

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

2009 JAN 30 AM 10:41
U.S. 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**
)
This document relates to:) **(MDL No. 1401)**
Carol DeVries)
) **Judge Kathleen M. O'Malley**

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Carol DeVries, by and through her attorney Andres C. Pereira, Esq. of the Law Firm Fleming & Assoc. ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated November 10, 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 award EIF Matrix Level III and IV benefits in the amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level III and IV benefits.
2. Appellant seeks EIF Matrix Level III benefits for her September 1, 2000 surgery, and Matrix Level IV benefits for a wound infection that was diagnosed on September 17, 2000.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level III and IV 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:

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 out in Claims Administrator Procedure ("CAP") 27.

Appellant seeks Matrix Level III benefits for the surgery she underwent on September 1, 2000. In this claim, Appellant alleges that this surgery is an Affected Product Revision Surgery, and that she suffered an infection, diagnosed on September 17, 2000.

Matrix Level III describes qualifications for Non-Affected Product Revision Surgery. Settlement Agreement § 1.1 defines a NAPRS as a "surgery (not indicated as a result of trauma) that was performed to remove and/or replace a product that is not an Affected Product within one-hundred and eighty (180) days of an Affected Product Revision Surgery in respect of a hip or knee that previously underwent an Affected Product Revision Surgery."

According to the Operative Report, Appellant underwent a right total hip arthroplasty on September 1, 2000. It was during this surgery that an Affected Product was implanted in Appellant, rendering her an Affected Product Recipient. Appellant did not undergo a NAPRS on September 1, 2000. Therefore, Appellee, Claims Administrator did not abuse his discretion in denying Appellant's claim for Matrix Level III benefits.

Appellant also seeks Matrix Level IV benefits for an infection that was diagnosed on September 17, 2000, shortly after the surgery wherein an Affected Product was implanted and prior to her revision surgery of January 30, 2001.

Section 8(b) of CAP 27 states, in pertinent part, "Wound infections which occur before a CRS [Covered Revision Surgery] ... are not compensable from the EIF".

Appellant alleges that she underwent an APRS on September 1, 2000. However, Appellant's medical records prove that she was implanted with an Affected Product on September 1, 2000, and she underwent an APRS on January 30, 2001. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's claim for a wound infection that occurred prior to her CRS.

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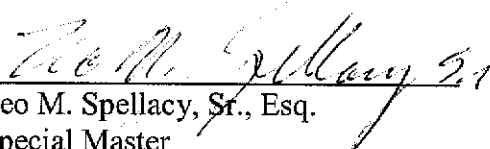
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By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's Matrix Level III and IV claim is hereby AFFIRMED.

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 February 16, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 30, 2004
Date


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