

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

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

**FINDINGS OF FACT**

1. On **[DATE]**, the AHP Settlement Trust (“Trust”) denied the claim of **[APPELLANT]**.
2. On **[DATE]**, **[APPELLANT]** requested the District Court to refer this matter to arbitration.
3. On **[DATE]**, the United States District Court for the Eastern District of Pennsylvania referred for arbitration the appeal of **[APPELLANT]** from the Trustees’ and/or claims administrator’s denial of benefits to **[APPELLANT]**.
4. On **[DATE]**, a hearing was begun on the arbitration claim of **[APPELLANT]**.
5. Because not all participants in the hearing had received the latest submission of **[APPELLANT]**, the hearing was postponed until **[DATE]**.
6. On **[DATE]**, a hearing was held on the arbitration claim of **[APPELLANT]**.

## **ANALYSIS**

1. Pharmacy records reflect that **[APPELLANT]** was dispensed more than 61 (sixty-one) days worth of Redux (Dexfenfluramine). According to the pharmacy records, **[APPELLANT'S]** Redux (Dexfenfluramine) prescriptions were filled between July and December, 1996. During the arbitration hearing, **[APPELLANT]** stated that he/she was not sure the Pharmacy records were accurate and that he/she believed he/she was dispensed Redux (Dexfenfluramine) in 1997, not 1996.

2. **[APPELLANT'S]** pink form includes his/her statement that he/she took the diet drug Redux (Dexfenfluramine) for 61 days or more.

3. **[APPELLANT'S]** file contains three green forms. Two (both dated **[DATE]**) were completed by **DOCTOR A**. **DOCTOR A'S** two completed green forms are identical except that the second green form corrects an erroneous answer to Question D.3. **DOCTOR A** is not a board-certified or board-eligible cardiologist. The third green form is dated **[DATE]** and is signed by **DOCTOR B**. **DOCTOR B'S** green form appears in all material respects to contain the same information as the second (corrected) green form signed by **DOCTOR A**. **DOCTOR B** is a board-eligible cardiologist.

4. **[APPELLANT'S]** file contains a **[DATE]**, green form signed by **DOCTOR C**. Because this green form had not been the subject of a final determination by the Trust, the parties agreed that **DOCTOR C'S** green form would not be considered during this arbitration hearing.

5. On **[DATE]**, **[APPELLANT]** suffered congestive heart failure.

6. On **[DATE]**, an echocardiogram was performed on **[APPELLANT]**.

7. The green forms signed by both **DOCTOR B AND DOCTOR A** contain a statement that **[APPELLANT'S]** **[DATE]** echocardiogram shows him/her to suffer from mild mitral regurgitation. Neither green form contains a statement that he/she has any aortic regurgitation. **[APPELLANT'S]** echocardiogram report is consistent with the answers in the green form.

8. During the hearing, **[APPELLANT]** provided a great deal of information in support of his/her claim that he/she suffers from mild aortic sclerosis. He/she expressed concern about the fact that there was no history of congestive heart failure in his/her family as well as the fact that statistically it is an illness that befalls people older than he/she. He/she also described the nature of the events surrounding his/her diagnosis of congestive heart failure (in **[DATE]**) in support of his/her claim for compensation for pain and suffering.

9. During the hearing, the representative of the Trust discussed the distinction between being eligible as a member of the settlement class and being qualified to receive benefits. The Trust representative explained that while **[APPELLANT'S]** mild mitral regurgitation makes him/her eligible to participate in the settlement, his/her current condition is not one that qualifies him/her for benefits at this time.

10. The green form and the echocardiogram report do not indicate that **[APPELLANT]** has any conditions which would qualify him/her for any Matrix Level Benefits.

Matrix Level I Benefits must be based on severe mitral regurgitation or on other conditions which are not indicated by **[APPELLANT'S]** green form or echocardiogram report. (Settlement Agreement, section IV.B.2.c (1)(a), (b)). There are also no conditions indicated which are prerequisite to recovery of Matrix Level II, III, IV or V Benefits. (Settlement Agreement, section IV.B.2.c (2), (3), (4) and (5)).

11. It is possible that **[APPELLANT]** will develop conditions that will entitle him/her to recovery of Matrix Benefits in the future. Because **[APPELLANT]** has registered the fact that he/she suffers from mild mitral valve regurgitation, he/she is an eligible class member (though not now qualified for benefits). If his/her condition should change in the future, he/she is entitled between now and December 31, 2015, to apply for Matrix Benefits by submitting a new green form.

12. **[APPELLANT]** also asked at the hearing about reimbursement for the cost of purchasing Redux (Dexfenfluramine). It was explained to him/her that such a claim is not appropriately raised at the arbitration hearing and that **[APPELLANT]** should pursue reimbursement directly from the Trust. **[APPELLANT]** was asked if he/she had recently received a package of forms (which package includes a reimbursement form) and he/she stated that he/she had received such a package.

## CONCLUSIONS

1. The conditions required for recovery of Matrix Level Benefits are not present in this claim.
2. The findings of the Trust are not clearly erroneous, as set forth in Rule 5 of the Rules Governing Arbitration Process.
3. Based upon the findings above, **[APPELLANT]** is not currently entitled to any Matrix Benefits because the conditions that are required for recovery of Matrix Level I, II, III, IV or V Benefits are not present in this claim. (Settlement Agreement, Sections IV.B.2.c. (1), (2), (3), (4) and (5)).

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

March 22, 2002  
DATE

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**REDACTED**  
Arbitrator