

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

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

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Anthony Graves, by and through his attorney Edward J. Sanocki, Jr., Esq. of the Law Firm Sanocki Newman & Turret ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated April 15, 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 V benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level IV, V and IX benefits.
2. Appellant has been deemed eligible for Matrix Level IX benefits for wage loss.
3. Appellant also seeks EIF Matrix Level IV benefits for right hip pain and dysfunction, limited range of motion, cystic change in acetabulum and loose prosthesis, for a dislocation of July 4, 2000, and for a loose component requiring revision; Matrix Level V benefits for a permanent nerve injury; and Matrix Level IX benefits for medical expenses.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV, V and IX benefits for medical expenses.

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Appellant has not appealed the Final Determination regarding his EIF Matrix Level IV claim for right hip pain and dysfunction, limited range of motion, cystic change in acetabulum and loose prosthesis, for a dislocation of July 4, 2000, and for a loose component requiring revision; or his Matrix Level IX claim for medical expenses. Therefore, Appellee's Final Determination of ineligibility regarding those claims is final and it may not be further contested or appealed.

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.

Section 9(d) of CAP 27 states, in pertinent part, "...an injury shall be permanent only when the existence of that injury is demonstrated by physical examination and quantitative measures performed at least three hundred and sixty-five (365) days after a qualifying CRS." That definition is reiterated in Annex IV of the Settlement Agreement.

Appellant suffered a nerve injury as a result of his November 14, 2001 CRS. In order to be eligible for EIF benefits under Matrix Level V, Appellant was required, by the terms of CAP 27 and the Settlement Agreement, to submit medical records that evidenced the existence of that injury through physical examination and quantitative measures performed at least three hundred and sixty-five (365) days after his qualifying CRS, or November 14, 2002.

Appellant submitted medical records from January 2002 through June 2002 regarding his nerve injury. There were no medical records from at least 365 days after his CRS, and even his Physician Declaration Form is dated less than 365 days after his CRS.

Appellee did not abuse his discretion in denying Appellant's claim for EIF Matrix Level V benefits for an injury that Appellant did not prove is permanent and moderate *at least 365 days after his qualifying CRS*.

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

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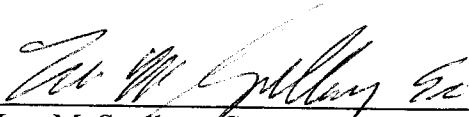
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will 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 AUG 02 2004, then the Special Master's Decision is final and may not be further contested or appealed.

JUL 16 2004

Date


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