

**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>Rose Rubino</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Carol Broccolo, on behalf of Class Member Rose Rubino (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated January 2, 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 IV benefits.

The factual findings of this matter are as follows:

1. Appellant submitted a claim for EIF Matrix Level IV, V and IX benefits.
2. Appellant has been deemed eligible for Matrix Level V benefits for a permanent injury.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV or 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:

Appellant has not appealed the Final Determination regarding her EIF Matrix Level IX claims. Therefore, Appellee's Final Determination of ineligibility regarding that claim is final and it 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.

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 8(b) of CAP 27 states, in pertinent part, "Wound infections which occur before a CRS [Covered Revision Surgery] ... are not compensable from the EIF".

Appellant's wound infection occurred prior to her CRS and, therefore, is not compensable under the EIF in accordance with CAP 27.

In addition, even though the infection continued to be present after her CRS, in order to qualify for Matrix Level IV benefits, CAP 27 § 8(b) provides that a wound infection must require surgical debridement with prosthesis retention, resection arthroplasty, hip arthrodesis, or reimplantation. After her CRS, Appellant's infection was treated with antibiotics.

Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's claim for EIF Matrix Level IV benefits for a wound infection that occurred prior to her CRS, and which did not require surgical debridement with prosthesis retention, resection arthroplasty, hip arthrodesis, or reimplantation, pursuant to the terms of CAP 27.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's claim for EIF Matrix Level IV benefits 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:**

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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 APR 12 2004, then the Special Master's
Decision is final and may not be further contested or appealed.

MAR 26 2004

Date

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