

DECISION

BACKGROUND

1. On November 16, 2005, the Administrator denied the Claimant's request for compensation as a Primarily-Infected Person under the Transfused HCV Plan (the "Plan"). The claim was denied on the basis that the donors of all units of blood that were transfused to her during the Class Period were tested for Hepatitis C and all obtained negative results.
2. On December 9, 2005, the Claimant requested that the Administrator's denial of her claim be reviewed by a referee. She and fund counsel agreed to have the hearing conducted by way of written submissions.
3. On April 5 and April 27, 2006, fund counsel, on behalf of the Administrator, filed written submissions. The Claimant requested that I review her claim file. On May 23, 2006, the hearing concluded when both parties confirmed they had no further submissions to file.

EVIDENCE

4. The Claimant is infected with Hepatitis C.
5. In the General Claimant Information Form dated November 30, 2004, the Claimant states that she received one blood transfusion during the Class Period.
6. In the Blood Transfusion History Form dated November 30, 2004, the Claimant states that she received two units of blood in February 1987 at St. Mary's Hospital in Montreal, Quebec.

7. In the Treating Physician Form dated September 22, 2004, the Claimant's physician indicates that the Claimant underwent significant surgery in October 1985, during the pre-Class period. This is considered a risk factor.
8. On December 10, 2004, The Administrator asked Hema-Quebec to conduct a Traceback Procedure with respect to the Claimant. On December 23, 2005, Hema-Quebec forwarded a letter to the Administrator documenting the traceback procedure which was performed.
9. The Traceback Procedure conducted by Hema-Quebec confirms the following:
 - (a) Three units of blood were transfused to the Claimant in February 1987; and
 - (b) The donors of the blood transfused to the Claimant in February 1987 have all tested negative for the HCV antibody.
10. The Administrator denied the Claimant's claim as a result of the negative results of the Traceback Procedure.
11. The Claimant provided no additional evidence relating to her claim in order to refute the negative traceback results.

ANALYSIS

12. The Settlement Agreement was approved by the Honourable Mrs. Justice Nicole Morneau, J.S.C., on September 21, 1999. The Settlement Agreement was determined to be fair, reasonable and in the best interests of the Class Members.
13. In order to receive compensation under the Plan, the Claimant must prove that she has been infected for the first time with Hepatitis C during a blood transfusion that occurred in Canada during the Class Period.

14. Section 3.01 of the Plan sets out the documentary evidence that a Claimant who is claiming to be a Primarily Infected Person must provide to the Administrator.

15. The Traceback Protocol provides that, in deciding whether a claim should be approved, the Administrator shall obtain and assess the results of a Traceback Procedure. Section 3.04(1) of the Plan provides that if the results of a Traceback Procedure demonstrate that none of the donors or units of blood received by the Primarily-Infected Person during the Class Period was HCV antibody positive, the Administrator must reject the claim.

16. However, Section 3.04(2) of the Plan provides that, notwithstanding traceback results, a Claimant may refute such results by submitting proof that she was infected by Hepatitis C for the first time with a blood transfusion received during the Class Period.

17. The Claimant did not provide any additional evidence relating to her claim in order to refute the negative traceback results.

18. The Administrator has properly denied that the Claimant is not entitled to compensation under the Plan. There is no evidence that the Claimant received any blood transfusions during the Class Period from a donor who has been determined to be HCV antibody positive.

19. 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. Unfortunately, the Claimant does not qualify for compensation. 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

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



Judith Killoran
Referee

July 3, 2006