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**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
This document relates to:) (MDL No. 1401)
Gloria Bailey)
) Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Gloria Bailey, by and through her attorneys Stephen B. Murray, Esq. and Robert Diliberto, Esq. of the Murray Law Firm ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated November 5, 2003 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 award EIF Matrix Level V benefits in the amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level V benefits.
2. Appellant seeks EIF Matrix Level V benefits for an alleged permanent injury regarding the loosening of the acetabular shell.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V benefits.

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

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.

Section 9(d) of CAP 27 states, in pertinent part, "...an injury shall be permanent only when the existence of that injury is demonstrated by physical examination and quantitative measures performed at least three hundred and sixty-five (365) days after a qualifying CRS." That definition is reiterated in Annex IV of the Settlement Agreement.

Appellant underwent a CRS on August 29, 2001. In order to be eligible for EIF benefits under Matrix Level V, Appellant was required, by the terms of CAP 27 and the Settlement Agreement, to submit medical records that evidenced the existence of that injury through physical examination and quantitative measures performed at least three hundred and sixty-five (365) days after her qualifying CRS, or August 29, 2002. There were no medical records submitted after May 2, 2002, and none of those records indicate any type of a permanent injury. In fact, her physician's note from February 25, 2002 indicates "patient states right hip is doing OK" and an x-ray report of her right hip also dated February 25, 2002 states "looks great."

Appellant's argument that her Physician Declaration Form corroborates her claim for a permanent injury is moot. Appellant did not include the Physician Declaration Form as an exhibit to her appeal, and without the appropriate medical records, as required by the Settlement Agreement, the Physician Declaration Form in and of itself is not sufficient evidence to prove a permanent injury. Therefore, Appellee, Claims Administrator did not abuse his discretion in denying Appellant's claim for EIF Matrix Level V benefits.

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

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Appellant and Appellee have fifteen days from the date of this decision to file with the Court, for the Special Master's review, a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received by February 4, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 21, 2004

Date


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