

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
2003 JUL 24 PM 2:55

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

Civil Action No.: 01-CV-9000

ALL CASES

This document relates to:
Ulysses S. Herrington
Claim Number.

(MDL No. 1401)

Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Ulysses S. Herrington ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated April 10, 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 award Settlement benefits in the amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant submitted a Yellow Form seeking Derivative Claimant benefits on August 12, 2002.
2. In his Yellow Form submission, Appellant checked the box indicating that he was the significant other of his associated APR.
3. On November 20, 2002 Appellee issued a Preliminary Determination that Appellant was not eligible for Settlement benefits because he had not proven that he was a Significant Other within the meaning of CAP 26.
4. Appellant submitted a letter dated January 3, 2003 contesting the Preliminary Determination.
5. On April 10, 2003 Appellee issued a Final Determination that Appellant was not eligible for Settlement benefits because he had not proven that he was a Significant Other pursuant to CAP 26.
6. Appellant's appeal of his Final Determination was postmarked June 4, 2003, which was past the deadline for filing an appeal pursuant to the requirements of the Settlement Agreement and CAP 30.

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Notice of Special Master Determination

Ulysses S. Herrington

Claim Number:

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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:

Appellee did not abuse his discretion in denying Appellant's request for Derivative Claimant benefits.

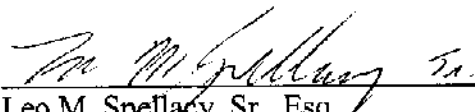
Appellant's request must be denied for two reasons. First, Appellant is neither a Spouse nor a Significant Other within the meaning of CAP 26. He is not married to his associated APR and no legal impediment exists to marriage to his associated APR.

In addition, the Final Determination by Appellee may not be appealed. The Settlement Agreement provides that Appellant must appeal the Final Determination within 30 days. Appellant did not submit a Notice of Appeal until after 55 days.

By order of the Special Master, Appellee's Final Determination of Zero Dollars (\$0.00) 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 August 8, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

July 24, 2003
Date


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