

**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>Leona Hawkins</i> |) | |
| |) | Judge Kathleen M. O'Malley |

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Leona Hawkins, by and through her attorney Ronald Brown, Esq. of the Law Firm Brown & Crouppen (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated December 29, 2003 on Appellant’s claim for 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 APRS and EIF benefits.

The factual findings of this matter are as follows:

1. Appellant submitted an Orange Form and a Green Form on November 1, 2002.
2. Appellee issued a Preliminary Determination of ineligibility regarding Appellant’s Orange Form claim on March 14, 2003.
3. Appellee issued a Preliminary Determination of ineligibility regarding Appellant’s Green Form claim on July 18, 2003.
4. On August 22, 2003 Appellant contested the Claims Administrator’s Preliminary Determination of July 18, 2003.
5. Appellant submitted an Orange Form on September 27, 2003.
6. Appellee issued a Preliminary Determination of ineligibility regarding Appellant’s September 27, 2003 Orange Form and a Final Determination of ineligibility regarding Appellant’s Green Form on December 29, 2003.

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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.

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.

Orange Form Claim Submitted November 1, 2002

It is not disputed that Appellant's APRS occurred on April 1, 2003. Therefore, Appellee, Claims Administrator, did not abuse his discretion in denying this claim since an APRS had not occurred.

Section 4.6(d) of the Settlement Agreement states "Such Class Member and/or the Plaintiffs' Counsel shall have forty-five (45) days from the date of the preliminary Determination by the Claims Administrator to provide any additional information documentation supporting his/her position... If the Class Member and/or Plaintiffs' Counsel does not contest the Preliminary Determination in accordance with this Section 4.6(d), such Preliminary Determination shall be deemed to be a Final Determination in accordance with Section 4.6(e) and such Class Member and/or Plaintiffs' Counsel shall have no further right to contest such Final Determination."

In accordance with Section 4.6(d) of the Settlement Agreement, Appellant had until April 28, 2003 (45 days from the March 14, 2003 Preliminary Determination) to provide additional information supporting her claim. Since Appellant did not submit any additional information on or before April 28, 2003, the Preliminary Determination regarding her Orange Form claim submitted on November 1, 2002 became final and it cannot be further contested or appealed.

Green Form Claim Submitted November 1, 2002

Appellee issued a Preliminary Determination regarding Appellant's claim for EIF benefits on July 18, 2003. That Preliminary Determination indicated that her claim was ineligible because "No Matrix Levels Claimed."

Appellant contested that Preliminary Determination on August 22, 2003. However, that contest addresses Appellant's claim for APRS benefits and not her claim for EIF benefits. As stated above, the Preliminary Determination regarding Appellant's Orange Form claim was not contested on or before April 28, 2003 and, therefore, it became final and could not be further contested or appealed.

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Since Appellant did not indicate what injury or complication she was seeking EIF benefits for, or even under what Matrix Level she was submitting an EIF claim, Appellee, Claims Administrator, did not abuse his discretion in denying her claim.

By Order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF claim is hereby **AFFIRMED**.

Supplemental / Modified Orange Form Submitted September 27, 2003

Appellee alleges that he did not receive Appellant's supplemental/modified Orange Form until November 24, 2003 and, therefore, that Orange Form was untimely.

However, Appellant included a copy of the envelope in which her supplemental Orange Form was mailed, and that envelope bears a postmark (not just a postage meter date but an actual postmark) of September 27, 2003, making that submission timely.

By Order of the Special Master, the Orange Form claim submitted on September 27, 2003 as a result of Appellant's April 1, 2003 APRS is remanded back to the Claim Administrator for review as a timely APRS claim. Appellee will issue a revised Final Determination regarding this claim within 30 days of the date of this Order. Appellant retains her right to appeal the revised Final Determination in accordance with CAP 30.

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:**

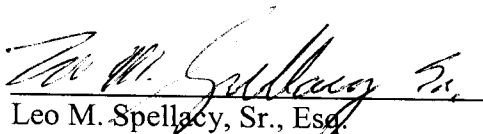
Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

MAY 11 2004

If no response is received (postmarked) by _____, then the Special Master's Decision is final and may not be further contested or appealed.

APR 26 2004

Date


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