signed by _____ dated _____

There is thus evidence from which to conclude that _____ relied on her completion of the two forms (Green Form and Form _____ to shift from herself to the Trust the burden of seeking her applicable medical records. There is no evidence that the Trust did so. While such an effort would have been compassionate, it was not required. The Trust is entitled to rely on a claimant's Green Form as the claimant's justification for compensation. In Green Form, _____ stated that _____ suffered from neither mitral nor aortic regurgitation. The Trust had no basis for disbelieving this statement nor any obligation to

undertake to disprove it by searching for evidence that in fact suffered valvular heart disease when all the assembled evidence (including the statement of own Board-certified physician) stated the opposite.

For these reasons, there is no basis to conclude that met the first requirement of establishing that she was eligible for Matrix compensation.

5. Even if were found to be eligible to receive Matrix compensation, in order to receive benefits, she would have to prove that she suffered from one of the conditions qualifying her for Matrix-level benefits. Those benefits are described in Settlement Agreement, Section IV.B.2.c.(1)-(5). And although requested that the Trust's denial of Matrix compensation be referred to Arbitration, in her Green Form did not specify the Matrix or Matrix-Level for which she believes she qualifies. (See Green Form, Questions 5 and 6.)

During the Arbitration Hearing, asserted that she suffers from shortness of breath, is often tired, has difficulty walking without a walker, and has been diagnosed with congestive heart failure, and suggested that these conditions support her claim for Matrix compensation. Though lamentable, none of the conditions with which suffers is defined as a qualifying Matrix-level condition entitling her to compensation.

Matrix Level I requires severe mitral or aortic regurgitation. Neither Green Form nor the Echocardiogram Worksheet support a finding of even mild mitral or aortic regurgitation. (See Green Form Questions C.3.A. and C.3.B. and Echocardiogram Worksheet). Matrix Level II requires moderate or greater mitral or aortic regurgitation plus other complicating factor. Neither Green Form nor the April

Echocardiogram Worksheet state that she suffers from either of these conditions. (*See id.*) Matrix Level III requires either valvular repair surgery, a proven yet unfulfilled need for such surgery or a stroke. Green Form states that she has not had valvular surgery, does not need such surgery, nor has she suffered a stroke. (*See Green Form Questions F.9., F.10, F.11 and H*). Matrix Levels IV and V require that the claimant first be qualified for one of the lower Matrix levels (Levels I, II or III) plus suffer from further complicating factors. Because does not qualify for Matrix-levels I, II or III, she cannot qualify for Matrix-levels IV or V. For these reasons, even if were eligible for Matrix compensation, which she has not established, she would not be qualified for Matrix-level benefits.

6. In her letter contesting the denial of her claim, stated that she sought reimbursement for the cost of her diet drug medication. (*See Letter from to "To Whom it May Concern" regarding "Nationwide Class Action Settlement Agreement with American Home Products Corporation", dated) The Settlement Agreement, as amended, 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. (Settlement Agreement, section IV.B; Memorandum and Pretrial Order No. 1415 (August 28, 2000)).*

The arbitration appeals process applies only to determinations made regarding Fund B. (*See Rules Governing Arbitration Process 5.*) A request for compensation for the purchase price

of the Redux does not pertain to Fund B benefits. Therefore, I lack authority to address it in connection with this arbitration.

CONCLUSIONS

1. The conditions required for recovery of Matrix Level Benefits are not present in this claim. Claimant submitted no basis on which to conclude that she 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.

2. 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. *Id.* at Sections IV.B.2.c.(1), (2), (3), (4), and (5).

Accordingly, based on all of the above, I find that is not presently entitled to any Matrix Compensation Benefits.

9/13/04

DATE

Arbitrator