

**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>Rebecca Dampier</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Tim Dampier, on behalf of Class Member Rebecca Dampier (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated December 30, 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 deny Appellant’s claim for EIF Matrix Level V benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level V and Matrix Level IX benefits.
2. Appellant seeks Matrix Level V benefits for an alleged permanent injury, and Matrix Level IX benefits for a stress fracture.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V or IX 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:

Appellant has not appealed the Final Determination regarding her EIF Matrix Level IX claim for a stress fracture. Therefore, Appellee's Final Determination of ineligibility regarding that claim is final and it may not be further contested or appealed.

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(e) of CAP 27 states, in pertinent part, "To prove a Moderate injury, a Class Member must prove that he or she experienced pain, sensory loss or gait alteration that required narcotics and/or use of a cane or walker. To prove a Severe injury a Class Member must prove that he or she required the use of a wheelchair or underwent an amputation." Those definitions are reiterated in Annex IV of the Settlement Agreement.

Appellant's leg length discrepancy requires her to use a shoe lift, as indicated in her Green Form and the Physician Declaration Form.

The documents submitted for the first time upon appeal cannot be considered pursuant to CAP 30 § 3 which states, in pertinent part, "No evidence, documentary or testimonial, real or illustrative, may be introduced during the course of the appeal if it was not first submitted to the Claims Administrator within 45 days of the issuance of the Preliminary Determination, the contest of which gave rise to the Appealed Final Determination." However, if those documents were to be considered they would not support Appellant's claim because Dr. Kendrick's office note of July 17, 2002 indicates that "she's here with her right hip and feet. Her left hip is doing well." It certainly is reasonable to expect that, since her left hip, the revised hip, was doing well, that use of a cane was not the result of her revision surgery but rather the result of the problems with her right hip and feet.

There is no evidence that Appellant's leg length discrepancy rises to the level of moderate or severe as defined by the Settlement Agreement, or that her use of a cane is a result of her CRS and, therefore, Appellee, Claims Administrator, did not abuse his discretion in denying her claim for Matrix Level V benefits.

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

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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

APR 12 2004

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

MAR 26 2004

Date



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