

How to Handle a Fen-Phen Claim

Kip Petroff
Petroff & Associates
3838 Oak Lawn Ave, Suite 1620
Dallas, Texas 75219
Phone: (214) 526-5300
Fax: (214) 526-5354

The process for filing a claim under the 7th Amendment to the Nationwide Settlement Agreement begins by filing a claim form and submitting proof to support the claim. While there are numerous medical conditions that could qualify for benefits, the vast majority of claims submitted today are “High Matrix Level” Claims involving heart surgery and will therefore be the focus of this article.

Step 1- Do I have a Fen-Phen Claim?

First, **no new** claimants are permitted. Anyone wanting to pursue a fen-phen claim today must have filed the required forms by **May 3, 2003** and had an echocardiogram performed by no later than the January 3, 2003 deadline (or July 3, 2003 if the echocardiogram was provided by the AHP Trust). It doesn't matter how much fen-phen, Pondimin, or Redux you took, and it doesn't matter what your medical condition is—you *simply are barred from pursuing a claim if you have not met these two basic filing requirements*:

1. Filed a BLUE Form with the AHP Trust by May 3, 2003; and
2. Had an Echocardiogram by January 3, 2003 (or July 3, 2003 if the echocardiogram was provided by the AHP Trust)

You should request a copy of your claim file from the Trust if you are not sure if you have met these basic filing requirements. See **Step 4** below for tips on how to do that.

Step 2 - Can I Receive Additional Compensation from the Trust?

Anyone who filed the necessary paperwork in 2002 or 2003 has the right to try to prove that they meet the criteria for **additional compensation** under the Seventh Amendment. Even if you have already settled your Seventh Amendment claim and have received payment from the Trust, you may be eligible to receive **additional compensation**. This “progression right” exists in two situations.

- The first situation is where the claimant accepted “B” Benefits under the Seventh Amendment, but available medical evidence demonstrates that the correct classification should have been an “A” Benefit level—thereby resulting in your claim value being multiplied by six.
- The second situation is where your condition has worsened since the original claim, such as surgery, or any of the events or conditions mentioned below:
 1. Heart valve surgery;
 2. A doctor recommends heart valve surgery, but is unable to perform the surgery due to your medical condition;
 3. A stroke causes residual problems that last for a period of at least six (6) months;
 4. A blood clot that causes kidney damage with dialysis, abdominal surgery, or amputation of an arm or a leg;
 5. A heart transplant;
 6. Ventricular fibrillation or ventricular tachycardia;
 7. Endocardial fibrosis;
 8. A coma due to cardiac arrest;
 9. Heart failure, heart arrhythmias, stroke, or pulmonary hypertension resulting in your demise;
 10. Any complications or worsening of the heart, lung, or valve conditions following a valve surgery.

Step 3 - Do I have a claim on file with the AHP Settlement Trust?

To determine if you have a claim on file, you will need to contact the Trust directly and provide them with some personal information (name, date of birth, and social security number) of the individual that you are inquiring about. The Trust can be reached at [1-800-386-2070](tel:1-800-386-2070) or www.settlementdietdrugs.com. The Trust personnel will assist you in determining if the basic filing requirements have been met in order to preserve your right to file a claim.

If you have already filed a claim with the Trust you will have been assigned a “Diet Drug Recipient Number” (or “DDR #”). You will want to use your DDR # in all communications with the Trust.

Step 4 - How to Request a Copy of Your File from the Trust:

If you determine that documents have been submitted to the Trust, you will want to request a copy of your file. You must do so in writing and you must include a payment of \$50.00 to the following:

AHP Settlement Trust,
Att'n: Document Fulfillment Department
1100 E. Hector Street, Suite 450
Conshohocken, PA 19428.

Step 5 - What is acceptable proof of use of a qualifying diet drug?

In order to assert a claim with the Trust, you will need to ensure that your AHP Trust Claim File includes acceptable proof that you ingested a *qualifying diet drug*. A qualifying diet drug is defined as either “Pondimin” (fenfluramine) or “Redux” (dexfenfluramine). The class action settlement does not cover the drug “phentermine.” The Trust accepts multiple kinds of proof of drug usage, including pharmacy records, doctor’s records, insurance records, and pill bottles.

Step 6 – Processing your Claim with the Trust:

After you or your lawyer, if any, has confirmed whether or not the Trust has a claim file for you and a copy of that file has been obtained, you or your lawyer will most likely need to submit an updated “Green Form”¹ and medical records to the Trust.

Step 7 – Submitting Medical Records to the Trust:

Relevant medical records include, but are not limited to, any echocardiogram videotapes or disks; heart catheterization films or disks; pathology slides, blocks and tissues samples; declarations of treating and/or prescribing physicians; and finally, proof that you actually had the requisite heart valve surgery or suffered one of the requisite non-surgical medical conditions mentioned above.

Step 8 – The Trust’s Review of your Claim:

The claims administrators at the Trust will eventually review your claim and medical records, request additional information and potentially challenge or contest your claim. If you have submitted all of the necessary medical records and other requested documents, and if your claim is approved by the Trust, you will receive a payment based on a grid payment scale or “Matrix” which accounts for many factors including your age, length of qualified diet drug usage, and severity of injury.²

¹ Diet Drug Settlement With American Home Products Corporation – Green Form. For a complete copy of the Green Form please visit our website at www.petroffassociates.com

² Diet Drug Settlement with American Home Products Corporation – Green Form - Appendix A: Settlement Matrix Compensation Benefits Guide for Physicians, Attorneys and Class Members. For a complete copy of the Green Form and Matrix please visit our website at www.petroffassociates.com

The Claims Administrator is required to carefully review your claim to determine whether or not it meets the claims requirements. If your claim is challenged or contested, you and/or your lawyer may need to obtain declarations from medical experts and respond to any motions filed by the Trust or demands asserted by the Claim Administrators for the Trust.

The above is a simplified description of the fen-phen Claims Process and rarely is submitting a claim ever this simple. Claims are often complicated by bankruptcy, death, probate, divorce, and Medicare/Medicaid issues. Additionally, lost and non-existent medical or pharmacy files, and the Trust's aggressive challenges to claims, often complicate and prolong the claims administration process. It is not unusual for a challenged High Matrix Level claim to take as long as one or two years from the date of original submission of the claim until final resolution and payment.

The focus of this paper was on the narrow topic of how to handle a fen-phen claim. The narrow focus resulted in certain topics being largely ignored.

Warnings:

If you are considering filing a fen-phen Claim please be aware that there is a fast approaching **deadline (December 31, 2011 or sooner)** that will affect most fen-phen claimants. For more information about this deadline and how it impacts you and your claim, please visit www.petroffassociates.com

Disclaimer – this information has been prepared by *Petroff & Associates, Attorneys at Law*, for informational purposes only and is not intended as legal advice. Viewing this information, receipt of this information, or transmission of this information does not constitute an attorney-client relationship. Persons receiving this information should not act upon this information without seeking professional legal advice.