

**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>Dorothy Blair</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Dorothy Blair, 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 24, 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 IX benefits.
2. Appellant seeks Matrix Level IX benefits for a periprosthetic fracture and blood transfusions.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits.

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

Notice of Special Master Determination

Dorothy Blair

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:

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.

Periprosthetic Fracture

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.”

CAP 27 §13(a)(1) states that “injuries such as bone, tissue or muscle loss, nerve damage, *fracture*,... are properly classified as Permanent Injuries and/or Major Complications which must be Claimed under Matrix Level IV or V, and to be compensable must meet the criteria of Matrix Levels IV or V to qualify for EIF benefits.” Since Appellant’s periprosthetic fracture was contemplated by Matrix Level IV, Appellee did not abuse his discretion in denying this Matrix Level IX claim.

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.*” [emphasis added]

There is not conclusive evidence that Appellant suffered a periprosthetic fracture during her CRS. The “Impression” from the April 21, 2001 Radiology Report reads “Status Post Left Total Hip Replacement with *Possible Fracture of the Left Acetabulum.*” [emphasis added]. Dr. Lock’s office note of May 7, 2001 (the first office note following her CRS) does not mention any type of fracture, and the Physician Declaration Form states “possible fracture of the left acetabulum.” In addition, there is no evidence that the alleged periprosthetic fracture required an open or closed reduction. Therefore, Appellant is not eligible for Matrix Level IV benefits.

Blood Transfusion

In order to be eligible for Matrix Level IX benefits, CAP 27 Section 13(b)(3) requires that an injury be catastrophic and extraordinary. Catastrophic is defined as an injury that prevented the Class Member from engaging in an activity of daily living; and

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

Notice of Special Master Determination

Dorothy Blair

Page 3 of 3

extraordinary shall mean that the complication suffered by the Class Member was unique compared to other Class Members similarly situated.

Appellant does not allege that the blood transfusions she required during her APRS prevented her from engaging in an activity of daily living; rather she alleges that "Each unit of blood she was transfused with puts her at a higher risk for developing a blood borne disease in the future which would, in all likelihood, seriously affect her activities of daily living."

The risk of possibly developing a blood borne disease in the future is not compensable under the EIF in accordance with Cap 27 § 13 (a)(4) which states "Injuries or damages that have not occurred within the time periods allotted by the Settlement Agreement shall not be eligible for compensation."

Appellee did not abuse his discretion in denying this Matrix Level IX claim for blood transfusions that were not catastrophic, as that term is defined by the Settlement Agreement.

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

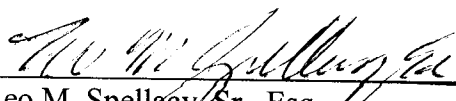
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will 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 JUN 28 2004, then the Special Master's Decision is final and may not be further contested or appealed.

JUN 11 2004

Date


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