

**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>Mary Goddard</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Mary Goddard, by and through her attorney Daniel E. Barenbaum, Esq. of the Law Firm Lieff, Cabraser, Heimann & Bernstein (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated March 3, 2004 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 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 Matrix Level IX benefits for prolonged extreme pain-requiring narcotics, inability to ambulate well, decrease in activities of daily living.
3. Appellee has deemed Appellant eligible for Matrix Level IX benefits for trochanteric wire removal.
4. Appellee issued Preliminary Determinations that Appellant was not eligible for EIF Matrix Level IX benefits for pain and gait alteration.
5. Appellee determined this claim was more appropriately considered under Matrix Level V and has issued only a Preliminary Determination regarding this claim under Matrix Level V.

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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. When an act of discretion is under review the reviewing party may not substitute its own notion of what is right for that of the Claims Administrator if his judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness.

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.

CAP 27 § 13(c) states “Where the Claims Administrator discovers that a Class Member has improperly asserted a Claim under Matrix Level IX, the Claims Administrator shall consider the Claim as if it has been properly made under the correct Matrix Level.”

After several reviews of Appellant’s claim, Appellee determined that Appellant was eligible for Matrix Level IX benefits for trochanteric wire removal, a complication for which Appellant had not even submitted a claim. In addition, Appellee determined that Appellant’s claim for “prolonged extreme pain-requiring narcotics, inability to ambulate well, decrease in activities of daily living” was more appropriately considered as pain and gait alteration under Matrix Level V.

Appellant’s contention that Appellee’s finding that her claim is complete also means her claim is eligible for Matrix Level IX benefits is erroneous. Complete only means that the requisite information has been received, it in no way infers that a claim is eligible.

Appellant’s appeal does not address her eligibility for benefits under Matrix Level IX, it focuses solely upon an alleged abuse of discretion by the Appellee in reclassifying her claim to Matrix Level V. However, Appellee has the authority to make such a reclassification pursuant to CAP 27 § 13(c) and, therefore, did not abuse his discretion in so doing.

Appellant did not submit any evidence upon appeal proving her eligibility for benefits under Matrix Level IX. Not one medical record was submitted supporting her claim for “prolonged extreme pain-requiring narcotics, inability to ambulate well, decrease in activities of daily living.” Therefore, the merits of her Matrix Level IX claim cannot be reviewed by the Special Master.

Appellee did not abuse his discretion in denying Appellant’s claim for EIF Matrix Level IX benefits for an injury that he has determined is more appropriately considered under

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Matrix Level V, and which must meet the criteria of Matrix Level V in order to be eligible for EIF benefits.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level IX claim for pain and altered gait (or prolonged extreme pain-requiring narcotics, inability to ambulate well, decrease in activities of daily living) is hereby AFFIRMED.

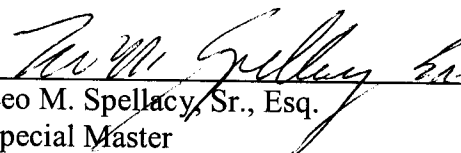
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will 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 JUL 30 2004, then the Special Master's Decision is final and may not be further contested or appealed.

JUL 15 2004

Date



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