

ARBITRATOR'S DECISION
HEPATITIS C CLASS ACTION
January 1, 1986 – July 1, 1990

Claimant:	15687
File No.:	416611-27
Province of Infection:	Alberta
Province of Residence:	Alberta
Date	JANUARY 16, 2007

DECISION

1. On May 19, 2006, the Administrator denied the claim for compensation of the Primarily-Infected Person pursuant to the transfused HCV Plan on the basis that the Claimant had not provided sufficient evidence that she had received a transfusion of blood within the Class Period.
2. The Claimant requested an in person hearing by an arbitrator to review the decision of the Administrator.
3. The Hearing took place in Calgary, Alberta on January 11, 2007.
4. Neither party disputed the following facts:
 - (a) The Claimant was diagnosed with Hepatitis C in April 2, 2004;
 - (b) The records from the Holy Cross Hospital and Rockyview General Hospital date back to January, 1986;
 - (c) The parties reviewed all of the hospital records produced the aforesaid Calgary Hospitals; and
 - (d) None revealed any blood transfusion either within the Class Period or otherwise.
5. The Claimant testified that
 - (a) she was the youngest of 10 children born in Quebec;
 - (b) Her birth mother died when she was age two and her birth father died when she was age four;
 - (c) one of her ears was pierced at aged four, probably by one of her elder female siblings.
 - (d) she and her siblings were transferred to foster homes where she lived until age 8;
 - (e) she was then adopted by a single mother with an eight year old son who was employed as a school teacher and who had previously adopted the Claimant's elder sister;
 - (f) At age 10 she injured her knee while running on a metal pole at school and recollected that the metal was tested at the time to see if it contained any toxic substances
 - (g) the Claimant at age 13 moved with her adoptive mother to Alberta who required treatment for cancer;
 - (h) She said that she had no other injuries during her school years;
 - (i) her mother provided an orderly household for her upbringing but died when the Claimant was 18;
 - (j) the Claimant found employment for four years at a Shell gas station as a cashier and in that period attempted to complete her high school education;
 - (k) Her social life was infrequent, but she was a casual drinker and a casual user of marijuana. She hated needles and denied ever using the same for injection of drugs;

- (l) She had her other ear pierced in a jewelry store but she was satisfied the equipment used was sterile;
 - (m) She denied having any tattoos, any other body piercing or any other socially risky behavior in her history;
 - (n) She recalled having one miscarriage in 1985 at the General Hospital in Calgary but cannot recall if any transfusion may have been required at that time;
 - (o) She testified that she had only three sexual partners;
 - (p) The first was the father of her only child and who lived together with her for approximately four years when he was not otherwise at work on oil rigs;
 - (q) One pregnancy resulted in the birth of her daughter on January 11, 1986 delivered by caesarian section after the doctors noted the baby's heartbeat was dropping;
 - (r) The Claimant also suffered an ectopic pregnancy in about 1989 where she was treated at the Lougheed Hospital;
 - (s) The Claimant had only two other sexual partners, one in 1988 during a one month relationship and one in 1992 in a three month relationship;
 - (t) She had no recollection of ever having any particular knowledge of their prior medical histories; and
 - (u) The discovery of the infection came as a result of investigations by her family doctor of abnormal liver enzyme readings;
6. The hospital records reveal an otherwise normal birth with no complications and no evidence whatsoever of any blood transfusion.
7. The Claimant was advised that the Lougheed Hospital had no records concerning hospital treatment for her at any time.
8. Her liver specialist, Dr. Simon Lee, had reported in the Tran 5 form that the Claimant had received a blood transfusion in the Class Period.
9. The Administrator wrote to Dr. Lee to obtain more particulars and Dr. Lee replied that he had no independent records of any transfusion and had relied on information provided to him by the Claimant.
10. The Claimant could present no supporting testimony from any other person or physician to substantiate her claim that she received a transfusion at a hospital in Calgary in the Class Period.
11. Article 3.01 of the Plan requires that a person claiming to be a Primarily-Infected Person must deliver to the Administrator an application form together with, among other things, medical "records demonstrating that the Claimant received a blood transfusion in Canada during the Class period".
12. Section 3.01(2) of the Plan provides as follows:

Notwithstanding the provisions of Section 3.01(a), if the Claimant cannot comply with provisions of Section 3.01(1)(a) the Claimant must deliver to the Administrator corroborating evidence independent of the personal recollection of the Claimant or any person who is a family member of the Claimant establishing on a balance of probabilities that he or she received a blood transfusion in Canada during the Class period.

13. The Claimant has had significantly challenging life circumstances however none of which are especially indicative of a high risk lifestyle.

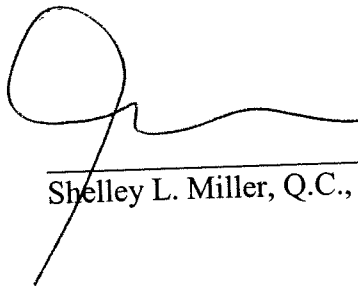
14. Her ear piercing at age four may have been as a result of experimentation by her older sibling under procedures which are unknown. It is also possible she acquired the infection if she received a blood transfusion during her miscarriage in 1985. There may also be a remote possibility that she acquired the infection through one of her previous sexual partners, the latter two of whom particularly had spent short durations of time with her and may not have either known or revealed their own history of high risk activity.

15. Given that the review of the hospital records indicate no transfusion was given and no reason to suspect a transfusion was required, and considering her own evidence, it may never be known how she acquired the Hepatitis C virus.

16. Because I could not accept her testimony that she must have undergone a transfusion in the Class period and because the Claimant delivered no corroborating evidence to the Administrator as required by the Section 3.01(2) of the Plan that she had received a blood transfusion during the Class period, I consider it somewhat more probable that she sustained Hepatitis C from some source other than a blood transfusion in the Class period or otherwise.

17. Accordingly, I must uphold the Administrator's decision to deny the Claimant's request for compensation as a Primarily-Infected Person under the Plan.

Dated January 16, 2007



Shelley L. Miller, Q.C., Arbitrator