

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

IN RE: DIET DRUGS (PHENTERMINE/ : MDL DOCKET NO.
FENFLURAMINE/DEXFENFLURAMINE) : 2:15MD1203
PRODUCTS LIABILITY LITIGATION :
: :
-----: :
: :
SHEILA BROWN, ET AL. :
v. :
AMERICAN HOME PRODUCTS CORPORATION : CIVIL ACTION NO.
: :
-----: 99-20593
: :
Appellant: : REPORT AND AWARD
Arbitration No: : OF ARBITRATOR
Claim No.: 183/00 : :

FINDINGS OF FACT

1. On [REDACTED] the AHP Settlement Trust (Trust) denied the claim of [REDACTED] for Matrix Compensation Benefits.

2. On [REDACTED] filed an appeal from the denial of benefits by the Trust to this Court 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 Section VI.C.4(h) & (i) or VI.D.1.(f) & (g) of the Nationwide Class Action Settlement Agreement with American Home Products Corporation (SA).

4. On [REDACTED] an Arbitration Hearing was held on the claim of [REDACTED]

5. [REDACTED] GREEN FORM, [REDACTED] reported no mitral valve regurgitation and mild aortic valve regurgitation

(GREEN FORM page 8, question C.3). The GREEN FORM also reported aortic sclerosis and ejection fractions between 50% and 60% (GREEN FORM pages 8 and 11, questions D.3 and F.8). The report associated with the echocardiogram submitted with her claim also reported "[t]race/physiological mitral insufficiency" and "[m]ild aortic insufficiency" (echocardiogram, page 27).

6. GREEN FORM establishes that she was FDA Positive because it reported mild aortic valve regurgitation.

ANALYSIS

1. is an "Eligible Class Member," because her GREEN FORM reported mild aortic valve regurgitation making her FDA Positive. SA §IV.B.1.a.

2. To determine whether is entitled to benefits, however, it must be determined whether her claim qualifies under one of the five Matrix Levels established in the Settlement Agreement (SA §§IV.B.1.a and 2.C).

3. is not entitled to Matrix Compensation Benefits, because no Matrix Level of disease severity is applicable to her claim. See SA §IV.B.2.c, which refers to the "levels of disease severity in a Diet Drug Recipient which qualify eligible Class Members for payment on the Matrices..." Under this provision, if does not meet one of the specified levels of disease severity she is not entitled to benefits.

4. Matrix Level I does not apply to her claim because her GREEN FORM does not report severe left sided valvular heart disease or that she has been diagnosed with Endocardial Fibrosis in addition

to having been diagnosed FDA Positive,. SA \$IV.B.2.c(1).

5. Matrix Level II does not apply to her claim because her GREEN FORM does not report moderate or severe aortic valve regurgitation or moderate or severe mitral valve regurgitation with complicating factors. SA \$IV.B.2.c(2).

6. Matrix Level III does not apply to her claim because her GREEN FORM does not report left sided valvular heart disease requiring surgery or a condition of equal severity.

7. Matrix Levels IV and V do not apply to her claim because her GREEN FORM does not report any of the conditions specified under Matrix Levels IV or V. SA \$IV.B.2.c(4)-(5).

8. is thus not entitled to Matrix Compensation Benefits, despite the presence of mild aortic valve regurgitation, because her GREEN FORM reports no condition that would place her claim on any Matrix Level.

CONCLUSIONS

1. The Trust's Final Determination that was not entitled to Matrix Compensation Benefits was not clearly erroneous as a matter of law.

2. Despite FDA Positive status and eligibility for benefits, the inapplicability of any Matrix Level to her claim eliminates any entitlement to Matrix Compensation Benefits at this time. appeal was apparently based on a misunderstanding of the distinction between "eligibility" for and "entitlement" to Matrix Compensation Benefits. Should her condition

worsen to a level cognizable under a Matrix Level, she may file a claim for Matrix Compensation Benefits by December 31, 2015, according to the terms of the Settlement Agreement.

September 8, 2004

DATE

ARBITRATOR