

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: SULZER HIP PROSTHESIS)	Civil Action No.: 01-CV-9000
AND KNEE PROSTHESIS PRODUCT)	
LIABILITY LITIGATION)	ALL CASES
)	
<i>This document relates to:</i>)	(MDL No. 1401)
<i>Alice B. Allen</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Alice B. Allen, by and through her attorney Janie L. Jordan, Esq. of the Law Firm Mithoff & Jacks (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 21, 2004 on Appellant’s claim for Extraordinary Injury Fund (“EIF”) benefits from the Sulzer Settlement Trust.

Appellant appealed the decision of the Appellee, and contends that Appellee erred in his decision to deny Appellant’s claim for EIF Matrix Level IV, V and IX benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level IV, V and IX benefits.
2. Appellant seeks Matrix Level IV benefits for a trochanteric escape, Matrix Level V benefits for pain and weakness, and Matrix Level IX benefits for emotional distress, abductor weakness, and pain and weakness.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV, V and IX benefits.

**IN RE: SULZER HIP PROSTHESIS
AND KNEE PROSTHESIS PRODUCT
LIABILITY LITIGATION**

Notice of Special Master Determination

Alice B. Allen

Page 2 of 3

After a thorough review of the appeal submitted by the Appellant and the response submitted by the Appellee, the Special Master finds as follows:

Appellant's October 24, 2003 Preliminary Determination contest does not address her Matrix Level IX claim for abductor weakness and pain. Therefore, in accordance with Section 4.6(d) of the Settlement Agreement, the Preliminary Determination regarding those claims is final and cannot be further contested or appealed. The Special Master will not consider her appeal regarding those claims, or address them in this Determination.

The Special Master shall review Final Determinations only for an abuse of discretion by the Appellee, Claims Administrator.

By Order of the United States District Court, the Claims Administrator shall evaluate claims for EIF benefits according to the policies and procedures set forth in Claims Administrator Procedure ("CAP") 27.

Matrix Level IV – Trochanteric Escape

CAP 27 §8(h) provides that "Periprosthetic fractures that occurred more than thirty days after a CRS, or which do not require an open or closed reduction, are not compensable from the EIF."

Appellant's periprosthetic fracture, or trochanteric escape, did not require an open or closed reduction. In fact, the medical report from September 12, 2001 states "Apparently the ER physician discussed these findings with Dr. Guinn. There was no apparent fracture or dislocation or subluxation per the ER physician's evaluation" and the October 11, 2001 office note from Orthopaedic Associate of Corpus Christi states "She had previously taken a fall and had a trochanteric fracture. It was displaced, but [I] did not feel it was worthwhile to intervene...she has excellent motion of both knees, but the extremes of either motion do reproduce some of her discomfort. I think most of her pain is coming from the fact that she has not been as mobile and as active as I would like her to be. I encouraged her to get therapy and gave her a prescription. She wants to try it on her own."

Appellee, Claims Administrator did not abuse his discretion in denying Appellant's claim for Matrix Level IV benefits for a fracture that did not require an open or closed reduction.

Matrix Level V – Pain and Weakness

A completed Physician Declaration Form does not prove the existence of a permanent injury. Medical records supporting the existence and severity of an alleged permanent injury must be submitted in order to qualify for Matrix Level V benefits.

**IN RE: SULZER HIP PROSTHESIS
AND KNEE PROSTHESIS PRODUCT
LIABILITY LITIGATION**

Notice of Special Master Determination

Alice B. Allen

Page 3 of 3

There were no medical records submitted that prove Appellant's alleged permanent injury exists or that it rises to the level of Moderate or Severe, as required by the Settlement Agreement and CAP 27. Therefore, Appellee did not abuse his discretion in denying Appellant's claim for Matrix Level V benefits.

Matrix Level IX – Emotional Distress

CAP 27 §13(a)(2) states "Claims requesting compensation for pain or mental anguish associated with an APRS, CRS, or implantation surgery will not qualify for payment. Compensation for pain or mental anguish associated with these injuries is deemed to be included in the benefit award...from the Affected Product Revision Surgery Fund or the Unrevised Affected Product Recipient Fund."

The only record submitted regarding Appellant's alleged emotional distress is a June 21, 2001 office note, approximately two months prior to her CRS. It is certainly reasonable to conclude that her anxiety was associated with her implantation surgery and need for an APRS, for which she was compensated under her APRS award. Appellee did not abuse his discretion in denying Appellant's claim for Matrix Level IX benefits for emotional distress.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IV, V and IX claim is hereby AFFIRMED.

Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will not be considered. Submissions are to be mailed to the following address:**

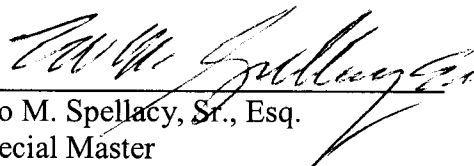
Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

JUN 04 2004

If no response is received (postmarked) by _____, then the Special Master's Decision is final and may not be further contested or appealed.

MAY 20 2004

Date


Leo M. Spellacy, Sr., Esq.
Special Master