

**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
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SHEILA BROWN, ET AL.	:	CIVIL ACTION NO.
v.	:	99-20593
AMERICAN HOME PRODUCTS CORPORATION	:	
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Appellant: REDACTED	:	REPORT AND AWARD
Arbitration No.: REDACTED	:	OF ARBITRATOR
Claim No.: REDACTED	:	

FINDINGS OF FACT

1. On **[DATE]**, the AHP Settlement Trust ("Trust") denied the claim of **[APPELLANT]** for Matrix Compensation Benefits.
2. On **[DATE]**, **[APPELLANT]** filed an appeal from the denial of benefits by the Trust, requesting that the United States District Court ("Court") refer this matter to Arbitration.
3. On **[DATE]**, the claim of **[APPELLANT]** was referred by the Court to Arbitration pursuant to VI.C.4(h) & (l) or VI.D.1.(f) & (g) of the Nationwide Class Action Settlement Agreement with American Home Products Corporation.
4. On Thursday, **[DATE]**, an Arbitration Hearing was held concerning the claim of **[APPELLANT]**.

ANALYSIS

1. According to questions 7, 8 and 9 of **[APPELLANT'S]** Pink Form, **[APPELLANT]** answered that he/she took Pondimin for 61 days or more.
2. In the Green Form, reference is made to an echocardiogram which was performed on **[DATE]**. (See the Green Form, Part II, page 8, at questions and answers C.1 and C.2).
3. The answer to the question in Section C.3.A of the Green Form indicates that **[APPELLANT]** does not suffer from mild or severe mitral regurgitation. (See the Green Form, Part II, page 8).
4. The answer to the question in Section C.3.A of the Green Form indicates, however, that **[APPELLANT]** does suffer from moderate mitral regurgitation. (See the Green Form, Part II, page 8).
5. The answer to the question in Section C.3.B of the Green Form indicates that **[APPELLANT]** does not suffer from mild, moderate or severe aortic regurgitation. (See the Green Form, Part II, page 8).
6. The answers to the questions in Part II of the Green Form, including Sections C.3.A and C.3.B thereof, were completed by the Appellant's physician, **[DOCTOR]**, a board-certified cardiologist.

CONCLUSIONS

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

2. Based on the answer to question C.3.A of the Green Form, it appears that Appellant is FDA Positive according to the terms of the Settlement Agreement. (Settlement Agreement, Section I.22.(a)).

3. However, Appellant is not entitled to any Matrix Benefits because he/she does not currently suffer from a condition specified in the terms of the Settlement Agreement.

4. Matrix Level I Benefits must be based on severe aortic regurgitation and/or severe mitral regurgitation, neither of which conditions exist in this case, (Id., Section IV.B.2.c(1)(a)), or based on other conditions that are not present in this case. (Id., Section IV.B.2.c(1)(b)).

5. Matrix Level II Benefits must be based, at a minimum, (a) on moderate or severe aortic regurgitation, or on moderate or severe mitral regurgitation, and (b) on the additional conditions specified in the Settlement Agreement. (Id., Section IV.B.2.c(2)(a) and (b)). **[APPELLANT]** does suffer from moderate mitral regurgitation. However, **[APPELLANT]** does not suffer from any condition associated with moderate mitral regurgitation, which is a prerequisite to recovery. (Id., Section IV.B.2.c(2)(b)).

6. The conditions that are prerequisite to recovery of Matrix Levels III, IV and V Benefits are also not present in this claim. (Id. Section IV.B.2.c(3), (4) and (5)).

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

8. **[APPELLANT]** may later qualify for Matrix Level Benefits if his/her condition becomes more severe in ways that are defined by the Settlement Agreement. If an echocardiogram, taken and reviewed by a qualified physician as defined by the Settlement Agreement, reveals a Matrix Level condition regarding his/her mitral valve, then the Appellant may apply for benefits between now and December 31, 2015 by following the procedures stated in the Settlement Agreement, which would include the submission of a Supplemental Green Form. Since the **[DATE]** echocardiogram did not reveal evidence of aortic valve regurgitation, the Appellant has until January 3, 2003 to have a qualifying echocardiogram demonstrating at least mild aortic regurgitation in order to be eligible to qualify for benefits on his/her aortic valve until December 31, 2015.

9. During the Arbitration argument, counsel for the Appellant made reference to, and asked the Arbitrator to consider, an echocardiogram report dated **[DATE]**. The Trust objected to the Arbitrator considering this report contending that the report constitutes new evidence within the meaning of Rule 9(a), and that a Petition to Submit New Evidence was not submitted to the Chair of the Arbitration Panel (“Chair”) as required by Rule 9(b). Rule 9(a) defines new evidence as evidence which was not submitted to the Trust prior to its final determination.

10. The Appellant concedes that he/she did not file a Petition to submit new evidence pursuant to Rule 9(b), but argued that a Petition was not required since the echocardiogram report dated **[DATE]** does not constitute new evidence.

11. I find that the echocardiogram report dated **[DATE]** does constitute new evidence within the meaning of Rule 9(a). Since permission to submit such new evidence

was neither sought nor obtained from the Chair, it cannot be considered by the Arbitrator. This conclusion does not preclude the Appellant from submitting a Supplemental Green Form based upon the **[DATE]** echocardiogram.

12. Finally, the Trust has made a request that the costs of the Arbitration, including the fees of the Arbitrator, be taxed against the Appellant pursuant to Rules 8(b) and 20, on the basis that the appeal was taken and maintained in violation of the standards set forth in Rule 8(b). I find that the appeal was not taken and maintained in violation of the standards set forth in Rule 8(b), as counsel for Appellant made a colorable argument for Matrix Level Benefits based upon Appellant's FDA Positive status and therefore, I deny the request of the Trust that the costs of the Arbitration be taxed against the Appellant.

REDACTED, ESQUIRE
ARBITRATOR

Dated: May 15, 2002