

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 :

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

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

FINDINGS OF FACT

1. On [DATE], the AHP Settlement Trust ("Trust") denied the claim of [APPELLANT] ("Claimant") for Matrix Compensation Benefits.

2. On [DATE], an appeal was filed on behalf of [APPELLANT] from the denial of benefits by the Trust, requesting that the United States District Court ("Court") refer this matter to Arbitration. The appeal was assigned docket number [REDACTED].

3. On [DATE], the claim of [APPELLANT] 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.

4. On [DATE], an Arbitration Hearing was held concerning the claim of [APPELLANT]. [APPELLANT] was represented by [SURVIVING SPOUSE] and Legal Representative of [APPELLANT] and by

[COUNSEL] of [REDACTED].

ANALYSIS

1. The claimant's Pink Form reports that **[APPELLANT]** ingested Pondimin (Fenfluramine) for sixty-one days or more. This is confirmed by pharmacy records which reflect that **[APPELLANT]** was dispensed Pondimin (Fenfluramine) on five dates ranging from **[DATE]** to **[DATE]**.

2. The claimant's Green Form, completed by **[DOCTOR]**, a Board-Certified Cardiologist, stated that **[APPELLANT]** had mild mitral regurgitation and mild aortic regurgitation based on an echocardiogram dated **[DATE]**. See Green Form, Page 8, Question C. 3.

3. The parties agree that **[APPELLANT]** died on **[DATE]**.

4. The claimant seeks benefits under Matrix A-1, Level V.

5. During the teleconference, **[SURVIVING SPOUSE]** asserted that **[APPELLANT]** had no heart problems before **[DATE]** when he/she was admitted to the hospital with congestive heart failure.

[SURVIVING SPOUSE] thus asserts that because death followed the ingestion of diet drugs and the coroner reported the cause of death as cardiac arrhythmia and congestive heart failure, there is strong circumstantial evidence that **[APPELLANT]** suffered from severe heart problems that did not exist until after he/she had ingested Pondimin (Fenfluramine). In addition, because **[APPELLANT]** was cremated before the **[SURVIVING SPOUSE]** knew of the instant diet drug litigation, **[SURVIVING SPOUSE]** asserts that he/she was deprived of the opportunity to seek an autopsy which

would have been the only source of proof that **[APPELLANT]** suffered from a qualifying medical condition.

5. The **[DATE]** discharge summary of **[DOCTOR]** reports that **[APPELLANT]** was admitted to **[HOSPITAL]** on **[DATE]** with, *inter alia*, congestive heart failure. The **[DATE]** Death Certificate of **[APPELLANT]**, signed by **DOCTOR]** (coroner), lists the cause of **[APPELLANT'S]** death as, *inter alia*, cardiac arrhythmia and congestive heart failure.

6. In order to qualify for Matrix-Level V Benefits, a diet drug recipient must have suffered from Endocardial Fibrosis or Left Sided Valvular Heart Disease with severe complications. See Settlement Agreement, Section IV.B.2.c.(5).

7. During the teleconference, the claimant conceded that no medical records substantiate a finding that **[APPELLANT]** had Endocardial Fibrosis or qualifying Left Sided Valvular Heart disease. In addition, the claimant's Green Form states that **[APPELLANT]** did not have Endocardial Fibrosis as defined in the Settlement Agreement. See Green Form, page 14, Question 6. Nor does the claimant's Green Form report any of the other conditions which would qualify the claimant for Matrix-Level V Benefits.

8. Even if the first manifestation of heart disease occurred in connection with **[APPELLANT'S]** hospitalization on **[DATE]** and even if the cause of death was congestive heart failure, neither of those facts is sufficient to qualify **[APPELLANT]** for Matrix-Level Benefits. See Settlement Agreement,

Section IV.B.2.c.(5). While it is regrettable that no autopsy was performed on **[APPELLANT]**, the Settlement Agreement does not permit the Trust to speculate about medical conditions that such an autopsy might have revealed.

8. The Trust has requested an award of costs and fees on the grounds that the claimant violated Arbitration Rule 8(b) by pursuing an appeal for Matrix-Level Benefits. The Trust asserts that the asserted basis of the appeal - that the "cause of death [was] cardiopulmonary arrest" - could be sustained only by ignoring the plain terms of the Settlement Agreement, thereby justifying an award of costs and fees.

9. Arbitration Rule 8(b) requires an Appellant to certify that the appeal

- i) is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the settlement of the Claim for Benefits;
- ii) the position of the Appellant is warranted under the terms of the Settlement Agreement;
- iii) the allegations and other actual contentions have evidentiary support which has been presented to the Trust and/or Chair; and
- iv) the denials of factual contentions are warranted on the evidence or lack thereof.

10. The medical records corroborate the claimant's assertion that **[APPELLANT]** was hospitalized on **[DATE]** and was

diagnosed with congestive heart failure. The death certificate lists the cause of death as: (A) cardiac arrhythmia; (B) congestive heart failure; and (C) morbid obesity. The fact that **[SURVIVING SPOUSE]** pursued an appeal on the grounds that there was circumstantial evidence of a qualifying medical condition entitling **[APPELLANT]** to Matrix-Level Benefits, though ultimately without merit, did not violate Arbitration Rule 8(b).

CONCLUSIONS

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

2. Based upon the findings above, the **[APPELLANT]** is not entitled to any Matrix Benefits because the conditions that are required 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)).

3. The appeal by **[APPELLANT]** was not filed in violation of Rule 8(b). Therefore, the Trust's request for costs and fees is denied.

Accordingly, based on all of the above, I find that **[APPELLANT]** is not entitled to any Matrix Compensation Benefits. The Trust's request for costs and fees is denied.

July 17, 2002

DATE

REDACTED
Arbitrator