

## **DECISION**

### **BACKGROUND**

1. On December 1, 2005, the Administrator denied the Claimant's request for compensation as a Primarily-Infected Person under the Transfused HCV Plan on the basis that the Claimant had not provided sufficient evidence that she received a Blood transfusion during the Class Period (January 1, 1986 to July 1, 1990).
2. On January 24, 2006, the Claimant requested that the Administrator's denial of her claim be reviewed by an arbitrator.
3. Both parties agreed to have this arbitration conducted by way of written hearing.
4. The Claimant did not file written submissions. I have reviewed all the material in her claim file from The 1986-1990 Hepatitis C Claims Centre.
5. Fund counsel, on behalf of the Administrator, filed written submissions on March 17, 2006. The written hearing concluded on April 22, 2006 when representatives for both parties confirmed that they had no further submissions to file with me.

### **Facts**

6. The Claimant is infected with Hepatitis C.
7. In her application for compensation dated September 7, 2001, the Claimant indicated that she did not receive a Blood transfusion during the Class Period.
8. The physician who signed the Treating Physician Form on September 13, 2001 stated that the Claimant did not receive a Blood transfusion during the Class Period.

9. In her letter dated January 24, 2006, the Claimant submitted that although she contracted Hepatitis C prior to the Class Period, she should have the same rights and be considered for compensation in the same manner as those claimants infected by a blood transfusion during the Class Period.

## **ANALYSIS**

10. The Claimant seeks compensation as a Primarily-Infected Person under the Transfused HCV Plan. The Transfused HCV Plan defines “Primarily-Infected Person”, in part, as meaning “a person who received a Blood transfusion in Canada during the Class Period ...”.

11. 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 Transfused HCV Plan.

12. Article 3.01 of the Transfused HCV Plan requires that 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.” Article 3.03 itemizes the additional proof that may be requested by the Administrator.

13. The Claimant has not delivered the proof that she was transfused during the Class Period. In fact, both she and her treating physician have confirmed that she was not transfused during the Class Period.

14. While I sympathize with the Claimant’s submissions that she remains infected with Hepatitis C and suffers from the consequences, I am bound by the terms of the 1986-1990 Hepatitis C Settlement Agreement. The terms of the Settlement Agreement are restricted to those claimants who were infected with Hepatitis C as a result of a blood transfusion between January 1, 1986 and July 1, 1990. The Claimant did not receive a blood transfusion during the Class Period. Therefore, she does not qualify for compensation under the terms of the Settlement Agreement.

15. The Administrator under the Settlement Agreement is required to administer the Transfused HCV Plan in accordance with its terms. The Plan sets out the requirements for compensation which is limited to a defined class of individuals. Unfortunately, the Claimant does not qualify for compensation as she did not receive a blood transfusion during the Class Period. The Administrator does not have authority to vary the terms of the Plan. An arbitrator or a referee also cannot vary the terms of the Plan when asked to review the Administrator's decision.

### **CONCLUSION**

16. I uphold the Administrator's denial of the Claimant's request for compensation.

  
Judith Killoran  
Arbitrator

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May 15, 2006