

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED

2003 JUN 16 PM 2: 34

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

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Civil Action No.: 01-CV-9000
NORTHERN DISTRICT OF OHIO
CLEVELAND
ALL CASES

This document relates to:
Eleanor Bomgaars
Claim Number:

(MDL No. 1401)
Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Eleanor Bomgaars ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated April 10, 2003 on Appellant's claim for benefits from the Sulzer Settlement Trust.

Appellant was untimely in appealing the decision of the Appellee, and contends that Appellee erred in its decision to award a net benefit amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant submitted a Blue Form seeking Unrevised APR benefits on May 17, 2002.
2. On July 26, 2002 Appellee issued a letter informing Appellant that to complete her Claim she needed to submit proof of implantation of an Affected Product.
3. On December 20, 2002 Appellee issued a Preliminary Determination denying Appellant Unrevised APR benefits because she had not proved that she was implanted with an Affected Product.
4. On December 28, 2002 Appellant submitted a letter contesting her Preliminary Determination. In support of her contest, Appellant included a handwritten note with a number that she alleged was the lot number of the product that was implanted in her.
5. On April 10, 2003 Appellee issued a Final Determination denying Appellant's claim because she had not proved that she was implanted with an Affected Product.
6. On May 5, 2003, three months after the deadline for providing supplemental information, Appellant submitted a Sulzer Orthopedics Delivery Ticket to the Court.

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Notice of Special Master Determination

Eleanor Bomgaars

Claim Number

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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:

Appellee did not abuse his discretion in denying Appellant's claim for Unrevised APR benefits.

Appellant's original claim did not include proof that she was implanted with an Affected Product. Despite many requests, she did not provide the necessary information proving implantation of an Affected Product. It was only after the Appellee issued his Final Determination that she provided a Sulzer Orthopedics Delivery Ticket to the Court.

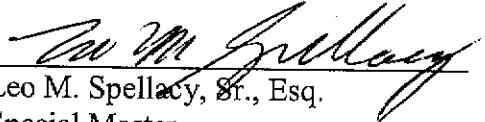
In reviewing an appeal from a Final Determination, the Special Master is limited to a review to determine if the Appellee abused his discretion. The Special Master cannot consider information presented for the first time on appeal.

Since Appellee did not have proof of an implant of an Affected Product when he made his Final Determination he did not abuse his discretion.

By order of the Special Master, Appellee's Final Determination of Zero Dollars (\$0.00) is hereby AFFIRMED.

Appellant and Appellee have fifteen days from the date of this decision to submit to 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 July 1, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

June 16, 2003
Date


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