

**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>Sara Doughty</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Sara Doughty, by and through her attorney Alan F. Wagner, Esq. of the Law Firm Wagner, Vaughan & McLaughlin (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated December 2, 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 IV and 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 EIF Matrix Level IX benefits for an infection, hearing loss, and physical therapy.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV and 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:

The Special Master shall review Final Determinations only for an abuse of discretion by the Appellee, Claims Administrator.

Appellant has not received a Final Determination pertaining to her claim for out-of-pocket medical expenses and, therefore, that claim cannot be appealed and will not be addressed by the Special Master.

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.

Appellant seeks EIF Matrix Level IX benefits for a wound infection.

CAP 27 § 13(a)(1) states that “Injuries such as bone, tissue or muscle loss, nerve damage, fracture, dislocation, *infection*, deformed hip, knee or femur...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.” Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s claim for Matrix Level IX benefits for a wound infection that must be claimed under Matrix Level IV or V in accordance with the terms of CAP 27.

In order to qualify for Matrix Level IV benefits, CAP 27 § 8(b) provides that a wound infection must require surgical debridement with prosthesis retention, resection arthroplasty, hip arthrodesis, or reimplantation. Appellant’s infection was treated with IV antibiotics. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s claim for Matrix Level IV benefits for a wound infection that did not require surgical debridement with prosthesis retention, resection arthroplasty, hip arthrodesis, or reimplantation, as required by CAP 27.

Appellant also seeks EIF Matrix Level IX benefits for a hearing loss that occurred after her course of IV antibiotics.

The Physician Declaration Form completed by Dr. Bartels and submitted by Appellant states “Hearing loss – not for sure related.” There is no evidence proving a causal relationship between Appellant’s hearing loss and her Affected Product or APRS.

Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying this claim.

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Appellant also seeks EIF Matrix Level IX benefits for the physical therapy she underwent after her APRS.

CAP 27 Section 13(b)(3) states, in pertinent part, "Catastrophic shall mean an injury that prevented the Class Member from engaging in an activity of daily living. Extraordinary shall mean that the complication suffered by the Class Member was unique compared to other Class Members similarly situated."

Physical therapy is a normal part of the rehabilitation necessary following hip or knee replacement surgery. It does not rise to the level of extraordinary as defined by CAP 27 and, therefore, Appellee Claims Administrator did not abuse his discretion in denying Appellant's Matrix Level IX claim for physical therapy.

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

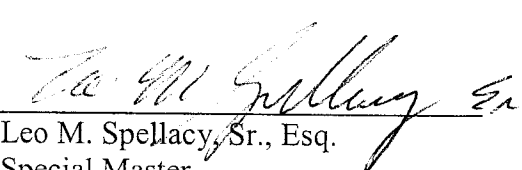
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will 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 MAR 25 2004, then the Special Master's Decision is final and may not be further contested or appealed.

MAR 10 2004

Date


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