

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
2004 JAN 23 PM 1:08
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

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)
Michelle Kaye)
) Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Michelle Kaye, by and through her attorney Robert M. Barta, Esq. of the Law Firm Rosoff, Schiffres & Barta ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated November 5, 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 Matrix Level IX benefits for pain.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits.

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

Notice of Special Master Determination

Michelle Kaye

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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.

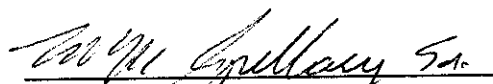
CAP 27 § 13(a)(2) provides that claims requesting compensation for pain or mental anguish associated with an APRS, CRS, or implantation surgery will not qualify for payment under the EIF because compensation for pain or mental anguish associated with these injuries is deemed to be included in the benefit award from the Affected Product Revision Surgery fund or the Unrevised Affected Product Recipient fund.

Appellant's APRS benefit award includes compensation for pain associated with her APRS, and the plain language of CAP 27 bars her request for additional compensation. 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 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 February 9, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

January 23, 2004
Date


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