

**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>Mary Van Wechel</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Mary Van Wechel, by and through her attorney Robert J. Crotty, Esq. of the Law Firm Lukins & Annis (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated February 20, 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 and IX 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 IV benefits for her dislocation of May 4, 2001 and Matrix V benefits for her pain/gait alteration.
3. Appellant also seeks Matrix Level IV benefits for bone grafting and allograft reconstruction, and spica cast placement, and Matrix Level IX benefits for cast complications, lost income, medical expenses, household services and future injuries.
4. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IV benefits for bone grafting and allograft reconstruction, and spica cast placement, and Matrix Level IX benefits for cast complications, medical expenses, household services and future injuries.

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In his response to Appellant's appeal, Appellee indicates that Appellant is eligible for Matrix Level IV benefits for a spica cast placement. Therefore, this Determination will not address that claim. The Special Master hereby directs the Claims Administrator, if he has not already done so, to immediately furnish Appellant with a revised benefit determination regarding that claim. Appellant retains her right to appeal that benefit determination in accordance with CAP 30.

Appellant has not received a Final Determination pertaining to her Matrix Level IX claim for loss of income. That claim is not being appealed at this time and will not be addressed in this Determination.

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

Matrix Level IV - Extensive Bone Grafting and Allograft Reconstruction

The Settlement Agreement and CAP 27 § 8(k) provide that in order to be eligible for EIF Matrix Level IV benefits, a Class Member must have suffered a Major Surgical Complication that was catastrophic and extraordinary. Catastrophic shall mean that the complication suffered prevented the Class Member from engaging in an activity of daily living. Extraordinary shall mean that the complication suffered by the Class Member was unique compared to other Class Members similarly situated.

Appellant was prevented from engaging in activities of daily living for seven weeks due to being immobilized following the placement of a spica cast two days after her revision surgery (a complication for which she has been deemed eligible for Matrix Level IV benefits).

There is no evidence that the bone grafting and allograft reconstruction that was done during Appellant's APRS prevented her from engaging in an activity of daily living. Therefore, it does not rise to the level of catastrophic as defined by the Settlement Agreement and Appellee did not abuse his discretion in denying this claim.

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Matrix Level IX – Cast Complications

Appellant has been deemed eligible for Matrix Level IV benefits for being placed in and immobilized by a spica cast. The bladder infections and hemorrhoids that allegedly were the result of being in the cast were compensated for under her Matrix Level IV award and, therefore, are not eligible for additional compensation under Matrix Level IX. Therefore, Appellee did not abuse his discretion in denying this claim.

Matrix Level IX – Medical Expenses, Future Medical Expenses, Household Expenses
and Future Household Expenses

CAP 27 § 13(a)(3) provides that “injuries contemplated by the Settlement Agreement or a CAP, but which are not compensable under the Settlement Agreement or the CAP in question, shall not be compensable pursuant to Matrix Level IX.”

Section 3.9(c) of the Settlement Agreement anticipated and provided for medical expenses of an APR necessitated by an Affected Product.

Since medical expenses are contemplated by the Settlement Agreement, they are not compensable under Matrix Level IX in accordance with CAP 27.

CAP 27 §13(a)(4) states “Injuries or damages that have not occurred within the time periods allotted by the Settlement Agreement shall not be eligible for compensation.”

Appellant’s contention that “the Trust’s position [relative to CAP 27 §13(1)(4)] is arbitrary and capricious. There is no authority in the Settlement Agreement for this position” is erroneous. The Special Master does not have the authority to nullify the Order of the United States District Court that requires the Claims Administrator to evaluate claims for EIF benefits according to the policies and procedures set forth in Claims Administrator Procedure (“CAP”) 27.

Appellant’s claim for future medical and household expenses is specifically barred by the terms of CAP 27.

Appellee, Claims Administrator, did not abuse his discretion in denying this Matrix Level IX claim.

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

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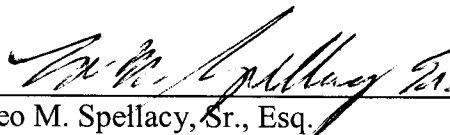
Appellant and Appellee have fifteen days from the date of this decision to submit a fact or principle they believe the Special Master did not consider in rendering a decision. **Such submissions may not be more than three pages in length. Exhibits are not to be attached to any such submission and will 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 01 2004, then the Special Master's Decision is final and may not be further contested or appealed.

MAY 17 2004

Date


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