

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

IN RE: DIET DRUGS (PHENTERMINE/ : MDL DOCKET NO.
FENFLURAMINE/DEXFENFLURAMINE) : 2:15MD1203
PRODUCTS LIABILITY LITIGATION :
: :
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: :
SHEILA BROWN, ET AL. :
v. :
AMERICAN HOME PRODUCTS CORPORATION : CIVIL ACTION NO.
: :
----- : 99-20593
: :
Appellants: REDACTED : REPORT AND AWARD
Arbitration No: REDACTED : OF ARBITRATOR
Claim No: REDACTED :
: :
:

FINDINGS OF FACT

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

2. On [DATE], [APPELLANTS] 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 [DATE], the claim of [APPELLANTS] 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 [DATE], an Arbitration Hearing was held concerning the claim of [APPELLANTS].

ANALYSIS

1. According to questions 8 and 9 of **[APPELLANT'S]** Pink Form, **[APPELLANT]** answered that he/she took Diet Drugs for 61 days or more.

2. The **[DATE]** echocardiogram report submitted with the claim reflects only mild aortic insufficiency with a left ventricular ejection fraction of 56%.

3. The answers to the questions in Section C.3.A of the Green Form state that **[APPELLANT]** suffers from mild mitral regurgitation. His/her level of aortic valve regurgitation is moderate, making him/her FDA positive. (See Green Form, page 8).

4. According to his/her answer to the question in Section F.2 of the Green Form, he/she also suffers from pulmonary hypertension.

5. **[APPELLANT'S]** Green Form does not suggest that he/she has any condition associated with his/her aortic or mitral valve that currently qualifies him/her for any Matrix Level Benefits.

CONCLUSIONS

1. Matrix Level I Benefits must be based on severe aortic or mitral valve regurgitation, (Settlement Agreement, section I.V.B.2.c(1)(a), page 36) or on other conditions that are not reported in this matter.

2. Matrix Level II Benefits must be based on moderate or severe aortic or moderate or severe mitral valve regurgitation

combined with other specific conditions that are not presented in this matter.

3. The conditions that are pre-requisite to recovery of Matrix Level III, IV and V Benefits are also not presented in this matter.

4. Section IV.B.2.c(2)(a), is the controlling provision relating to **[APPELLANT'S]** claims in this matter. That section provides in part;

(2) MATRIX LEVEL II is left sided valvular heart disease with complicating factors, and is defined as:

(a) Moderate aortic regurgitation (25%-49% JH/LVOTH) or Severe AR (>49% JH/LVOTH) with one or more of the following:

- i) **Pulmonary hypertension secondary to severe aortic regurgitation** with a peak systolic pulmonary artery pressure >40mm Hg measured by cardiac catheterization or standard procedures assuming a right atrial pressure of 10mm Hg;
- ii) Abnormal left ventricular end-systolic dimension >50 mm by M-mode or 2-D Echocardiography or abnormal left ventricular end- diastolic dimension >70 mm as measured by M-mode or 2-D Echocardiography;
- iii) Ejection fraction of <50%, and/or...

5. The language quoted above lists in the alternative

specific conditions that qualify a claimant for Level II Matrix payments.

6. Subparagraph IV.B.2.c(2)(a)(i) expressly states that recovery for pulmonary hypertension is limited only to claimants with severe aortic regurgitation.

7. The phrase "secondary to severe aortic regurgitation" is not ambiguous.

8. [APPELLANT] does not have "pulmonary hypertension secondary to severe aortic regurgitation..."

9. [APPELLANT] does not presently qualify for Matrix benefits.

10. [APPELLANT] may later qualify for Matrix Level Benefits if his/her condition becomes more severe in ways that are defined by the Settlement Agreement. If an echocardiogram, taken and reviewed by a qualified physician as defined by the Settlement Agreement reveals a Matrix Level condition, then the Appellant may apply for benefits between now and December 31, 2015 by following the procedures stated in the Settlement Agreement, which would include the submission of a supplemental Green Form.

April 25, 2002
DATE

REDACTED, ESQUIRE
ARBITRATOR