

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.	:	
	:	
AMERICAN HOME PRODUCTS CORPORATION	:	CIVIL ACTION NO.
-----	:	99-20593
Appellant: REDACTED	:	REPORT AND AWARD
Arbitration No.: REDACTED	:	OF ARBITRATOR
Claim No.: REDACTED	:	

FINDINGS OF FACT

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

. 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.

. 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) & (g) of the Nationwide Class Action Settlement Agreement with American Home Products Corporation (SA).

. On [DATE] an Arbitration Hearing was held concerning the claim of [APPELLANT].

5. [APPELLANT'S] GREEN FORM, dated [DATE], indicated that he/she had mild mitral valve regurgitation and no aortic valve regurgitation (questions C.3.A and B).

[APPELLANT' S] GREEN FORM indicated that he/she underwent surgery to repair or replace the aortic and/or mitral valve, and that this surgery took place after he/she ingested Diet Drugs (question F.9). According to the medical records and the appellant's statement of the case, **[APPELLANT]** underwent aortic valve replacement surgery

7. **[APPELLANT' S]** surgery for aortic valve replacement was not required by left sided valvular heart disease. Specifically, it was not required as a result of the mild mitral valve regurgitation reported on his/her GREEN FORM. This surgery was undertaken as a response to his/her condition of aortic stenosis.

8. **[APPELLANT' S]** GREEN FORM does not establish that he/she was FDA Positive.

ANALYSIS

1. **[APPELLANT]** is an "Eligible Class Member," because his/her GREEN FORM reports mild mitral valve regurgitation. (SA) §IV.B.1.a.

2. To determine **[APPELLANT' S]** eligibility for benefits, it must first be determined whether Matrix A-1 or B-1 applies to his/her claim.

3. Matrix A-1 is inapplicable to his/her claim because he/she is not FDA Positive. SA §IV.B.2.d(1).

4. Matrix B-1 is inapplicable to his/her claim even though he/she was diagnosed by a Qualified Physician as having mild mitral regurgitation, because no Matrix Level of disease severity is applicable to his/her claim. See SA §IV.B.2.c, which refers to the "levels of disease severity in a Diet Drug Recipient which qualify

eligible Class Members for payment on the Matrices..." Under this provision, if **[APPELLANT]** does not meet one of the specified levels of disease severity he/she is not entitled to benefits.

5. Matrix Level I does not apply to his/her claim because his/her GREEN FORM does not report severe left sided valvular heart disease. SA §IV.B.2.c(1).

6. Matrix Level II does not apply to his/her claim because his/her GREEN FORM does not report moderate or severe aortic regurgitation or moderate or severe mitral regurgitation with complicating factors. SA §IV.B.2.c(2).

7. Matrix Levels IV and V do not apply to his/her claim because his/her GREEN FORM does not report any of the conditions specified under Matrix Levels IV or V. SA §IV.B.2.c(4)-(5).

8. **[APPELLANT]** asserts that Matrix Level III applies to his/her claim. The potentially applicable provision is SA §IV.B.2.c(3)(a), which states that "Matrix Level III is left sided valvular heart disease requiring surgery or conditions of equal severity, and is defined as: (a) Surgery to repair or replace the aortic and/or mitral valve(s) following the use of Pondimin and/or Redux...."

9. **[APPELLANT]** argues that because he/she had aortic valve replacement surgery necessitated by aortic stenosis at a time subsequent to his/her use of the Diet Drugs, his/her claim falls within the plain meaning of SA §IV.B.2.c(3)(a), entitling him/her to Matrix Level III Benefits, because Matrix Level III "is defined as ...surgery to...replace the aortic valve..." He/she argues further that the phrase "requiring surgery" should not be interpreted as meaning that the surgery must have been necessitated or otherwise required as a result of left sided valvular heart disease; that the subsection's apparent requirement of left sided valvular heart disease is satisfied by

his/her condition of mild mitral regurgitation; and that any ambiguity in the interpretation of the SA should be resolved in his/her favor as an Eligible Class Member.

10. **[APPELLANT'S]** argument that the plain meaning of section c(3) leads inescapably to the conclusion that he/she is eligible for Matrix Level III Benefits is not only erroneous, but itself ignores the plain meaning of that subsection. The SA refers explicitly to "left sided valvular heart disease *requiring* surgery" (emphasis added). No interpretation is needed to conclude that Matrix Level III Benefits are available only when disease of that type has required or necessitated the surgery undergone by the claimant. This reading of the SA is not a matter of resolving an ambiguity in favor of the Trust, but rather one of giving effect to the unambiguous meaning of the SA. **[APPELLANT'S]** interpretation also would render the phrase "left sided valvular heart disease *requiring* surgery" meaningless. Such an interpretation would violate the principle of statutory or contractual construction that precludes interpretations that would result in the language of the statute having no purpose or meaning.

11. Entitlement to Matrix Level III Benefits cannot be established merely by showing the coincidence of aortic valve replacement surgery resulting from aortic stenosis and the prior use of Diet Drugs. The SA unambiguously refers only to surgery that was *required* by left sided valvular heart disease. **[APPELLANT]** has not claimed, and apparently cannot claim that his/her aortic valve replacement surgery was required or necessitated in any way by his/her condition of mild *mitral* valve regurgitation. In the absence of such a relationship between his/her aortic valve replacement surgery and any left sided valvular heart disease, Matrix Level III cannot apply to his/her claim.

CONCLUSIONS

. As this appeal involved a question of law, not a factual determination, **[APPELLANT'S]** claim was reviewed de novo, and not under a "clearly erroneous" standard.

. The Trust's Final Determination that **[APPELLANT]** was not entitled to Matrix Compensation Benefits was correct as a matter of law.

. In the absence of FDA Positive status and the applicability of any Matrix Level of benefits under Matrix B-1 to his/her claim, **[APPELLANT]** is not entitled to Matrix Compensation Benefits. Should his/her condition of mild mitral valve regurgitation worsen to a level cognizable under either Matrix A-1 or B-1, he/she may file a claim for Matrix Compensation Benefits by December 31, 2015, according to the terms of the Settlement Agreement.

March 22, 2002
DATE

REDACTED, ESQUIRE
ARBITRATOR