

**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>Anna Iorio</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Anna Iorio (“Appellant”) appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated December 22, 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 deny Appellant’s claim for EIF Matrix Level V and IX benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level V and IX benefits.
2. Appellant seeks EIF Matrix Level V benefits for an alleged Permanent Injury and Matrix Level IX benefits for lost wages.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level V and IX 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.

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.

Matrix Level V – Permanent Injury

Appellant seeks benefits for a Permanent Injury due to pain and sensory loss in her right leg.

Appellant claims that there is a direct causal relation between her revision surgery of January 2001 and the pain she began to experience in March 2002.

Appellee has denied Appellant’s claim for failure to submit the required proof.

Appellant has submitted a letter from Dr. Carrol, her treating orthopedic surgeon and a report from Dr. Kelemen, a neurologist.

Dr. Carrol referred Appellant to Dr. Kelemen for further evaluation of the pain in May 2002. Dr. Kelemen confirmed the presence of pain and sensory loss but stated “it is not entirely clear what the cause might be.” His report to Dr. Carrol did not provide a causal connection between her APRS in January 2001 and the pain experienced in March 2002.

Other than Dr. Carrol’s letter of September 8, 2003, there is no evidence that Dr. Carrol treated Appellant more than a year after her APRS. Dr. Carrol’s opinion is based, in part, on the opinion of Dr. Keleman, who is unable to determine a cause for Appellant’s pain.

Having failed to satisfy the proof requirements by documenting the Permanent Injury by both objective physical assessment and quantitative measures 365 days or more after a CRS, the Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s claim for Matrix Level V benefits.

Matrix Level IX – Lost Wages

CAP 27 § 13(b)(1) states, in pertinent part, “...a loss of income is “catastrophic” if, in the judgment of the Claims Administrator, it results in direct economic loss, *provable by objective evidence*, of \$20,000 or more.” [emphasis added]

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Appellant's Preliminary Determination indicates "You must submit W-2 forms (or other applicable tax forms) for at least two years prior to the lost wages claimed and for each year for which you are claiming lost wages."

Even though W-2's were not available for 2001 and 2002, CAP 27 required her to provide objective evidence of her lost wages. This could have been accomplished by submitting "other applicable tax forms", such as her federal tax return.

In addition, Appellant's possible future loss of income cannot be considered in accordance with Cap 27 § 13(a)(4) which states "Injuries or damages that have not occurred within the time periods allotted by the Settlement Agreement shall not be eligible for compensation."

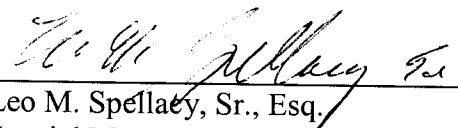
Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's Matrix Level IX claim for lost wages because she did not submit objective evidence supporting her claim.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF 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 APR 20 2004, then the Special Master's Decision is final and may not be further contested or appealed.

APR 05 2004

Date


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