

DECISION

BACKGROUND

1. On September 21, 2004, the Administrator denied the claimant's request for compensation as a Primarily-Infected Person under the Transfused HCV Plan (the "Plan") on the grounds that he had not provided evidence of a transfusion during the Class Period.
2. On October 15, 2004, the claimant requested that the Administrator's denial of his claim be reviewed by a referee.
3. Both parties consented to having the claim reviewed by me in a written hearing.
4. The claimant did not file submissions but requested that the referee review all the material in his claim file from The 1986-1990 Hepatitis C Claims Centre.
5. Fund counsel, on behalf of the Administrator, filed written submissions on May 6, 2005.
6. The hearing concluded on May 23, 2003 when the claimant did not file any submissions in response to those of fund counsel.

EVIDENCE

7. It is not disputed that the claimant is infected with Hepatitis C.
8. In the Treating Physician Form, the claimant's physician has listed tattoos and intra-nasal drug use as other risk factors. He put a question mark on question 25 which asked if the claimant received a Blood transfusion in the Class Period.

9. In his Blood Transfusion History Form dated December 2001, the claimant stated he received Blood at Vancouver, Burnaby, and Surrey during the Class Period and at Huronia District Hospital after the Class Period. In his subsequent Claimant Information Form received on August 28, 2003, the claimant identified three transfusions during the Class Period: Abbotsford on July 15, 1987, and Langley on November 25, 1989 and May 2, 1990. He repeated these dates and locations on a new Blood Transfusion History Form dated November 27, 2003.
10. On the Other Risk Factor Inquiry Form dated January 1, 2004, the claimant stated that he received two tattoos in New Westminster, British Columbia. He claimed that he received one tattoo in 1983 and the second tattoo a few years later. He stated that he used cocaine in 1980 or 1981. He attributed the discrepancies with the earlier Other Risk Factor Inquiry Form to his mother who completed the original form and did not disclose the tattoos or drug use.
11. Canadian Blood Services conducted a Traceback which is summarized in a letter dated July 7, 2004. The Traceback disclosed no transfusion was given to the claimant at MSA District Hospital, Langley Memorial Hospital, Burnaby Hospital, Surrey Memorial Hospital and Vancouver General Hospital. Although the claimant received three transfusions at Huronia District Hospital in Ontario outside the Class Period, the HCV status of the donors was negative.
12. On November 9, 2004, the claimant's physician stated in a letter to the Hepatitis C Claims Centre: "I have absolutely no personal knowledge or medical documentation to support that [the claimant] received a transfusion of any kind between the period of January 1, 1986 and July 1, 1990."

13. A further letter from Canadian Blood Services dated February 3, 2004 (should have been 2005) summarizes the claimant's file and confirms the negative Traceback.

ANALYSIS

14. The claimant seeks compensation as a Primarily-Infected Person under the Plan. The Plan defines "Primarily-Infected Person", in part, as meaning "a person who received a Blood transfusion in Canada during the Class Period and who is or was infected with HCV."
15. The 1986-1990 Hepatitis C Settlement Agreement defines "Class Period" as meaning "the period from and including 1 January 1986 to and including 1 July 1990." "Class Period" is defined identically in the Plan.
16. Section 3.01(1) (a) 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 ..."
17. Section 3.01(2) states:
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. A Traceback Procedure is defined in section 1.01 of the Plan as "a targeted search for and investigation of the donor and/or the units of Blood received by a HCV Infected Person." A Traceback Procedure has been conducted which provides no evidence of a Blood transfusion during the Class Period. The claimant has not provided any evidence, as provided for by Section 3.04(2), to refute the results of the Traceback Procedure.

19. Based on the evidence before me, the claimant did not receive a blood transfusion during the Class Period. Therefore, I find that the claimant does not qualify as a Primarily-Infected Person and is not entitled to compensation under the terms of the Transfused HCV Plan.
20. I agree with the submissions of fund counsel that the claimant may not be able to determine the cause of his HCV infection. The claimant had other risk factors: tattoos, drug use and prior surgery. As has been noted previously, the Canadian Liver Foundation publication, "Hepatitis C Medical Information Update" states that in 10% of cases of hepatitis C, according to U.S. data, the source of infection cannot be identified. Another article published in the Canadian Journal of Infectious Diseases states, at page 361, Table 3, that unknown factors contribute to 20.8% of all cases of HCV infection.
21. The Administrator under the Settlement Agreement is required to administer the Transfused HCV Plan in accordance with its terms. The Administrator does not have authority to vary the terms of the Plan. An arbitrator or a referee when asked to review the Administrator's decision also does not have authority to vary the terms of the Plan. I have not been presented with any evidence in this review which refutes the Administrator's decision.

CONCLUSION

22. I uphold the Administrator's denial of the claimant's request for compensation.



JUDITH KILLORAN

Referee

May 27, 2005

DATE