

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

7/24/03 01:01

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

*This document relates to:  
Margaret Estes*

) **Civil Action No.: 01-CV-9000**  
)  
) **ALL CASES**  
)  
) **(MDL No. 1401)**  
)  
) **Judge Kathleen M. O'Malley**

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Margaret Estes ("Appellant") appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated October 20, 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 IX 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 IX benefits as a result of a surgery after her APRS.
2. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for Matrix Level IX benefits because her claim was for an injury contemplated by Matrix Level III, and she had not satisfied the requirements of Matrix Level III.
3. Appellant submitted an additional EIF claim under Matrix Level IX for medical expenses and lost wages.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits because her medical expenses and lost income was less than \$20,000.00.

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

Appellee contends that Appellant's October 2, 2002 surgery that is the basis of her first Matrix Level IX claim does not qualify under Matrix Level IX: Discretionary because post-APRS surgeries were anticipated complications in the Settlement Agreement and awards under Matrix Level IX are limited to complications that were neither anticipated nor provided for in other Matrix Levels. Appellee then indicates that this claim does not satisfy the requirements of Matrix Level III: Non-Affected Product Revision Surgery and Additional Non-Affected Product Revisions because the plastic insert that was replaced during Appellant's October 2, 2002 surgery did not functionally replace the Affected Product that had been revised and, therefore, that surgery was not an NAPRS and is not compensable under the EIF in accordance with CAP 27.

The Special Master agrees that Appellant's October 2, 2002 surgery does not qualify as a NAPRS under Matrix Level III. However, since this was not a NAPRS, it was not a complication anticipated by or provided for under the Settlement Agreement and should be considered under Matrix Level IX.

The Special Master, therefore, remands this claim back to the Claims Administrator for consideration under Matrix Level IX. Appellee has thirty (30) days to complete his review and to file with the Court, for the Special Master's review, a brief explaining his position in this matter.

In regards to Appellant's second EIF claim, CAP 27 § 13(b)(1) states, in pertinent part, that "...a loss of income is "catastrophic" if, in the judgment of the Claims Administrator, it results in direct economic loss, provable by objective evidence, of \$20,000 or more." Since Appellant's alleged economic loss is \$3,852.26, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's second Matrix Level IX claim pursuant to the terms of CAP 27.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's economic loss claim under Matrix Level IX is hereby AFFIRMED.

However, in her second EIF claim, Appellant alleges "Insurance Co. expenses" in the amount of \$8,109.44. The Special Master hereby remands that claim back to the Claims Administrator for review under the subrogation provisions of the Settlement Agreement.

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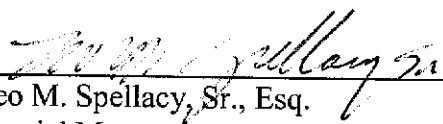
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Appellant and Appellee have fifteen days from the date of this decision to file with the Court, for the Special Master's review, a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received by January 23, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 8, 2004  
Date

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