

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>IN RE: SULZER HIP PROSTHESIS</b>	)	<b>Civil Action No.: 01-CV-9000</b>
<b>AND KNEE PROSTHESIS PRODUCT</b>	)	
<b>LIABILITY LITIGATION</b>	)	<b>ALL CASES</b>
	)	
<i>This document relates to:</i>	)	<b>(MDL No. 1401)</b>
<i>Dallaise C. Peters</i>	)	
	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Dallaise C. Peters, by and through her attorneys C.L. Mike Schmidt, Esq. and Michael E. Schmidt, Esq. of the The Schmidt Firm (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated December 2, 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 III and IV benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level III and IV benefits.
2. Appellant seeks EIF Matrix Level III benefits for undergoing a NAPRS on June 28, 2002, and Matrix Level IV benefits for dislocations that occurred on May 5, 2001, June 6, 2001 and January 31, 2002.
3. Appellant has been deemed eligible for Matrix Level IV benefits for the dislocations that occurred on May 5, 2001 and June 6, 2001.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level III benefits, or Matrix Level IV benefits for the dislocation of January 31, 2002.

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After a thorough review of the appeal submitted by the Appellants 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 III

Section 7(c) of CAP 27 and Annex IV of the Settlement Agreement state “Class Members who have undergone a Non-Affected Product Revision Surgery on or before the date that is one hundred and eighty (180) days after the date of an APRS” may be eligible for benefits under Matrix Level III, and “the Claims Administrator may, at his discretion, extend this compensable time period by 180 days where a Class Member’s treating orthopedic surgeon causally relates (to a medical probability) the NAPRS to the APRS and/or to the original implantation of the Affected Product.”

Appellant’s APRS was performed on April 19, 2001. In accordance with the terms of the Settlement Agreement and CAP 27, in order to be eligible for EIF Matrix Level III benefits, the latest possible date for Appellant to have undergone a NAPRS would have been 360 days after her APRS, or April 19, 2002. It is not disputed that Appellant’s NAPRS was performed on June 28, 2002, more than two months after that deadline.

Appellant’s argument that CAP 27 § 7(c) permits the Claims Administrator to use his discretion to extend the time limits with regard to such claim is incorrect. Appellee, Claims Administrator, does not have the authority to extend the EIF Matrix Level III deadline for undergoing a NAPRS past the 360 days prescribed by the Settlement Agreement and, therefore, he did not abuse his discretion in denying Appellant’s claim.

Matrix Level IV

Appellant also seeks Matrix Level IV benefits for a dislocation of January 31, 2002.

CAP 27 § 8(c) states, in pertinent part, “Dislocations that occur more than ninety days from a CRS...are not compensable from the EIF.”

Appellant underwent a CRS on April 19, 2001. In accordance with the terms of the Settlement Agreement and CAP 27, only dislocations that occurred on or before July 18, 2002 are compensable under Matrix Level IV. Therefore, Appellee, Claims

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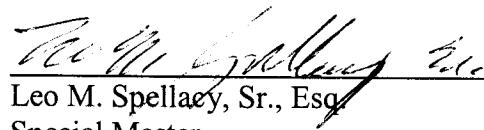
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Administrator, did not abuse his discretion in denying Appellant's claim for a dislocation that occurred more than 90 days after her CRS.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level III and IV 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 March 4, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

February 17, 2004  
Date

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