

**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>Larry R. Hester</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Larry R. Hester, by and through his attorney W. David Bridgers, Esq. of the Law Firm Neal & Harwell (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated April 19, 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 I benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level I and IX benefits.
2. Appellant seeks Matrix Level I benefits for an alleged revision surgery indicated on both his left and right hips but for a medical condition; and Matrix Level IX benefits for a dislocation, pain and disability/dysfunction, depression and wage loss.
3. Appellant has been deemed eligible for Matrix Level IX benefits for depression.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level I benefits and Matrix Level IX benefits for a dislocation, and pain and disability/dysfunction.
5. At the time of this appeal, Appellee had not issued a Final Determination regarding Appellant’s Matrix Level IX claim for wage loss. Therefore, that claim cannot be appealed at this time and will not be addressed in this Determination.

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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:

Appellant has not appealed the Final Determination regarding his EIF Matrix Level IX claim for a dislocation, and pain and disability/dysfunction. Therefore, Appellee's Final Determination of ineligibility regarding those claims is final and may not be further contested or appealed.

The Special Master shall review Final Determinations only for an abuse of discretion by the Appellee, Claims Administrator. When an act of discretion is under review the reviewing party may not substitute its own notion of what is right for that of the Claims Administrator if his judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness.

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 3.4(c) of the Settlement Agreement requires Class Members implanted with an Inter-Op Shell to have undergone an APRS on or before June 5, 2003 in order to be eligible for APRS benefits. Therefore, it is reasonable to conclude that an APRS must have been indicated on or before June 5, 2003 in order for a Class Member to be eligible for Matrix Level I benefits.

The Special Master could find no evidence that an APRS was indicated prior to June 5, 2003. The March 19, 2001 x-ray report of Appellant's right hip states "The acetabular component remains well seated." Dr. Shell's office note of May 14, 2001 reads "lateral X-rays of both hips show the right hip in good alignment and position. Components are well fixed in the femoral side. The left acetabular component looks satisfactory. There is questionable lucency but is difficult to say."

The letter from Dr. McDonald dated October 23, 2003 indicates that Appellant would be medically contraindicated from undergoing surgery, but even though that letter states that Appellant would be seeing Dr. Shell on October 23, 2003, no record of that visit was submitted. In fact, it does not appear Appellant saw an orthopedist for the three year period between May 14, 2001 and May 14, 2004. Even if Dr. Siegel's May 14, 2004 office note were to be considered, there is no evidence that revision surgery was indicated prior to June 5, 2003.

Appellee did not abuse his discretion in denying this Matrix Level I claim.

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

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:**

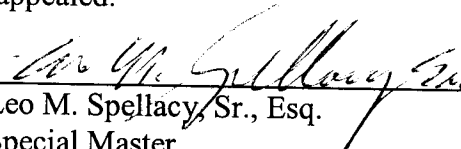
Leo M. Spellacy, Sr., Esq.
Special Master to the Sulzer Settlement Trust
c/o Liaison Counsel
1600 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115

SEP 30 2004

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

SEP 15 2004

Date



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