

## DECISION

### BACKGROUND

1. On May 17, 2004, 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 to support his claim that he received a blood transfusion during the Class Period.
2. On May 24, 2004, the Claimant requested that the Administrator's denial of his claim be reviewed by an arbitrator. A hearing was scheduled for January 20, 2005 in Toronto.
3. On June 16, 2004, fund counsel, on behalf of the Administrator, filed written submissions.
4. On January 19, 2005, the Claimant requested that the in-person hearing not proceed. Rather, he asked that a written hearing be conducted. He requested that I review the master claim file provided by the 1986-1990 Hepatitis C Claims Centre. The written hearing concluded on January 21, 2005, when fund counsel declined to make further submissions.

### EVIDENCE

5. In the General Claimant Information Form dated February 12, 2001, the Claimant stated that he received a blood transfusion in Ontario during the Class Period.
6. In the Blood Transfusion History Form dated March 4, 2004, the Claimant stated that he was transfused with at least one unit of blood in November, 1986 at Toronto Western Hospital.

7. The Claimant's physician completed the Treating Physician Form on November 22, 2000. He confirmed that the Claimant was infected with Hepatitis C. He stated that the Claimant had received a blood transfusion during the Class Period.
8. Carol Miller, the Appeal Co-ordinator of the Hepatitis C Claims Centre, wrote to the treating physician asking him to confirm whether his response was based on a verbal response from the Claimant or if the treating physician had medical documentation of a transfusion during the Class Period. On April 4, 2004, the treating physician stated that: "The answer is based on patient's verbal history."
9. The Toronto Western Hospital has searched its records for the year 1986 and confirmed that the Claimant was not transfused during his admission to the hospital in 1986.

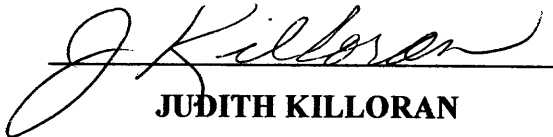
## **ANALYSIS**

10. 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."
11. The Claimant did not provide proof of a blood transfusion during the Class Period. The medical records confirmed that no blood transfusion was given.
12. Fund counsel submitted that there is a percentage of the infected population where the cause of HCV infection cannot be identified. Counsel referred to the Canadian Liver Foundation medical information update which states that in 10% of the cases of Hepatitis C, according to U.S. data, the source of infection cannot be identified. In an article titled "Enhanced Surveillance of Acute Hepatitis B and C in Four Health Regions in Canada, 1998 to 1999", it is estimated that approximately 20.8% of HCV infections have no known cause.

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. Unfortunately, the Claimant does not qualify for compensation. While I am very sympathetic to the Claimant, 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.

  
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**JUDITH KILLORAN**

**ARBITRATOR**

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February 6, 2005

**DATE**