

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>IN RE: SULZER HIP PROSTHESIS</b>	)	<b>Civil Action No.: 01-CV-9000</b>
<b>AND KNEE PROSTHESIS PRODUCT</b>	)	
<b>LIABILITY LITIGATION</b>	)	<b>ALL CASES</b>
	)	
<i>This document relates to:</i>	)	<b>(MDL No. 1401)</b>
<i>Joanna Garcia</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Joanna Garcia, by and through her attorney Anita Sherbanee, Esq. of the Law Firm Robinson, Cacagnie & Robinson (“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 V and IX benefits.

The factual findings of this matter are as follows:

1. Appellant submitted several claims for EIF benefits.
2. Appellant has been deemed eligible for EIF Matrix Level IV benefits.
3. Appellant also seeks EIF Matrix Level V and IX benefits
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V and IX benefits.

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After a thorough review of the appeal submitted by the Appellants 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.

Since Appellee is not eligible for Unrevised APR benefits for the implantation of a reprocessed shell, and because her EIF claims were not denied on the basis of an untimely Blue Form, that issue is moot and will not be addressed by the Special Master.

Appellant seeks Matrix Level V benefits for a permanent limp and limited ability to ambulate. In his response to Appellant’s appeal, Appellee concedes that Appellant is eligible for Matrix Level V benefits and, therefore, the Special Master will not address this claim. The Special Master hereby directs the Claims Administrator to immediately furnish Appellant’s counsel with notice of the revised benefit determination pertaining to her claim for a permanent limp and limited ability to ambulate. Appellant retains her right to appeal that revised benefit determination in accordance with CAP 30.

Appellant also seeks Matrix Level IX benefits for the six weeks of bed rest she required after her second 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.”

The Settlement Agreement vests the Claims Administrator with the discretion to make Matrix Level IX awards.

The Appellant has provided sufficient evidence to form the basis of the “bed rest” claim. Dr. Hale’s report supports her request.

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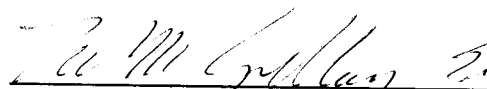
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By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IX claim is hereby REVERSED and this claim is remanded back to the Claims Administrator for consideration as an eligible Matrix Level IX claim.

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 March 8, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

February 20, 2004

Date

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