

**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>Patricia Barker</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Patricia Barker, by and through her attorney Tommy Jacks, Esq. of the Law Firm Mithoff & Jacks (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 22, 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 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 has been deemed eligible for Matrix Level V benefits for a permanent nerve injury.
3. Appellant also seeks Matrix Level IV benefits for a wound infection and Matrix Level IX benefits for financial loss.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits.

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Appellant's Matrix Level IV claim for a wound infection is not subject to this appeal and will not be addressed in this Determination.

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.

CAP 27 § 13(b)(1) states that "...a loss of income is "catastrophic" if...it results in direct economic loss, provable by *objective* evidence, of \$20,000 or more." [emphasis added]

Because of her painful hips, Appellant has not worked since 1998. She received certification as a massage therapist and estheticist in 1999 but has never worked in that capacity. She was implanted with an Affected Product on her right hip in July 2000 and her left hip in October 2000. She underwent an APRS on her left hip in May 2001.

Appellant's statement that "I believe that I would have been working successfully for the past two years. According to my calculations...this amounts to \$218,400 in lost wages over the past two years" is speculative and not supported by objective evidence.

Appellant also included out of pocket medical expenses with her claim for financial loss.

CAP 27 § 13(a)(3) provides that "injuries contemplated by the Settlement Agreement or a CAP, but which are not compensable under the Settlement Agreement or the CAP in question, shall not be compensable pursuant to Matrix Level IX."

Section 3.9(c) of the Settlement Agreement anticipated and provided for medical expenses of an APR necessitated by an Affected Product.

Since medical expenses are contemplated by the Settlement Agreement, they are not compensable under Matrix Level IX in accordance with CAP 27.

Appellee did not abuse his discretion in denying Appellant's claim for EIF Matrix Level IX benefits for an alleged financial loss that was not proven by objective evidence, or for medical expenses. He shall, however, review Appellant's claim for medical expenses as

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a claim for subrogation benefits and make such payments as required by the Settlement Agreement.

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

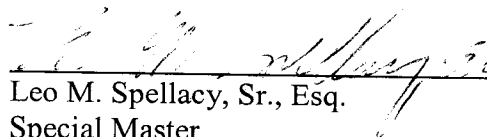
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will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

If no response is received (postmarked) by JUL 02 2004, then the Special Master's Decision is final and may not be further contested or appealed.

JUN 17 2004

Date


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