

**IN THE MATTER OF AN APPEAL TO REVIEW THE DECISION
OF THE ADMINISTRATOR CONCERNING CLAIM NO. XXXXXX UNDER THE HCV 1986 - 1990
SETTLEMENT AGREEMENT AND THE HEMOPHILIAC HCV PLAN**

Vincent R. K. Orchard, Q.C., Arbitrator / Referee for the Province of British Columbia

Decision

Claim ID No: XXXXXX

I. INTRODUCTION

1. This is an appeal for review of a decision of the Administrator denying specific out-of-pocket expenses submitted to the Administrator by the Claimant who is a hemophiliac Class Member under the Hemophiliac HCV Plan (the "Plan"). The expenses that were denied were for travel expenses of the Claimant's spouse and son to attend a hospital to obtain certain medications prescribed in the treatment of hemophilia.
2. The Administrator denied the expenses in question on the basis that such expenses are not allowed under section 4.07 of the Plan.
3. The Claimant requested review of the Administrator's denial by arbitration.
4. On November 24, 2021, I conducted, as Arbitrator, a telephone conference involving the Claimant, a representative of the Administrator and Fund Counsel. The parties agreed that an in-person arbitration hearing was unnecessary and that the Claim file provided a complete factual record without the need for additional evidence. I have read the Claim file. It is voluminous. I agree with Fund Counsel that only a limited part of the file is relevant. I directed that the parties provide further written submissions in December, 2021 if they so chose. Fund Counsel provided written submissions; the Claimant chose not to do so relying upon the Claim file and his oral statements made during the telephone conference on November 24, 2021.

II. ISSUE

5. There is a narrow issue in this appeal: whether certain travel expenses for family members to retrieve hemophiliac related drugs from a somewhat distant hospital are allowed under the Plan as reimbursable out-of-pocket expenses.
6. The Claimant says the claimed expenses should be paid because he has chronic pain and limited mobility as a result of infection caused by HCV which arose as a result of knee replacement surgery.
7. Fund Counsel argues generally that s. 4.07 of the Plan does not compensate claimants for retrieving or picking up HCV drugs. Fund Counsel also argues specifically that the prescribed

medication retrieved in this case was not medication for treatment of HCV but rather was prescribed for treatment of the underlying condition of hemophilia.

III. FACTS

8. The Claimant is hemophiliac and has been a Class Member under the Plan since 2000, having been confirmed with HCV disease level 3. As I understand it, hemophilia is a hereditary blood disorder that occurs almost exclusively in men.
9. In my view, the key fact in deciding the Appeal is that the out-of-pocket expenses incurred by family members were related to picking up Factor 8 medication from the hospital which is medication for the underlying condition of hemophilia. Factor 8 medication is not part of the specific treatment regime for HCV.
10. The Claimant states he requires Factor 8 medication four times per year but that due to chronic pain and mobility limitations brought about by an HCV related infection he was not able to travel himself to the hospital and the hospital did not allow home delivery. However, apparently the Claimant has now arranged for home delivery by a pharmacy so that the said travel expenses will not be an ongoing out-of-pocket expense.
11. There is medical opinion in the Claim file from treating physicians that the Claimant has chronic pain syndrome related to an HCV related infection of a knee replacement. Claims for opiate medication and dressings for the infected knee were allowed under the Plan. The medical opinions do not address the matter of expenses related to the inability to pick up non-HCV medication dispensed at the hospital.

IV. DISCUSSION

12. This appeal turns on the interpretation of s. 4.07 of the Plan as it relates to the specific out-of-pocket expenses claimed. S. 4.07 reads as follows:

An Approved HCV Infected Person who delivers to the Administrator evidence satisfactory to the Administrator that he or she has incurred or will incur out-of-pocket expenses due to his or her HCV infection that are not recoverable by or on behalf of the claimant under any public or private health care plan is entitled to be reimbursed for all reasonable costs so incurred provided:

- a. out-of-pocket expenses will include (i) expenses for travel, hotels, meals, telephone and other similar expenses attributable to seeking medical advice or generally accepted medication or treatment due to his or her HCV infection and (ii) medical expenses incurred in establishing a Claim; and
- b. the amount of the expenses cannot exceed the amount therefor in the guidelines in the Regulations issued under the *Financial Administration Act* (Canada) from time to time. **[Emphasis Added]**

13. Fund Counsel relies upon certain authorities including an arbitration decision by Arbitrator Sanderson in Hep C Claim ID: 1401751 decided on February 14, 2006 ('1401751") and *Parsons v. Canadian Red Cross Society* 2016 ONSC 4809. Fund Counsel relies upon 1401751 for support of a broad interpretation that s. 4.07 of the Plan does not allow claims for the pick-up of HCV drugs. Reliance is placed on *Parsons* for judicial history concerning the allowance of a payment up to \$200.00 to compensate family members for attendance at medical appointments to accompany Class Members.

14. In *(Claim)*, Arbitrator Sanderson upheld the Administrator's denial of certain expenses under s. 4.07 including the Claimant's travel expenses to a pharmacy to fill a prescription for treatment of HCV. It is noted that travel expenses of the Claimant to see his doctor to get the prescription were allowed by the Administrator. Fund Counsel submits *(Claim)* was correctly decided. It is submitted that if s. 4.07 does not allow for reimbursement of a Claimant's travel expenses to fill a prescription, travel expenses of family members are obviously not recoverable.

15. To determine this appeal, I do not need to decide if *(Claim)* is correctly decided, nor do I need to rely upon the history of treatment of expenses of family members as outlined in *Parsons*.

16. In my opinion, it is clear that s. 4.07 does not allow for travel expenses of a Class Member or family members to pick up medication prescribed for conditions not due to HCV. In this case, the Factor 8 medication is related to treatment of hemophilia not HCV. The key words of s. 4.07 are (i) "out-of-pocket expenses due to his or her HCV infection" and (ii) "out-of-pocket expenses...attributable to seeking medical advice or generally accepted medication or treatment due to his or her HCV infection..." The expenses claimed in this Appeal do not fall within that wording.

V. CONCLUSION

17. Neither the Administrator nor Referees/Arbitrators may vary, alter, amend, delete or modify the Plans adopted under the HCV 1986-1990 Settlement Agreement and confirmed by the courts. *Parsons* confirms that the courts may not vary the Agreement by adding to it or deleting or modifying any material terms.
18. For the reasons given, I conclude that the Administrator correctly denied the Claim. The Administrator's decision is upheld. The Appeal is denied.

Dated at Burnaby, British Columbia, this 31st day of December, 2021.



Vincent R.K. Orchard, Q.C., C. Arb.
Arbitrator / Referee