

**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>Mildred R. Wallace</i>)	
)	Judge Kathleen M. O'Malley

NOTICE OF SPECIAL MASTER DETERMINATION

Class Member Mildred R. Wallace, by and through her attorney Alan F. Wagner, Esq. of the Law Firm Wagner, Vaughan & McLaughlin (“Appellant”), appealed the decision of the Claims Administrator (“Appellee”) in rendering a Final Determination dated December 2, 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 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 IX benefits.
2. Appellant seeks EIF Matrix Level IX benefits for an infection that occurred prior to her APRS, pain, and future surgical needs.
3. Appellee issued Preliminary and Final Determinations that Appellant was not eligible for EIF Matrix Level IX benefits.

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After a thorough review of the appeal submitted by the Appellants 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.

Appellee, Claims Administrator, has determined that Appellant’s claim for pain and gait alteration was improperly asserted under Matrix Level IX, and, in accordance with CAP 27 § 13(c), is considering that claim under Matrix Level V. A Final Determination on that claim has not been issued and, therefore, it cannot be appealed at this time and will not be addressed in this Determination.

Matrix Level IX – Infection

CAP 27 § 13(a)(1) states that “Injuries such as bone, tissue or muscle loss, nerve damage, fracture, dislocation, *infection*, deformed hip, knee or femur...are properly classified as Permanent Injuries and/or Major Complications which must be Claimed under Matrix Level IV or V, and to be compensable must meet the criteria of Matrix Levels IV or V to qualify for EIF benefits.” Appellee, Claims Administrator, did not abuse his discretion in denying Appellant’s claim for Matrix Level IX benefits for a wound infection that must be claimed under Matrix Level IV or V in accordance with the terms of CAP 27.

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. Appellant’s infection was treated with antibiotics. Therefore, Appellant is not eligible for Matrix Level IV benefits for a wound infection that did not require surgical debridement with prosthesis retention, resection arthroplasty, hip arthrodesis, or reimplantation, pursuant to the terms of CAP 27.

Matrix Level IX – Future Surgical Needs

Appellant does not address this claim in her appeal, other than to state “This will serve as our notice contesting your Final Determination of Ms. Wallace’s ineligibility for compensation with respect to her infection, constant, pain and *future surgical needs* as well as this firm’s ineligibility for attorneys’ fees.”

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.”

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Therefore, Appellee, Claims Administrator did not abuse his discretion in denying a claim for future surgical needs that is specifically barred by the terms of CAP 27.

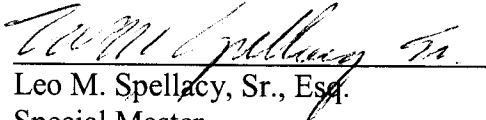
Attorney Fees

Again, this issue was not addressed in the appeal. However, attorney fees will be awarded only on eligible claims.

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 March 3, 2004, then the Special Master's Decision is final and may not be further contested or appealed.

February 17, 2004

Date


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