

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. v. AMERICAN HOME PRODUCTS CORPORATION	CIVIL ACTION NO. 99-20593
Appellant: Redacted Arbitration No.: Redacted Claim No.: Redacted	REPORT AND AWARD OF ARBITRATOR

FINDINGS OF FACT

On [DATE], the AHP Settlement Trust (“Trust”) denied the claim of [APPELLANT] for Matrix Benefits.

On [DATE], [APPELLANT] requested that the District Court refer this matter to arbitration. [APPELLANT’S] appeal was filed with the District Court on July 23, 2001.

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

On [DATE], a hearing was held on [APPELLANT’S] arbitration claim.

ANALYSIS

FUND B MATRIX ELIGIBILITY AND QUALIFICATION

[APPELLANT’S] pharmacy records reflect that he/she was dispensed more than 61 (sixty- one) days’ worth of Pondimin® and Phentermine.

[APPELLANT] stated on his/her Pink Form that he/she ingested Pondimin® (Fenfluramine) for 61 days or more.

Question C.3(A) of [APPELLANT’S] GREEN Form does not state whether he/she has mitral valve regurgitation.

[APPELLANT’S] GREEN Form states that he/she has mild aortic regurgitation and an ejection fraction of 50-60% (Questions C.3.(B) and F.8).

[APPELLANT'S] echocardiogram of [DATE] indicates that he/she has mild aortic regurgitation with a left ventricular ejection fraction of 55%.

The Settlement Agreement discusses the distinction between eligibility as a class member and qualification for benefits availability depending on the severity of the disease. (Settlement Agreement IV.B.1 and B.2) During the hearing, the AHP Trust representative explained the distinction between eligibility and qualification for benefits to [APPELLANT].

[APPELLANT] took the Diet Drugs for 61 or more days and has a mild level of aortic valve regurgitation. These factors make him/her eligible as a class member, however, alone do not make him/her qualified for matrix level compensation benefits at this time.

The GREEN Form and the [DATE] 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 aortic regurgitation and/or severe mitral regurgitation without complicating factors as defined in the Settlement Agreement 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, II, IV, or V Benefits. (*Id.* at IV.B.2.c(2), (3), (4), and (5)).

[APPELLANT] expressed concern over the long term effects of his/her condition and expressed concern for the care of his/her two small children should his/her health deteriorate in the future.

As stated by the Attorney for the AHP Settlement Trust, it is possible that [APPELLANT] will develop conditions that will entitled him/her to recovery of Matrix Benefits in the future. Since [APPELLANT] has demonstrated mild aortic valve regurgitation, should his/her condition change in the future, as an eligible class member, he/she is entitled between now and December 31, 2015 to apply for Matrix Level Benefits by submitting a supplemental GREEN Form.

[APPELLANT] expressed concern whether there will be adequate funding in Fund B by the year 2015 should his/her condition worsen. The Attorney for the AHP Settlement Trust explained to [APPELLANT] the funding provisions required by the Settlement Agreement.

FUND A ISSUES NOT COVERED BY ARBITRATION PROCESS

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 (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.).

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

[APPELLANT] raised the issue of whether he/she will be reimbursed for the cost of Diet Drugs prescriptions and three echocardiograms. Such costs may be covered under Fund A, but are not part of this appeals process. The Arbitrator referred [APPELLANT] to Christine Gallagher in the office of the Chair of the Arbitration Panel so that the Chair could directly give [APPELLANT] appropriate instructions for obtaining any relief to which he/she may be entitled.

CONCLUSIONS

The Trust findings are not clearly erroneous as set forth in Rule 5 of the Rules Governing Arbitration Process.

[APPELLANT] has demonstrated mild aortic regurgitation with a left ventricular ejection fraction of 55% and no mitral regurgitation.

Based upon the findings above, [APPELLANT] is not entitled to any Matrix Benefits at this time because the conditions that are prerequisites 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)).

As an eligible class member, should his/her condition change in the future, demonstrated by a qualifying echocardiogram and medical documentation, [APPELLANT] is entitled between now and December 31, 2015 to apply for Matrix Level Benefits by submitting a supplemental GREEN Form.

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

Date: April 22, 2002	REDACTED, ESQUIRE
	ARBITRATOR