

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

2004 JAN 27 PM 1:35
1/27/04

IN RE: SULZER HIP PROSTHESIS) **Civil Action No.: 01-CV-9000**
AND KNEE PROSTHESIS PRODUCT)
LIABILITY LITIGATION) **ALL CASES**
)
This document relates to:) **(MDL No. 1401)**
Helen Harrington)
) **Judge Kathleen M. O'Malley**

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Helen Harrington, by and through her attorney Rachel Abrams, Esq. of the Law Firm Hersh & Hersh ("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 IX 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 IX benefits.
2. Appellant seeks EIF benefits for a bone grafting procedure done during her APRS.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits.

1409, 1522

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

Notice of Special Master Determination

Helen Harrington

Page 2 of 2

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.

CAP 27 § 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."

Appellant seeks EIF Matrix Level IX benefits for a bone grafting procedure that was performed during her revision surgery. The Discharge Summary from Appellant's APRS of October 22, 2001 states "Postoperatively, the patient did well...She was doing well enough that by October 25 she could be transferred to the transitional care unit at Northern California Rehabilitation Hospital." In addition, in response to the statement in her Physician Declaration Form that "Ms. Harrington necessitated a bone graft surgery during the revision of her Sulzer hip implant", Dr. Carn wrote, "this is routine for revision of a failed cup."

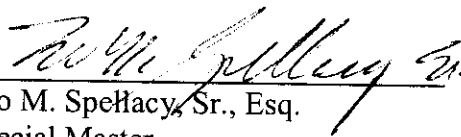
There is no evidence that the bone grafting procedure performed during Appellant's revision surgery rises to the level of catastrophic or extraordinary as defined by CAP 27. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying this claim.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's Matrix Level IX 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 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