

**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 E. Quinn</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Larry E. Quinn, by and through his attorney Tommy Jacks, Esq. of the Law Firm Mithoff & Jacks (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 21, 2004 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 deny Appellant’s claim for EIF Matrix Level III benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level III, IV and V benefits.
2. Appellant has been deemed eligible for Matrix Level IV benefits for dislocations that occurred on April 24, 2001 and May 20, 2001.
3. Appellant also seeks Matrix Level III benefits for his surgery of June 19, 2001, Matrix Level IV benefits for a dislocation of June 19, 2001, and Matrix Level V benefits for bone loss and future complications.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for Matrix Level III benefits for his surgery of June 19, 2001 and Matrix Level V benefits for bone loss and future complications.

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At the time of this appeal, Appellant had not received a Final Determination regarding his Matrix Level IV claim for a dislocation of June 19, 2001. That claim, therefore, is not subject to this appeal and will not be addressed in this Determination.

Appellant has not appealed the Final Determination regarding his Matrix Level V claim for bone loss and future complications. Therefore, Appellee's Final Determination of ineligibility regarding that claim is final and it may not be further contested or appealed.

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.

It is not disputed that Appellant's surgery of June 19, 2001 does not qualify as a NAPRS pursuant to the terms of CAP 27 and the Settlement Agreement.

Appellant argues that he should be eligible for EIF Matrix Level III benefits because the *intent* of the surgery was to remove his Non-Affected Product.

Had Class Counsel or the Court, both of whom approved CAP 27, wanted "intent to remove a Non-Affected Product" to be compensable, it would have been included in the eligibility criteria for Matrix Level III, as "intent to secure an Affected Product" was included under Matrix Level II [see CAP 27 § 6(a) which states, in pertinent part, "Where the Affected Product was not actually secured during the surgery and upon inspection was found to be well-fixed, Class Members will only be eligible for Matrix Level II benefits if the medical records clearly state that prior to performing the procedure...the stated intention of the physician was to secure the Affected Product."]. Instead, CAP 27 § 7(b) reads "If the product revised does not qualify as a Non-Affected Product pursuant to the requirements in Paragraph 6(a) above, the Class Member is not eligible for payment under Matrix Level III. Surgeries that are not NAPRS for the purposes of Matrix Level III include, but are not limited to, surgical revisions of femoral components, plastic liners, antibiotic spacers, screws, cement or circlewires."

The Claims Administrator is bound by Order of the United States District Court to evaluate claims for EIF benefits according to the policies and procedures set forth in Claims Administrator Procedure ("CAP") 27. Therefore, he did not abuse his discretion in denying a claim that is specifically barred by CAP 27 § 7(b).

Appellee's allegation that CAP 27 violates his due process because it "changed the rules" after he consented to the Settlement Agreement is erroneous. Annex IV-2 of the Settlement Agreement itself renders Appellant ineligible for EIF Matrix Level III benefits because his June 19, 2001 surgery was not a NAPRS as defined by Section 1.1 (hhh) of the Settlement Agreement.

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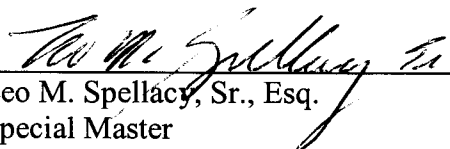
By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's EIF Matrix Level III claim is hereby AFFIRMED.

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

If no response is received (postmarked) by JUN 18 2004, then the Special Master's Decision is final and may not be further contested or appealed.

JUN 03 2004
Date


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