

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 United States District Court refer this matter to arbitration. **[APPELLANT'S]** appeal was filed with the District Court on **[DATE]**.

3. On **[DATE]**, **[APPELLANT'S]** claim was referred by the 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

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

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

7. **[APPELLANT' S]** GREEN Form indicates that he/she had an Echocardiogram conducted on **[DATE]**.

8. Question C.3(A) of **[APPELLANT' S]** GREEN Form states that he/she has mild mitral valve regurgitation.

9. **[APPELLANT' S]** GREEN Form also indicates that he/she has mitral valve prolapse. (Question D.7)

10. **[APPELLANT' S]** GREEN Form states that he/she has an ejection fraction of 50-60%. (Question F.8) **[APPELLANT' S]** Echocardiogram of **[DATE]** indicates that he/she has mild mitral regurgitation with an ejection fraction of 50%.

11. Neither **[APPELLANT' S]** GREEN Form nor Echocardiogram report indicates any aortic valve regurgitation.

12. 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 Attorney for the AHP Settlement Trust explained the distinction between eligibility and qualification for benefits to **[APPELLANT]**.

13. **[APPELLANT]** took the Diet Drugs for 61 or more days and has a mild level of mitral 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.

14. 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, III, IV, or V Benefits. (*Id.* at IV.B.2.c(2), (3), (4), and (5)).

15. [APPELLANT] stated that he/she had a prior existing mitral valve condition which had previously responded to treatment until after he/she took the Diet Drugs. [APPELLANT] further stated that while his/her mitral valve formerly responded to treatment it no longer does so and medication no longer has an effect on his/her valve. [APPELLANT] added that a year prior to the hearing his/her physician had wanted to hospitalize him/her to treat his/her symptoms. [APPELLANT] stated that he/she is afflicted with constant irregular heartbeats which affect his/her daily life.

16. The Attorney for the AHP Settlement Trust explained to [APPELLANT] that symptoms are not in and of themselves qualifiers

of benefits and that, according to the provisions of the Settlement Agreement, **[APPELLANT]** would need to demonstrate regurgitation in order to qualify for benefits.

17. When it was explained to **[APPELLANT]** that he/she was eligible for an additional screening Echocardiogram which would be paid for by the Trust, **[APPELLANT]** stated that he/she had already had the Echocardiogram provided by the Trust but that he/she never received a copy of the results. **[APPELLANT]** stated that he/she had an Echocardiogram taken by **[DOCTOR]** of **[REDACTED]**, California.

18. Neither the GRAY Form nor the Echocardiogram report by **[DOCTOR]** is part of the current record. The Attorney for the AHP Settlement Trust gave **[APPELLANT]** the number of an individual to contact regarding the missing GRAY Form and Echocardiogram report.

19. The GRAY Form and the Echocardiogram report indicating the results of the Echocardiogram performed by **[DOCTOR]** will be sent to **[APPELLANT]** by AHP Settlement Trust. If the results of that Echocardiogram (or any future Echocardiogram) indicate a change in condition, **[APPELLANT]** should submit a supplemental GREEN Form.

20. As stated by the Attorney for the AHP Settlement Trust, it is possible that **[APPELLANT]** will develop conditions that will entitle him/her to recovery of Matrix Benefits in the future. Since **[APPELLANT]** has demonstrated mild mitral valve

regurgitation, should his/her mitral valve 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.

21. Since **[APPELLANT]** has no currently documented aortic valve problems, should his/her aortic valve condition change in the near future, he/she is entitled between now and January 3, 2003, to register any aortic valve changes by submitting a supplemental GREEN Form.

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 with a left ventricular ejection fraction of 50% 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 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)).

4. As an eligible class member, should his/her mitral valve 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.

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

Date: May 13, 2002

[REDACTED], ESQUIRE
ARBITRATOR