

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 :
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 : CIVIL ACTION NO.
APPELLANT :
 v. : 99-20593
AMERICAN HOME PRODUCTS CORPORATION: :
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 :
Appellant: REDACTED :
Arbitration No: REDACTED :
Claim No: REDACTED :

FINDINGS OF FACT

1. On [DATE] the Trustees of American Home Products Corporation denied the claim of [APPELLANT] for Matrix Compensation Benefits.

2. On [DATE] [APPELLANT] requested that the District Court refer this matter to arbitration.

3. On [DATE] the claim of [APPELLANT] was referred by the United States District Court for arbitration from the Trustees and/or claims administrator's denial of benefits to [APPELLANT].

4. On [DATE] a hearing was held on the arbitration claim of [APPELLANT].

ANALYSIS

1. Pharmacy records of [APPELLANT] reflect that she was dispensed Redux in May and June of 1997.
2. [APPELLANT]'s Pink Form includes her statement that she took the Diet Drug for 60 days (Pink Form, page 4, questions 8 and 9).
3. There are two Green Forms in the file of [APPELLANT]. By agreement, the later of the two forms, which includes the most information, is the one to be considered in this matter.
4. In the second Green Form, dated [DATE], with claim no. **REDACTED**, there are two echocardiograms referred to. One of the echocardiograms was taken in 1996 (before the ingestion of the Diet Drug), and the second echocardiogram was taken in March, 2000 (after the ingestion of the Diet Drug). These are referred to on the Green Form, page 8, at questions 2 and 3.
5. The answer to question 3 of the Green Form appears to state that [APPELLANT]'s regurgitation levels for both the mitral valve and the aortic valve do not rise to the level of mild.
6. Although somewhat ambiguous, the answer to question 3A has

"cross outs," which appears to show that the cardiologist crossed out the reference to mild mitral regurgitation and completed the form by stating that [APPELLANT]'s mitral valve regurgitation level did not rise to the level of mild.

7. During the course of the arbitration hearing, counsel for the Trust conceded that there may be an ambiguity in the Green Form and that the claimant may want to file a new green form to preserve her potential rights in the future.

CONCLUSIONS

1. The Trust findings are not clearly erroneous as set forth in Rule 5.

2. Based upon the findings above, [APPELLANT] is not entitled to any Matrix Benefits at this time.

3. Even if the ambiguities discussed above are resolved in favor of [APPELLANT], she still would not be entitled to any Matrix Benefits at this time because:

a. Matrix Level I Benefits must be based on severe aortic regurgitation or severe mitral regurgitation (Settlement Agreement, Section IV.B.2.c(1)(a), page 36) or on other conditions that are not present in this

matter. (Id., Section IV.B.2.c(1)(b). Page 36).

b. Matrix Level II Benefits must be based on moderate or severe aortic regurgitation (Id., Section IV B.2.(c)(2), pages 37-38).

4. The conditions that are pre-requisites for recovery of Matrix Level III, IV and V Benefits are not present in this claim. (Id., Section IV B.2.(c)(3)(4) and (5), pages 39-45).

5. Based upon all of the above, the claimant is not presently entitled to any Matrix Benefits.

DATE

_____/s/_____
ARBITRATOR