

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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

*This document relates to:
Humphrey Gaines*

Civil Action No.: 01-CV-9000

ALL CASES

(MDL No. 1401)

Judge Kathleen M. O'Malley

2001 JAN 30 AM 10:41
CLERK OF COURT
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Humphrey Gaines, by and through his 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 I 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 I benefits.
2. Appellant seeks EIF benefits for being medically contraindicated from undergoing an APRS.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level I 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 EIF Matrix Level I benefits because he is medically contraindicated from undergoing a revision surgery.

Annex IV of the Settlement Agreement provides that “Class Members for whom Affected Product Revision Surgery would be indicated but for a medical condition” may be eligible for EIF Matrix Level I benefits.

CAP 27 § 5 (a) requires that “The records submitted by the Class Member in support of his or her Claim must demonstrate that an APRS is needed and that a medical condition exists which renders the performance of the revision surgery medically inappropriate.”

Appellant relies upon a letter from his internist, Dr. Friesen, that states “He [Appellant] was evaluated by his orthopedic surgeon in 2001 and on an as needed basis with a view to repeat his arthroplasty.” However, the medical records from Appellant’s orthopedic surgeon do not support Appellant’s contention that a revision surgery is indicated. Dr. Heywood’s office notes indicate the following:

July 30, 2001: “x-rays show there is no evidence of any loosening”

March 19, 2002: “x-rays of both hips show no evidence of loosening of the operated hip, the other hip looks normal”

May 21, 2002: “the x-rays show no change from the previous films or from films in July of 2001. He [Appellant] states that he has been told by his attorney to get a second opinion and he has one with Dr. Ballard.”

There is no evidence that an APRS is indicated for Appellant. Therefore, Appellee, Claims Administrator did not abuse his discretion in denying Appellant’s claim for EIF Matrix Level I benefits.

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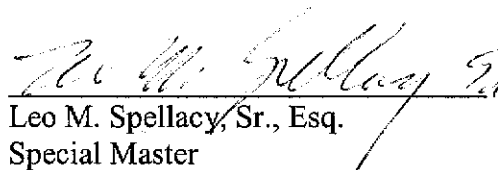
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By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's Matrix Level I claim is hereby AFFIRMED.

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