

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

	:		:	MDL DOCKET NO. 1203
IN RE: DIET DRUGS (PHENTERMINE/	:		:	
FENFLURAMINE/DEXFENFLURAMINE)	:		:	
PRODUCTS LIABILITY LITIGATION	:		:	
	:		:	
THIS DOCUMENT RELATES TO:	:		:	
	:		:	
	:		:	
	:		:	
SHEILA BROWN, et al.	:		:	
	:		:	
v.	:		:	
	:		:	
AMERICAN HOME PRODUCTS	:		:	
CORPORATION	:		:	NO. 99-20593
	:		:	
THIS DOCUMENT RELATES TO:	:		:	
	:		:	
Claimant: Girtha Flakes	:		:	
Claim No.: 183/00 8016575	:		:	
	:		:	

PRETRIAL ORDER NO. 8127

AND NOW, this *1st* day of *April* 2009, it is hereby ORDERED that the October 15, 2008 Report and Award of the Arbitrator related to the claims of Girtha Flakes for Matrix Benefits under the Nationwide Class Action Settlement Agreement is AFFIRMED for the reasons set forth in said Report and Award.

BY THE COURT:

  
C.J.

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

IN RE: DIET DRUGS (PHENTERMINE/  
FENFLURAMINE/DEXFENFLURAMINE)  
PRODUCTS LIABILITY LITIGATION

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MDL DOCKET NO.  
2:15MD1203

SHEILA BROWN, ET AL.

CIVIL ACTION NO.

v.

99-20593

AMERICAN HOME PRODUCTS  
CORPORATION

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Appellant: Girtha L. Flakes  
Arbitration No.: 1077  
Claim No.: 183/00 8016575

REPORT AND AWARD  
OF ARBITRATOR

FINDINGS OF FACT

1. On April 24, 2008, the AHP Settlement Trust ("Trust") issued a Final Determination denying the claim of Girtha L. Flakes for Matrix Compensation Benefits.
2. On May 6, 2008, Girtha L. Flakes 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 May 21, 2008, the claim of Girtha L. Flakes was referred by the Court to Arbitration pursuant to VI.C.4(h) & (i) or VI.D.1.(f) & (g) of the Nationwide Class Action Settlement Agreement with American Home Products Corporation.
4. On the Arbitration Initial Contact Form dated June 7, 2008, Girtha L. Flakes waived her right to an Arbitration Hearing and requested that the Report and Award of Arbitrator be based solely on the arbitration record.

5. The Trust determined that Girtha L. Flakes was not entitled to any Matrix Compensation Benefits on the basis that she failed to supply the documentation required to establish Diet Drug ingestion.

6. In her statement of the case, Girtha L. Flakes requests benefits based on alleged medical symptoms and conditions purportedly caused by the use of the Diet Drugs. In her Green Form, Girtha L. Flakes indicates that she believes she is entitled to Matrix A-1 Benefits. See Green Form, Part I, page 4, question 6.

### ANALYSIS

#### FUND A ISSUES NOT COVERED BY ARBITRATION PROCESS

1. The Settlement Agreement provides for two funds, Funds A and B, which were established to provide benefits to class members. See Settlement Agreement, Section III.A.1; Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62. Fund A provides funding only for non-Matrix specified benefits and expenses, e.g., drug refunds and echocardiogram reimbursement. See Settlement Agreement, Section IV.A; Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62. Fund B provides funding for Matrix Compensation Benefits. See Settlement Agreement, Section IV.B; Memorandum and Pretrial Order No. 1415 (August 28, 2000) at 62.

2. The arbitration process only covers determinations made regarding Fund B and the eligibility of claimants to receive Matrix Compensation Benefits and/or the amount of Matrix Compensation Benefits they are entitled to receive.

#### MATRIX ELIGIBILITY AND QUALIFICATION

1. Under the Settlement Agreement, Matrix Compensation Benefits are paid according to two matrices. See Settlement Agreement § IV.B.2.d. The A Matrix, or the full

compensation matrix, applies to claimants who: (1) have been diagnosed timely as FDA Positive; (2) ingested the diet drugs for sixty-one (61) or more days; and (3) have no conditions requiring a reduced payment under the terms of the Settlement Agreement. See id. § IV.B.2.d.(1). The B Matrix, or reduced compensation matrix, applies to claimants who: (1) have been diagnosed timely with Mild Mitral Regurgitation (regardless of the duration of ingestion of the diet drugs); or (2) were diagnosed timely as FDA Positive and ingested the diet drugs for sixty (60) days or less; or (3) were diagnosed timely as FDA Positive, ingested the diet drugs for sixty-one (61) or more days, and have certain conditions, identified in the Settlement Agreement, that may have caused or contributed to the claimant's heart problems. See id. § IV.B.2.d.(2).

2. In determining the length of diet drug usage, Section VI.C.2.d of the Settlement Agreement requires the claimant to submit documentary proof concerning the period of time the diet drugs were ingested. Specifically, the claimant must submit pharmacy records documenting the claimant's name, prescribing physician information, diet drug name, date(s) prescribed, dosage and duration the drug was prescribed or dispensed. If a physician or weight loss clinic prescribed the diet drugs directly, or pharmacy records are unobtainable, a claimant must identify the prescribing physician, including the prescribing physician's name, address and telephone number, and submit a copy of the medical records prescribing or dispensing the drugs. If the pharmacy records and medical records are unobtainable, a claimant must submit an affidavit under penalty of perjury from the prescribing physician or dispensing pharmacy identifying the claimant, the drug prescribed or dispensed, the date(s), quantity, frequency, dosage and number of prescriptions or refills of the diet drug(s) to document ingestion. See id. § VI.C.2.d.(3).

3. Ms. Flakes submitted a Green Form dated June 26, 2003.

4. In the Green Form, reference is made to an echocardiogram which was performed on July 19, 2003. (See the Green Form, Part II, dated June 26, 2003, page 8, at questions C.1 and C.2).

5. The Green Form submitted by Ms. Flakes reports moderate mitral valve regurgitation and no aortic valve regurgitation. (See Green Form, Part II, page 8, question C.3).

6. The answers to the questions in Part II of Ms. Flakes' Green Form were completed by her physician, Harvey Serota, M.D., a Board-Certified Cardiologist. (See Green Form, Part II, page 7, Section A).

7. Ms. Flakes submitted a Blue Form dated April 30, 2002.

8. According to questions 7 and 8 of Girtha L. Flakes' Blue Form, dated April 30, 2002, Ms. Flakes answered that she took Redux for 61 days or more.

9. In her statement of the case, Girtha L. Flakes states that the physician who prescribed the diet drugs she ingested is deceased and that the pharmacy where she purchased the diet drugs was destroyed by fire. However, the record establishes that Ms. Flakes failed to submit to the Trust the required documentation needed to establish that she had ingested diet drugs.

10. Ms. Flakes failed to submit any pharmacy records documenting the claimant's name, prescribing physician information, diet drug name, date(s) prescribed, dosage and duration the drug was prescribed or dispensed; failed to submit a copy of any medical records prescribing or dispensing the drugs; and failed to submit any affidavit under penalty of perjury from the prescribing physician or dispensing pharmacy identifying the claimant, the drug

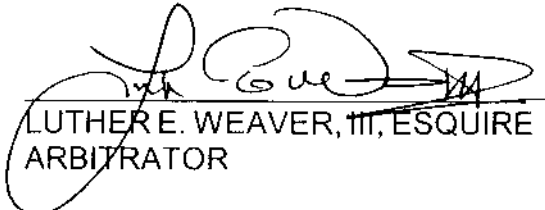
prescribed or dispensed, the date(s), quantity, frequency, dosage and number of prescriptions or refills of the diet drug(s) to document ingestion. See Settlement Agreement § VI.C.2.d.(3).

11. As a result, the Trust determined that Ms. Flakes failed to supply the required documentation needed to establish that she had ingested diet drugs. I conclude that the Trust's analysis and determination were not clearly erroneous.

CONCLUSIONS

1. The Claimant failed to provide documentary proof of diet drug ingestion to the Trust as required by the Settlement Agreement.
2. Based on the above, the findings of the Trust are not clearly erroneous as set forth in Rule 5 of the Rules Governing the Arbitration Process.
3. The final determination of the Trust is affirmed.

October 15, 2008

  
LUTHER E. WEAVER, III, ESQUIRE  
ARBITRATOR