

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

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

REPORT AND AWARD
OF ARBITRATOR

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, 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) & (g) of the Nationwide Class Action Settlement Agreement with American Home Products Corporation.

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

ANALYSIS

FUND A ISSUES NOT COVERED BY ARBITRATION PROCESS

1. The Settlement Agreement provides for two funds, Funds A and B, to be established to provide benefits to class members. (Settlement Agreement, Section III.A.1; Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62). Fund A provides funding only for non-Matrix specified benefits and expenses, e.g., drug and echocardiogram reimbursement. (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).

2. The arbitration appeals process only covers determinations made regarding Fund B, specifically, the eligibility of claimants to receive Matrix Compensation Benefits and/or the amount of Matrix Compensation Benefits they are entitled to receive.

3. In her statement of the case, [REDACTED] requests benefits based on alleged medical symptoms and conditions allegedly caused by the use of the Diet Drugs. On her Green Form, [REDACTED] indicates that she believes she is entitled to Benefits on the Fund A-1 Matrix. (Green Form, Part I, page 4, question 6).

MATRIX ELIGIBILITY AND QUALIFICATION

4. Under the Settlement Agreement, Matrix Compensation Benefits are paid according to two matrices. See Settlement Agreement § IV.B.2.d. The A Matrix, or the full compensation matrix, applies to claimants who: (1) have been diagnosed timely as FDA Positive; (2) ingested the diet drugs for sixty-one (61) or more days; and (3) have no conditions requiring a reduced payment under the terms of the Settlement Agreement.

See id. § IV.B.2.d.(1). The B Matrix, or reduced compensation matrix, applies to claimants who: (1) have been diagnosed timely with Mild Mitral Regurgitation (regardless of the duration of ingestion of the diet drugs); or (2) were diagnosed timely as FDA Positive and ingested the diet drugs for sixty (60) days or less; or (3) were diagnosed timely as FDA Positive, ingested the diet drugs for sixty-one (61) or more days, and have certain conditions, identified in the Settlement Agreement, that may have caused or contributed to the claimant's heart problems. See id. § IV.B.2.d.(2).

5. The Pharmacy records of [REDACTED] indicate that she took Pondimin and Redux for 61 days or more.

6. [REDACTED] submitted a Blue Form, dated [REDACTED]. According to questions 7, 8 and 9 of [REDACTED] Blue Form, [REDACTED] answered that she took Pondimin and Redux for 61 days or more. (See the Blue Form, dated [REDACTED], page 4, at questions 7,8 and 9).

7. [REDACTED] submitted a Green Form dated [REDACTED]

8. In the Green Form, reference is made to an echocardiogram which was performed on [REDACTED]. (See the Green Form, Part II, dated [REDACTED], page 8, at questions C.1 and C.2).

9. The Green Form submitted by [REDACTED] reports no mitral valve regurgitation and no aortic valve regurgitation. (See Green Form, Part II, page 8, at question C.3). The answers to the questions in Part II of [REDACTED]'s Green Form were completed by her physician, [REDACTED], a Board-Certified Cardiologist. (See Green Form, Part II, page 7, Section A).

CONCLUSIONS

1. Based on the above, the findings of the Trust are not clearly erroneous as set forth in Rule 5 of the Rules Governing the Arbitration Process.
2. Based upon the above findings, [REDACTED] is not entitled to any Matrix Benefits because:
 - a. Both [REDACTED]'s echocardiogram and Green Form indicate that she is not FDA positive. (Settlement Agreement, Section 1.22(a)).
 - b. Matrix Level I Benefits must be based on severe aortic regurgitation and/or on severe mitral regurgitation, neither of which condition exists in this case, (Id., Section IV.B.2.c(1)(a)), or based on other conditions that are not present in this case. (Id., Section IV.B.2.c(1)(b)).
 - c. Matrix Level II Benefits must be based, at a minimum, on moderate or severe aortic regurgitation, or on moderate or severe mitral regurgitation, neither of which condition exists in this case. (Id., Section IV.B.2.c(2)).
3. The conditions that are prerequisite to recovery of Matrix Levels III, IV and V Benefits are also not present in this claim. (Id., Section IV.B.2.c(3), (4) and (5)).
4. Based upon all of the above, the Appellant is not entitled to any Matrix Benefits.

November 14, 2006

[REDACTED]