

DECISION

BACKGROUND

1. On August 10, 2005, the Administrator denied the Claimant's request for compensation as a Primarily-Infected Person under the Transfused HCV Plan (the "Plan") on the basis that the Claimant had not provided sufficient evidence that he received a blood transfusion during the Class Period.
2. On September 14, 2005, the Claimant requested that the Administrator's denial of his claim be reviewed by an arbitrator.
3. On September 30, 2005, fund counsel, on behalf of the Administrator, filed written submissions. The Claimant requested that all material in the 1986-1990 Hepatitis C Claims Centre file be reviewed by me.
4. The written hearing concluded on January 19, 2006 when the Claimant confirmed that he was filing no submissions.

EVIDENCE

5. In the General Claimant Information Form dated November 18, 2004, the Claimant stated that he received a blood transfusion in Ontario during the Class Period.
6. In the Treating Physician Form received on November 25, 2004, the Claimant's physician confirmed that the Claimant was infected with HCV. However, he denied that the Claimant had received a blood transfusion during the Class Period.

7. The Claimant did not submit an HCV test as requested by the Administrator on December 3, 2004 and May 20, 2005.
8. In his Request for Review form dated September 14, 2005, the Claimant stated: "I have received numerous letters wanting more information. I have already sent everything I have. I am not able to prove my claim. I was under when the needle went in. No prior drug history."
9. The Claimant filed a letter dated September 13, 2005 with his Request for Review form. In the letter he stated: " My first surgery was in 1982. I received blood at that time. My second surgery was in 1988 Since I was unconscious during both operations, it would be difficult for me to report on any transfusions. The last thing I remember, in the operating room, was being put on an intravenous needle."
10. Hospital records submitted by the Claimant show a hospital admission on October 26, 1988 for surgery on his right elbow. There is no record of a blood transfusion. The Claimant did not submit any evidence confirming that he received a blood transfusion during the Class Period.


ANALYSIS

11. A person claiming to be a Primarily-Infected Person under the Plan must deliver: "medical, clinical, laboratory, hospital, the Canadian Red Cross Society, Canadian Blood Services or Hema-Quebec records demonstrating that the claimant received a Blood transfusion in Canada during the Class Period."
12. The Claimant did not provide proof of a blood transfusion during the Class Period. Accordingly, he does not qualify for compensation under the terms and conditions of the Settlement Agreement.

13. The Administrator under the Settlement Agreement is required to administer the Plan in accordance with its terms. Compensation is limited to a defined class of individuals. The Claimant does not qualify for compensation as there is no proof that he received a blood transfusion during the Class Period. The Administrator does not have authority to vary the terms of the Plan nor does an arbitrator or a referee when asked to review the Administrator's decision.

CONCLUSION

14. I uphold the Administrator's denial of the Claimant's request for compensation.


JUDITH KILLORAN
ARBITRATOR

January 22, 2006
DATE