

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

2004 JAN 27 PM 1:35

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

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

*This document relates to:
Shelby Hall*

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Shelby Hall, by and through her 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 V 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 V benefits.
2. Appellant seeks EIF benefits for an alleged permanent injury.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V 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.

Appellant seeks Matrix Level V benefits for a moderate “right leg longer than left causing severe limping; back unaligned, crooked gait” permanent injury.

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.

Section 9(e) of CAP 27 states, in pertinent part, “To prove a Moderate injury, a Class Member must prove that he or she experienced pain, sensory loss or gait alteration that *required narcotics and/or use of a cane or walker.*” [emphasis added] That definition is reiterated in Annex IV of the Settlement Agreement.

Appellant has not proven that she experienced pain, sensory loss or gait alteration that required narcotics and/or use of a cane or walker. In fact, Appellant’s medical reports contradict her claim. Dr. Smith’s records report the following:

December 17, 2001: “She [Appellant] says her back is pain free.”

June 3, 2002: “She [Appellant] says she has only slight occasional R hip pain. She can negotiate stairs normally and enter a bus independently. She can sit comfortably for an hour and put on her own shoes and socks with ease. She feels like she still has a moderate limp but can walk without support and without limit.”

May 23, 2003: “She [Appellant] says as far as her hip is concerned, she has absolutely no pain...She walks without support and can go two miles comfortably.”

There is no evidence that Appellant’s injury rises to the level of Moderate as defined in the Settlement Agreement. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s request for EIF Matrix Level V benefits.

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

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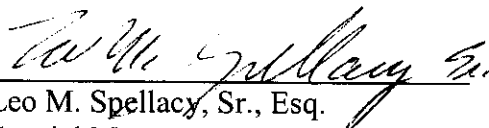
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Appellant and Appellee have fifteen days from the date of this decision to file with the Court, for the Special Master's review, a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received by February 11, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 27, 2004

Date


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