

FILED

2004 JAN 23 PM 1:09

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NORTHERN DISTRICT OF OHIO
CLEVELAND

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

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Civil Action No.: 01-CV-9000

ALL CASES

*This document relates to:
Louise B. Stafford*

(MDL No. 1401)

Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Louise B. Stafford, by and through her attorney Edi M.O. Faal, Esq. ("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 IV and 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 IV and IX benefits.
2. Appellant seeks EIF benefits for a dislocation that was diagnosed on November 29, 2001, for a wound infection that occurred prior to her APRS, and for circumstances caused by the wound infection that occurred prior to her APRS.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV and 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:

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.

Annex IV-3 of the Settlement Agreement and CAP 27 § 8(h) require that a periprosthetic fracture occur within 30 days of a CRS in order to be eligible for Matrix Level IV benefits.

Appellant underwent an APRS on September 4, 2001. She seeks Matrix Level IV benefits for a dislocation that probably occurred on November 22, 2001 but which was not diagnosed until November 29, 2001.

Appellee, Claims Administrator did not abuse his discretion in denying Appellant's claim for Matrix Level IV benefits for a periprosthetic fracture that occurred well past the deadline prescribed in the Settlement Agreement and CAP 27.

Appellant also seeks EIF Matrix Level IV benefits for a wound infection that occurred prior to her APRS and Matrix Level IX benefits for circumstances caused by the wound infection.

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 was prior to a CRS and, therefore, is not compensable under the EIF in accordance with CAP 27. Further, Appellant does not qualify under Matrix Level IX: Discretionary. The awards under this section are solely within the discretion of the Claims Administrator. The Settlement Agreement limits awards under Matrix Level IX to complications that were neither anticipated nor provided for in other Matrix Levels. Since wound infections were anticipated complications that were provided for in the Settlement Agreement, Appellant does not qualify for Discretionary benefits. Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's request for EIF Matrix Levels IV and IX benefits.

By order of the Special Master, Appellee's Final Determination of ineligibility for Appellant's Matrix Level IV and IX claims is hereby AFFIRMED.

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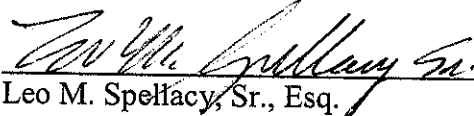
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Appellant and Appellee have fifteen days from the date of this decision to file with the Court, for the Special Master's review, a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received 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