

## **DECISION**

Claim ID: 12821

1. On December 2, 2003, the Administrator denied the claim for compensation of the Claimant filed on the basis of qualifying as a primarily-infected person under the transfused HCV Plan. The claim was denied on the grounds the claimant was not able to prove that he received a Blood Transfusion during the Class Period.
2. The Claimant requested that the Administrator's denial of his claim be reviewed by a Referee.
3. Following several pre-hearing telephone conference calls and an exchange of correspondence, a hearing took place on May 30, 2006 in Campbell River, British Columbia, at which time the parties presented submissions concerning their respective positions.
4. The relevant facts are not in dispute and can be summarized as follows:
  - (a) The Claimant is an approved HCV Infected Person.
  - (b) In his claim, the Claimant stated that he is entitled to succeed in his claim because he received blood products during treatment at the hospital in Quesnel, British Columbia on December 5, 1986. The Claimant submitted documentation in support of his claim, which was reviewed and considered by the Administrator.
  - (c) The Administrator requested Canadian Blood Services to conduct a Traceback in the usual manner. The results show that the Claimant did not receive a transfusion at G.R. Baker Memorial Hospital where treatment was given to the Claimant for a serious thumb injury.
  - (d) The Administrator denied the claim on the basis that the Claimant had not provided evidence to support his claim that he received a Blood transfusion during the Class Period.
  - (e) Subsequently, hospital records were retrieved from the WCB file dealing with the injury. Such records indicated that 30 mgs. of Papaverine was injected to absorb bleeding in injured thumb.

- (f) At the hearing, the Claimant submitted initially that Papaverine is a form of blood serum or plasma, but later conceded that was not a tenable position.
- (g) For the purposes of determining entitlement, "Blood" is specifically defined under Article 1.01 of the terms of the Settlement Agreement as follows:

"Blood" means whole blood and the following blood products: packed red cells, platelets, plasma (fresh frozen and banked) and white blood cells. Blood does NOT include:

Albumin 5%, Albumin 25%, Factor VIII, Porcine Factor VIII, Factor IX, Factor VII, Cytomegalovirus Immune Globulin, Hepatitis B Immune Globulin, Rh Immune Globulin, Immune Serum Globulin, (FEIBA) FEVIII Inhibitor Bypassing Activity, Autoplex (Activate Prothrombin Complex), Tetanus Immune Globulin, Intravenous Immune Globulin (IVIG) and Antithrombin III (ATIII).

- 5. Based on these facts and the definition of Blood quoted above, it is clear the Administrator's decision to deny the claim must be sustained. It cannot be disputed that Papaverine is a medicine and is not Blood or a Blood product. Since a Blood transfusion was not received during the Class Period, the Claimant is not entitled to compensation under this Plan.
- 6. It is the role and responsibility of the Administrator, under the settlement agreement, to administer the Plan in accordance with its terms. The Administrator has an obligation under the Plan to review each claim to determine whether the required proof for compensation exists. The words of Article 1.01 of the Plan are clear and unambiguous that the Administrator has no alternative but to reject the claim in circumstances such as these. The Administrator must administer the Plan in accordance with its terms and he does not have the authority to alter or ignore the terms of the Plan. A Referee, called upon to review a decision of the Administrator is also bound by the terms of the Plan and can not amend it or act contrary to its terms.
- 7. I acknowledge the personal feelings and frustrations of the Claimant in having his claim rejected. While that is a result that is unsatisfactory for him, neither the Administrator nor a Referee appointed under the Plan has the authority or discretion to award his claim. I also acknowledge that he may not be able to

determine with any precision the cause of his Hepatitis C infection. Studies indicate this is the case in up to 20% of all cases of Hepatitis C.

8. Accordingly, for the reasons set out above, I find that the Administrator has properly determined that the Claimant was not entitled to compensation under the Plan. I further find that the Administrator's decision must be sustained.

Dated at Vancouver, British Columbia, this 7th day of June 2006.

A handwritten signature in dark ink, appearing to read "J.P. Sanderson", is written over a horizontal line.

John P. Sanderson, Q.C.

Referee