

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

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| 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.

ANALYSIS

1. [APPELLANT]’s pharmacy records reflect that she was dispensed more than 61 (sixty-one) days’ worth of Pondimin and Phentermine.
2. [APPELLANT] stated on her Pink Form that she ingested Pondimin® (Flenfluramine) for 61 days or more from April 1996 through July 1997.

3. At the arbitration hearing, [APPELLANT] expressed concern that in the AHP Settlement Trust's Response to [APPELLANT] 's Statement of the Case, one sentence read that "The GREEN Form does not show that [REDACTED] has any of the mitral valve condition that would qualify her for any Matrix level benefits." (Emphasis added.) [APPELLANT] inquired whether the wrong individual's information had been used to adjudicate her claim. However, the claim and arbitration numbers and the repeated use of [APPELLANT] 's name throughout the rest of the document indicate that the one mention of a "[REDACTED]" was a typographical error. The typographical error was discussed at the hearing, and all parties indicated that they were satisfied the document was [APPELLANT]'s and that the typographical error did not alter the Trust's response.
4. The other issue raised by [APPELLANT] concerned the difference between mild and moderate grades of valvular regurgitation and which levels entitle an individual to matrix level benefits. The confusion expressed by [APPELLANT] seemed to arise from the distinction between being "eligible" as a class member and being "qualified" for matrix level benefits.
5. Question C.3 of [APPELLANT] 's GREEN Form states that she has a mild level of mitral valve regurgitation and does not have any aortic valve regurgitation. [APPELLANT]'s echocardiogram report is consistent with the answers in the GREEN Form.

6. 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 to [APPELLANT] . After Ms. [APPELLANT] indicated that she had been unable to find the relevant Settlement Agreement provisions, the representative of the Chair of the Arbitration Panel offered to send her a copy of the provisions.
7. [APPELLANT] took Diet Drugs for 61 or more days and has a mild level of mitral valve regurgitation. These factors make her eligible as a class member, however, alone do not make her qualified for matrix level compensation benefits.
8. The GREEN form and the echocardiogram report do not indicate that [APPELLANT] has any conditions which would qualify 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, II, IV, or V benefits. (*Id.* at IV.B.2.c(2), (3), (4), and (5)).
9. As stated by the Attorney for the AHP Settlement Trust, it is possible that [APPELLANT] will develop conditions that will entitled her to recovery of Matrix benefits in the future. Since [APPELLANT] has demonstrated

mild mitral valve regurgitation, should her condition change in the future, as an eligible class member, she is entitled between now and December 31, 2005 to apply for Matrix benefits by submitting a new GREEN Form.

10. The distinction between eligibility and qualification for benefits was explained to [APPELLANT] at the hearing.

CONCLUSIONS

1. The Trust findings are not clearly erroneous as set forth in Rule 5 of the Rules Governing Arbitration Process.
2. [APPELLANT] has demonstrated mild 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. As an eligible class member, should her condition change in the future, she is entitled between now and December 31, 2015 to apply for Matrix benefits by submitting a new GREEN Form.
5. Based upon all of the above, the claimant is not presently entitled to any Matrix Benefits.

Date: February 19, 2002

[REDACTED], ESQUIRE
ARBITRATOR