

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED

2004 JAN 23 PM 1:09

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

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

*This document relates to:
Helen M. Schmidt*

) **Civil Action No.: 01-CV-9000**
)
) **ALL CASES**
)
) **(MDL No. 1401)**
)
) **Judge Kathleen M. O'Malley**

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Helen M. Schmidt, by and through her attorney Scott Ozmun, Esq. of the Law Firm Whitehurst, Harkness, Ozmun & Brees ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated November 10, 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 I 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 I benefits.
2. Appellant seeks EIF benefits for a revision surgery allegedly indicated but for a medical condition.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level I benefits.

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

Notice of Special Master Determination

Helen M. Schmidt

Page 2 of 2

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 out in Claims Administrator Procedure ("CAP") 27.

Appellant seeks EIF Matrix Level I benefits because she is medically contraindicated from undergoing an APRS at the present time. Appellee, Claims Administrator, alleges she did not prove an APRS is indicated at the present time.

Annex IV of the Settlement Agreement provides that "Class Members for whom Affected Product Revision Surgery would be indicated but for a medical condition" may be eligible for EIF Matrix Level I benefits.


CAP 27 § 5 (a) requires that "The records submitted by the Class Member in support of his or her Claim must demonstrate that an APRS is needed and that a medical condition exists which renders the performance of the revision surgery medically inappropriate."

Matrix Level I does not provide benefits for a possible future surgery. It is not clear, from Dr. Hill's September 16, 2003 letter, whether his opinion is that a revision surgery may be indicated in the future, or whether revision surgery would be indicated *at the present time* if her medical condition would permit such a surgery.

Therefore, pursuant to CAP 30 § 5, the Special Master is requesting that Appellant submit an additional statement from Dr. Hill that clarifies whether or not revision surgery is indicated *at the present time*. This statement is to be filed with the Court, for the Special Master's review, and a copy is to be sent to the Claims Administrator, within forty-five (45) days of the date of this determination. Appellant may request an extension if such a statement cannot be obtained within 45 days.

January 23, 2004

Date


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