

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
2003 JUL 24 PM 2:55
CLERK OF COURT
CLEVELAND, OHIO

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)**
Janice Carpenter)
Claim Number:) **Judge Kathleen M. O'Malley**

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Janice Carpenter, by and through her attorney, R. Jeffrey Neer, Esq. of the Law Firm Baker, Keener & Nahra ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated May 14, 2003 on Appellant's claim for benefits from the Sulzer Settlement Trust.

Appellant appealed the decision of the Appellee, and contends that Appellee erred in his decision to award Settlement benefits in the amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant submitted an untimely Orange Form seeking APRS benefits on November 20, 2002.
2. On January 31, 2003 Appellee issued a Preliminary Determination that Appellant was not eligible for Settlement benefits because her claim had not been submitted in a timely fashion according to the requirements of the Settlement Agreement.
3. Appellant submitted a letter dated February 6, 2003 contesting the Preliminary Determination.
4. On April 4, 2003 Appellant submitted a request for a deadline extension under CAP 29.
5. On May 14, 2003 Appellee issued a Final Determination that Appellant was not eligible for Settlement benefits because her claim was not filed before the deadline.
6. Appellant has not submitted any evidence demonstrating that her failure to submit a timely claim form was caused by circumstances giving rise to a permissible extension of time under CAP 29.

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

Notice of Special Master Determination

Janice Carpenter

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:

Appellant appeals the Appellee's denial of APRS benefits due to an untimely filing.

Appellant submitted her claim 16 days after the applicable deadline, on November 20, 2002, and admits the filing was untimely but urges that the neglect causing the untimely filing should be excused.

Appellant's counsel completed the claim forms and gave them to his secretary with instructions to obtain Appellant's signature. The secretary had an accident and was out of work until December 2, 2002. The other secretaries did not complete the assigned task until after the November 4, 2002 deadline.

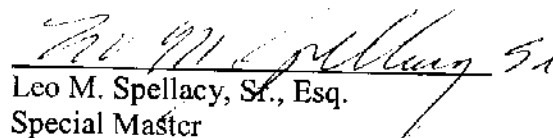
CAP 29 explains how Appellee is to exercise discretion in granting extensions of filing deadlines. He may grant an extension for reasons such as surprise, inadvertence, or excusable neglect. An attorney's unawareness of a clearly articulated deadline, miscalculation of a deadline, or a Class Member's reliance on the attorney is not a basis for an extension. Appellant has not satisfied the requirements for an extension of the filing deadline under CAP 29.

Appellee followed the terms of the Settlement Agreement and CAP 29 and did not abuse his discretion in denying Appellant's request for a deadline extension and her claim for Settlement benefits.

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 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 August 8, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

July 24, 2003
Date


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