

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

IN RE: DIET DRUGS (PHENTERMINE / : MDL DOCKET NO.
FENFLURAMNE/DEXFENFLURAMINE) : 2 :15 MD1203
PRODUCTS LIABILITY LITIGATION :

: :
SHEILA BROWN, ET AL. :
5. : CIVIL ACTION
AMERICAN HOME PRODUCTS : 99-20593
CORPORATION :
: :

: :
Appellant: REDACTED :
Arbitration Nos.: REDACTED : REPORT AND AWARD
Claim No.: REDACTED : OF ARBITRATOR
:

FINDINGS OF FACT

1. On [DATE], the AHP Settlement Trust ("Trust") issued an Amended Final Determination of Benefits to [APPELLANT], awarding him/her Matrix-Level III Benefits on the B-1 Matrix.

2. On [DATE], [APPELLANT] filed an appeal from the Determination of Benefits by the Trust, requesting that the United States District Court ("Court") refer this matter to Arbitration. [APPELLANT'S] appeal was assigned docket number [REDACTED]. Previously, on [DATE], [APPELLANT] had filed an appeal from the Trust's [DATE] Final Determination of Benefits. The [DATE] appeal was assigned docket number [REDACTED].

3. On [DATE], the [DATE] appeal of [APPELLANT] (docket number [REDACTED]) was referred by the Court to Arbitration

pursuant to VI.C.4. (h) & (i) or VI.D.1. (f) and (g) of the Nationwide Class Action Settlement Agreement with American Home Products Corporation. On [DATE], the [DATE] appeal of [APPELLANT] (docket number [REDACTED]) was also referred by the Court to Arbitration. Thereafter, all parties agreed to the consolidation of the two appeals.

4. On [DATE], an Arbitration Hearing was held concerning the claim of [APPELLANT]. [APPELLANT] did not participate. He/she was represented during the arbitration by his/her attorney, [REDACTED], Esquire of [REDACTED].

ANALYSIS

1. [APPELLANT'S] Pink Form reports that he/she ingested Redux (Dexfenfluramine) for sixty-one days or more. This is confirmed by [APPELLANT'S] pharmacy records, which show that he/she was dispensed Redux (Dexfenfluramine) from November 4, 1996 to January 15, 1997.

2. [APPELLANT'S] Green Form, completed by [DOCTOR], a Board-Certified Cardiothoracic Surgeon, stated that [APPELLANT] had severe mitral regurgitation but did not indicate if [APPELLANT] had aortic regurgitation. The Green Form also stated that [APPELLANT] had mitral valve prolapse and that he/she underwent valve replacement after the use of diet drugs.

[APPELLANT' S] medical records confirm that he/she underwent mitral valve replacement in December 1999.

3. The parties agree that because **[APPELLANT]** underwent mitral valve replacement following the use of Redux, he/she is entitled to Matrix-Level III benefits. (See Settlement Agreement, Section IV.B.2.c.(3)(a)). **[APPELLANT]** claims that he/she belongs on Matrix A-1. The Trust, however, awarded benefits based on Matrix B-1.

4. **[APPELLANT]** makes several arguments in support of his/her claim to placement on Matrix A-1. He/she first bases his/her claim on the fact that in two places his/her treating physician, **[DOCTOR]**, observed that his/her mitral valve appears to have been a Fen-Phen-damaged valve. See **[DATE]** handwritten progress notes and **[DATE]** letter by **[DOCTOR]** addressed to "To Whom It May Concern". In a **[DATE]** letter to **[DOCTOR]**, **[DOCTOR]** found it disconcerting that **[APPELLANT' S]** valve would have deteriorated to the point where it needed replacement because it had been completely normal when she performed coronary bypass surgery on **[APPELLANT]** in December 1997. Though **[APPELLANT]** concedes that he/she experienced mitral valve prolapse, he/she claims that **[DOCTOR' S]** conclusions entitle him/her to equitable placement on Matrix A-1.

5. **[APPELLANT' S]** Green Form states that he/she experienced

mitral valve prolapse. The echocardiogram submitted with his/her claim shows mitral valve prolapse. In addition, **[APPELLANT'S]** **[DATE]** echocardiograms show mitral valve prolapse. Because he/she experienced mitral valve prolapse, **[APPELLANT]** was placed on Matrix B-1. (See Settlement Agreement, Section IV.B.2.d.(2)(c) ii) b)).

6. **[APPELLANT]** also bases his/her claim to placement on Matrix A-1 on the fact that the Trust's determination refers to evidence of rupture of the chordae tendineae. He/she challenges this reference because neither **[DOCTOR'S]** **[DATE]** post-operative report nor her **[DATE]** post-operative report mention this fact. The **[DATE]** post-surgical pathology report also does not indicate evidence of chordae tendineae rupture.

7. **[APPELLANT'S]** **[DATE]** post-operative echocardiogram report refers to "continued suggestive evidence of rupture of a few minor chordae tendineae." **[APPELLANT'S]** **[DATE]** echocardiogram report indicates: "posterior leaflet prolapse suggesting rupture of a minor chordae tendineae". In addition, **[APPELLANT'S]** **[DATE]** echocardiogram report contains a finding of "ruptured cordae (sic) of the posterior mitral leaflet". Because there is evidence that he/she experienced rupture of the chordae tendineae, **[APPELLANT]** was placed on Matrix B-1. (See Settlement Agreement, Section IV.B.2.d.(2)(c) ii) c)).

8. Finally, **[APPELLANT]** also bases his/her claim to placement on Matrix A-1 on the fact that in its **[DATE]** Tentative Determination and its **[DATE]** (initial) Final Determination, the Trust placed him/her on Matrix A-1. (Specifically, the Trust placed him/her on Matrix A-1, Level I with an age determination of 60-64 years). It is undisputed that **[APPELLANT]** was fifty-nine years old at the time of the certifying event which was the mitral valve replacement in **[DATE]**.

9. While it is regrettable that the Trust erroneously notified **[APPELLANT]** that he/she was to be placed on Matrix A-1 in its initial Final Determination of Benefits, there is no evidence that **[APPELLANT]** relied on this misinformation to his/her detriment and there is no basis on which to conclude that the Trust was estopped from correcting its error.

CONCLUSIONS

1. Because he/she underwent mitral valve replacement, **[APPELLANT]** is entitled to Matrix-Level III Benefits. Because he/she experienced mitral valve prolapse and there is evidence of rupture of the chordae tendineae, **[APPELLANT]** was appropriately awarded benefits based on Matrix B-1.

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

3. Based upon the findings above, **[APPELLANT]** is not

entitled to Matrix A-1 Benefits due to the diagnoses of mitral valve prolapse and chordae tendineae rupture. (See Settlement Agreement, Section IV.B.2.d.(2)). Nor are the conditions prerequisite to recovery for Matrix-Level IV or V Benefits currently present in this claim. (See Settlement Agreement, Sections IV.B.2.c.(4) and (5)).

Accordingly, based on all of the above, I find that **[APPELLANT]** is presently entitled to Matrix B-1, Level III Benefits.

June 3, 2002

DATE

REDACTED
Arbitrator