

ANALYSIS

1. According to questions 7, 8 and 9 of [APPELLANT'S] Pink Form, dated [DATE], [APPELLANT] answered that he/she took Redux for 61 days or more. A separate Pink Form was also submitted by [DERIVATIVE CLAIMANT] as a derivative claimant.

2. [APPELLANT] submitted two Green Forms dated [DATE]. One of the Green Forms was submitted on behalf of [DERIVATIVE CLAIMANT].

3. [APPELLANT'S] Green Form reported that he/she was diagnosed with aortic stenosis with an aortic valve area less than 1.0 square centimeter by the Continuity Equation. (See Green Form, Part II, Page 10, question 5). The answers to the questions in Part II of [APPELLANT'S] Green Form were completed by his/her physician, [DOCTOR], a Board-Certified Cardiologist.

4. [APPELLANT'S] Green Form also reported that he/she seeks Matrix Level III Benefits pursuant to the B-1 Matrix. (See Green Forms, Part I, Page 5, questions 5 and 6).

5. In support of his/her claim, [APPELLANT] submitted a Gray Form dated [DATE], which reported that he/she has mild mitral regurgitation and no aortic regurgitation. The information in the Gray Form was based upon an echocardiogram dated [DATE]. (See Gray Form dated [DATE], Pages 2 and 3, Questions 6(a) and 6(b)).

6. [APPELLANT] submitted a second Gray Form dated [DATE], which reported that [APPELLANT] has mild mitral regurgitation and mild aortic regurgitation. This

information is based upon an echocardiogram dated [DATE]. (See Gray Form dated [DATE], Page 2, questions 6(a) and 6(b)).

7. [APPELLANT] also submitted surgery records reporting that he/she underwent aortic valve replacement on [DATE]. The admitting diagnosis was aortic stenosis. There is no report in the surgery records of any valvular regurgitation conditions.

8. During argument, Appellant's counsel argued that Appellant qualified for Matrix Level III Benefits pursuant to Section IV.B.2.c(3) (a) of the Settlement Agreement.

CONCLUSIONS

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

2. [APPELLANT] does not qualify for Matrix Level III Benefits pursuant to Section IV.B.2.c(3)(a) of the Settlement Agreement. In order to qualify for Matrix Level III(a) Benefits, a Claimant must have "left sided valvular heart disease requiring surgery or conditions of equal severity, and is defined as follows: (a) Surgery to repair or replace the aortic and/or mitral valve(s) following the use of Pondimin® and/or Redux™... ."

3. Thus, from the plain reading of the Settlement Agreement, there must be a causal connection between valvular heart disease and the surgery in order to qualify for Matrix Level III Benefits.

4. The record is clear that Appellant's surgery was necessitated by aortic stenosis. There is no evidence, as Appellant conceded during the argument, that Appellant suffered from valvular heart disease prior to the surgery. As a result,

[APPELLANT] does not qualify for Matrix Level III Benefits pursuant to Section IV.B.2.c(3)(a) of the Settlement Agreement.

5. Appellant argues in his/her Statement of the Case that he/she is currently FDA Positive based upon the [DATE] echocardiogram. (Settlement Agreement, Section I.22.(a)). However, Appellant is not entitled to any Matrix Benefits because he/she does not currently suffer from a Matrix condition specified in the Settlement Agreement.

6. Matrix Level I Benefits must be based on severe aortic regurgitation and/or severe mitral regurgitation, neither of which conditions exist in this case, (Id., Section IV.B.2.c(1)(a)), or based on other conditions that are not present in this case. (Id., Section IV.B.2.c(1)(b)).

7. Matrix Level II Benefits must be based, at a minimum, on (a) moderate or severe aortic regurgitation, or moderate or severe mitral regurgitation, and (b) the additional conditions specified in the Settlement Agreement. (Id., Section IV.B.2.c(2)(a) and (b)). There is no evidence that [APPELLANT] suffers from moderate or severe aortic regurgitation, or from moderate or severe mitral regurgitation, or from any of the additional conditions specified in the Settlement Agreement. (Id., Section IV.B.2.c(2)(a) and (b)).

8. The conditions that are prerequisite to recovery of Matrix Levels III, IV and V Benefits are also not present in this claim. (Id., Section IV.B.2.c(3), (4) and (5)).

9. Based upon all of the above, the Appellant is not presently entitled to any Matrix Benefits because he/she does not currently suffer from a condition specified in the terms of the Settlement Agreement.

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 or other medical documentation 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.

September 17, 2002
DATE

REDACTED
ARBITRATOR