

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

1. On **[DATE]**, the AHP Settlement Trust (“Trust”) denied the claim of **[APPELLANT]** for Matrix Benefits.
2. On **[DATE]**, **[APPELLANT]** requested that the District Court refer this matter to arbitration.
3. 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]**.
4. On **[DATE]**, a hearing was held on **[APPELLANT]**’s arbitration claim.
5. **[APPELLANT]** raised certain issues both at the hearing and through his written submissions in his statement of appeal concerning reimbursement for his privately obtained Echocardiogram, doctors visits, Diet Drug purchases, time spent, postage, parking, and other miscellaneous expenses.

ANALYSIS

1. [APPELLANT]'s pharmacy records reflect that he was dispensed more than 61 (sixty-one) days' worth of Redux and Phentermine from February to June 1997.
2. [APPELLANT] stated on his Pink Form that he ingested Pondimin® (Flenfluramine) for 90 (ninety) days and Redux™ (Dexfenfluramine) for 300 (three hundred) days.
3. [APPELLANT] had a privately obtained Echocardiogram taken on April 26, 1999, independent of the Screening Program. [APPELLANT]'s Echocardiogram took place prior to the Settlement Agreement authorizing Echocardiograms through the Screening Program.
4. 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 Pre-Trial 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 Pre-Trial Order No. 1415 (August 28, 2000) at 62.). Fund B provides funding for Matrix Benefits. (Settlement Agreement, Section IV.B; Memorandum and Pre-Trial Order No. 1415 (August 28, 2000) at 62.).
5. 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.

Matrix Benefits Under Fund B

1. [APPELLANT]'s Echocardiogram report found only trivial mitral regurgitation and no aortic regurgitation.
2. Questions C3A and C3B of [APPELLANT]'s Green Form indicate that [APPELLANT]'s regurgitation levels for both the mitral valve and aortic valve do not rise to the level of mild.
3. Both [APPELLANT]'s Echocardiogram and Green Form indicate that he was not FDA Positive by September 5, 1999.
4. [APPELLANT]'s privately obtained Echocardiogram indicated he was not eligible for Matrix Benefits because he was not FDA Positive and did not have Mild Mitral Regurgitation. (*Id.*, Section IV.B.1.a). However, if another Echocardiogram yields different results before the end of the Screening Period, [APPELLANT] could be eligible for Matrix Benefits. (*Id.*)

Expenditures Under Fund A

1. [APPELLANT] has raised some issues in his written appeal regarding issues which may be covered under Fund A, but are not part of this appeals process.
2. The following questions are referred to the Chair of the Arbitration Panel so that the Chair may directly give [APPELLANT] appropriate instructions for obtaining any relief to which he may be entitled:
 - ? Whether [APPELLANT] may be eligible under Section Section IV.A.1.d of the Settlement Agreement for a cash refund of the purchase of Diet Drugs

since [APPELLANT] has ingested Diet Drugs for more than 61 (sixty-one) days.

- ? Whether [APPELLANT] may be eligible to be reimbursed under Section IV.A.3.d of the Settlement Agreement for his Echocardiogram obtained outside of the Screening Program.

Miscellaneous Costs and Lost Wages

1. In addition, [APPELLANT]'s statement of appeal also presented a claim for several miscellaneous expenses, such as gas, copies, long-distance telephone calls, parking, postage, and time expended.

2. The Settlement Agreement does not provide for the miscellaneous expenses requested and, as a result, [APPELLANT] cannot be reimbursed for them.

CONCLUSIONS

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

2. [APPELLANT] only demonstrated trivial mitral regurgitation and no aortic regurgitation.

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

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

/S/

Date: January 23, 2002

ARBITRATOR