

REFEREE'S DECISION
HEPATITIS C CLASS ACTION
JANUARY 1, 1986 – JULY 1, 1990

Claimant:	Claimant #1000555
File No.:	416611 – 30
Province of Infection:	Alberta
Province of Residence:	Alberta
Date:	August 26, 2009

DECISION

1. On May 18, 2007, the Administrator denied the claim for compensation of the Primarily-Infected Person pursuant to the transfused HCV Plan on the basis that the Claimant had not provided sufficient evidence that she had received a transfusion of blood within the Class Period.
2. The Claimant requested an in person hearing by a referee to review the decision of the Administrator.
3. The Hearing took place in Calgary, Alberta on March 31, 2009.
4. Neither party disputed the following facts:
 - (a) The Claimant was diagnosed with Hepatitis C;
 - (b) The records from the Didsbury Hospital date back to December 29, 1988;
 - (c) The parties reviewed all of the hospital records produced by the aforesaid Hospital; and
 - (d) None revealed any blood transfusion either within the Class Period or otherwise.
5. The Claimant testified that
 - (a) She was one of six children;
 - (b) As a child, her sister had been exposed to Hepatitis A as a result of which the entire family was investigated and the family was vaccinated against Hepatitis A;
 - (c) She underwent an abortion at about age 14 at the Foothills Medical Centre and recalled having been under anesthetic for that procedure;
 - (d) She was not aware whether she had received any blood products during that surgical procedure.
 - (e) She has a memory of being inoculated against Hepatitis A at about age 16;
 - (f) She had a family physician from 1966-1976 however that physician's chart appears to have been destroyed;
 - (g) She admitted to having experimented with intravenous drugs and in particular, having injected "speed" and mescaline;
 - (h) Her boyfriend (who later became her husband) was diagnosed with Hepatitis B;
 - (i) She had pierced her ears at about age 21-22;
 - (j) Her mother suffered from cirrhosis of the liver which her mother thought was caused by heavy drinking;
 - (k) The Claimant gave birth to three children, deliveries of whom were normal and required no transfusions;

- (l) Her first husband eventually died of a drug overdose;
 - (m) She was diagnosed with rheumatoid arthritis in about 1981-82;
 - (n) She was seen by a family doctor at her home on December 21, 1988 after she fell unconscious from abdominal pain;
 - (o) She noted that her symptoms had been misdiagnosed twice before she was admitted to Didsbury Hospital on December 29, 1988;
 - (p) She eventually underwent emergency surgery on December 30, 1988 due to tubal pregnancy which ruptured in her right fallopian tube and ruptured a cyst on her left ovary;
 - (q) She believes she received a blood transfusion during the course of her treatment for this condition but could not say how many units of blood or blood products she received; and
 - (r) She brings this appeal not only because of the belief that she had a transfusion, but also because she had lost confidence in the Hepatitis C Class Action Claims process, due to errors of fact presented in the course of the investigation of her claim.
6. In particular, the Claimant noted that the Canadian Blood Services had erred in stating that she had been diagnosed with Hepatitis C as a child.
7. She further noted that their record indicated she had been diagnosed in January 1989 whereas her surgery occurred on December 20, 1988.
8. She further noted that their record indicated that the search period for any blood transfusion was 1989 whereas her surgery occurred on December 20, 1988.
9. She further noted that in the Tran 2 form, Dr. Sigfried Erb reported that while she had used intravenous drugs, there was no evidence that she became infected with Hepatitis C as a result.
10. The Administrator wrote to Dr. Erb to obtain more particulars.
11. Dr. Erb advised that he had no independent records of any transfusion and in filling out the Tran 2 had relied on information provided to him by the Claimant.
12. The Claimant could present no supporting testimony from any other person or physician to substantiate her claim that she received a transfusion at a hospital in Didsbury in the Class Period.
13. All parties agreed that the initial information provided by the Administrator to the Claimant was flawed.
14. I could well understand how the errors in the information provided to the Claimant would undermine her confidence in the investigation of, and subsequent denial, of her claim.

15. It was agreed that the hearing would be adjourned to allow me to request a full copy of the Didsbury hospital records to provide to me, the Claimant and to Fund counsel.

16. Following receipt and review of those records, the Claimant and Fund counsel confirmed that all the relevant medical records had been produced and it was in order for me to proceed to render my decision on the evidence before me.

17. I note first that Article 3.01 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".

18. I note that the hospital records do not show that the Claimant was transfused. Instead they show that no transfusion was provided to her.

19. I note that the Claimant has not produced any medical or other evidence to contradict those records.

20. Further, Section 3.01(2) of the Plan provides as follows:

Notwithstanding the provisions of Section 3.01(a), if the Claimant cannot comply with 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.

21. I could find no suggestion from any health professional to support her testimony or any reliable evidence from the Claimant to support the contention that she received a transfusion.

22. Because the Claimant delivered no corroborating evidence to the Administrator that she had received a blood transfusion during the Class Period as required by the Section 3.01(2) of the Plan I have no alternative but to uphold the decision of the Administrator.

23. While it is not necessary to my decision, I would note that the Claimant has had significantly challenging life circumstances including experimentation with intravenous drugs in her youth which are indicative of a high risk lifestyle for at least some part of her early life.

24. I would also note that while it will probably never be known how she acquired the Hepatitis C virus, were it necessary to decide, I would consider it more probable that she sustained Hepatitis C from some source other than a blood transfusion in the Class Period or otherwise.

Dated August 26, 2009.



Shelley L. Miller, Q.C., Referee