

**ARBITRATOR'S DECISION**

1. The Claimant has submitted an application for compensation as a primarily infected person under the HCV Transfused Plan.
2. By letter dated February 3, 2003, the Administrator denied this Claim because the Claimant did not establish that she received blood, as defined by the Settlement Agreement, during the Class Period.
3. The Claimant appealed the decision of the Administrator and requested that it be reviewed by an Arbitrator.
4. A hearing was held in St. John's, Newfoundland on August 17, 2004.
5. During the hearing, it was agreed that the Claimant would have additional time to provide any further evidence or submissions. Such evidence and submissions were to be provided by August 31, 2004.
6. Although no further evidence or submissions were provided by that date, the Claimant was granted additional time to attempt to locate further evidence and submissions and was to provide such material on or before September 30, 2004. Nothing further was supplied by the Claimant.
7. Initial documentation supporting the Claimant's Claim included the completion of the Treating Physician's Form by Dr. Stephen Darcy. In that Form, Dr. Darcy states that having regard to the definition of blood, the Claimant received a blood transfusion in the period of January 1, 1986 to July 1, 1990.

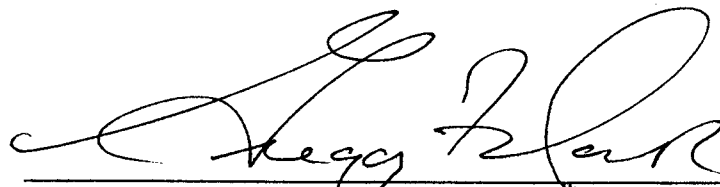
8. An investigation by the Administrator did not reveal any records confirming such a transfusion during this period of time.
9. On November 18, 2002, upon request by the Appeals Co-ordinator for further information, Dr. Darcy confirmed that he had no medical documentation to support that the blood transfusion took place during the Class Period. He stated he relied on information given to him by his patient who advised that she was transfused at St. Clare's Mercy Hospital in St. John's, Newfoundland in May of 1988.
10. Dr. Darcy reviewed the file at St. Clare's Mercy Hospital and found no documentation to support such a transfusion.
11. Records concerning the Claimant's admission to St. Clare's Mercy Hospital in 1998 reveal no record of a transfusion of blood products. The records do show that the Claimant received RH Immune Globulin.
12. No further evidence in support of a blood transfusion has been provided except for a written statement presented during the hearing of August 17, 2004 by the Claimant from her friend, Annie Rowe. In that statement, Ms. Rowe states that she visited the Claimant at St. Clare's Mercy Hospital in May of 1988 and states "I remember there was a bag of blood hooked up to her – or at least I assume it was 'cause it was red."
13. Ms. Rowe was not available to attend at the hearing and has not been available to testify in person or be cross-examined.
14. The Claimant also testified during the hearing that, after she woke up in the recovery room at St. Clare's following a surgical procedure, she observed a bag of what appeared to be blood to which she was hooked up and which remained there until Monday morning.

## DECISION

15. The Claimant has applied for compensation under the terms of the Hepatitis C 1986 – 1990 Class Action Settlement, as approved by Court Order dated October 22, 1999. The terms of the Settlement provide in considerable detail who is eligible for compensation and how eligibility can be proven.
16. One of the initial requirements to qualify for compensation as an eligible Class member is to establish that the Claimant received blood in the Class Period. Membership in the Class is a pre-condition for compensation.
17. In circumstances where hospital records are not available to establish that a Blood Transfusion within the meaning of the Settlement Agreement has taken place, a Claimant may still establish that they received a transfusion pursuant to Section 3.01(2). That provision reads as follows:

**“Notwithstanding the provisions of Section 3.01(1)(a), if a claimant cannot comply with the 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.”**
18. The Claimant was entirely credible throughout these proceedings. Unfortunately, there is no corroborating evidence as required by Section 3.01(1)(a).
19. The records from St. Clare’s Mercy Hospital indicate that the only product received by the Claimant was Rh Immune Globulin which is specifically excluded from the definition of blood.

20. "Blood" is defined by the Plan to exclude various globulins, which are pooled blood products:
- " '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, Varicella Zoster Immune Globulin, Immune Serum Globulin, (FEIBA) FEVII Inhibitor Bypassing Activity, Autoplex (Activate Prothrombin Complex), Tetanus Immune Globulin, Intravenous Immune Globulin (IVIG) and Antithrombin III (ATIII)." (emphasis added)**
21. It is to be noted that Rh Immune Globulin is excluded as a multiple donor product. It is not possible to conduct a targeted search for the donor of this product.
22. As a result, there is no corroborating evidence establishing that the Claimant received a blood transfusion during her stay at St. Clare's Mercy Hospital in 1988. This evidence is required by Section 3.01(2).
23. I can fully understand and appreciate the frustration and disappointment felt by the Claimant who has contracted Hepatitis C. Unfortunately, in determining eligibility for compensation, I am limited by the conditions set out by the Order approved by Court.
24. Based on the evidence, it is my finding that the Claimant has not met the eligibility requirements for compensation under the HCV Transfused Plan contained in the Hepatitis C 1986 – 1990 Settlement Agreement. Therefore, the Decision of the Administrator is confirmed.



Dated at Halifax, Nova Scotia this 6<sup>th</sup> day of October 2004  
Gregory I. North, Q.C., Arbitrator