

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

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

FINDINGS OF FACT

1. On [DATE], the AHP Settlement Trust (“Trust”) denied the claim of [APPELLANT] for Matrix Compensation Benefits.
2. On [DATE], [APPELLANT] 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 [DATE], the claim of [APPELLANT] was referred by the Court to 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 [DATE], an Arbitration Hearing was held concerning the claim of [APPELLANT].

ANALYSIS

1. [APPELLANT] Pink Form (Questions 8 and 9) states that she ingested Pondimin (Fenfluramine) for 61 days or more. This is confirmed by pharmacy records which confirm that [APPELLANT] was prescribed 180 Pondimin between [DATE] and [DATE].

2. In her Green Form, [APPELLANT] seeks Level I Matrix Compensation Benefits (See Green Form Question 5) but does not specify whether she seeks benefits on the A-1 Matrix or on the B-1 Matrix (See Green Form Question 6). In response, the Trust has characterized her claim as a claim for benefits on the A-1 Matrix. As is more fully explained below, whether [APPELLANT] claim is analyzed as a claim for benefits on the A-1 Matrix or the B-1 Matrix does not affect the outcome of this matter.

3. 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 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 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.

4. [APPELLANT] Green Form, dated [DATE], and completed by Board-Certified Cardiologist [DOCTOR], did not indicate that [APPELLANT] had any level of either mitral

regurgitation or aortic regurgitation. See Green Form Questions C.3.A. and C.3.B.

[APPELLANT] submitted two echocardiograms in support of her claim. The first was dated [DATE]; the second was dated [DATE]. Neither stated that [APPELLANT] had any level of either mitral regurgitation or aortic regurgitation. Although both echocardiograms disclosed that [APPELLANT] mitral valve was minimally redundant with minimal buckling of the anterior leaflet, that condition does not constitute mitral valve regurgitation. Therefore, based on the information contained in her Green Form and two echocardiograms, [APPELLANT] suffered none of the conditions that would place her within the first category of eligibility for Matrix Compensation benefits.

5. In [APPELLANT] Green Form, [DOCTOR] stated that [APPELLANT] did not have Endocardial Fibrosis. See Green Form, Question L.6. Therefore, [APPELLANT] did not suffer any condition that would place her within the second category of eligibility for Matrix Compensation benefits.

6. Although both of [APPELLANT] echocardiograms identified borderline criteria for mitral valve prolapse, neither concluded that she had mitral valve prolapse. Additionally, [DOCTOR] stated in [APPELLANT] Green Form that she did not have mitral valve prolapse. See Green Form, Question D.7. In any event, mitral valve prolapse entitles a claimant to Matrix Level B-1 benefits only if the claimant is first eligible for Matrix Compensation benefits, as defined in paragraph 3, above. Because [APPELLANT] was not eligible for Matrix Compensation benefits, she would not have been entitled to Matrix-Level B-1 benefits even if she suffered mitral valve prolapse (which she did not).

CONCLUSIONS

1. Appellant 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, [APPELLANT] 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).

DATE

REDACTED, Arbitrator