

**THE 1986-1990 HEPATITIS C CLASS ACTION SETTLEMENT**

IN THE MATTER OF AN APPEAL FROM THE DECISION OF THE ADMINISTRATOR  
DATED NOVEMBER 29, 2002

DATE OF HEARING: By conference call February 11, June 15, 2005

CLAIMANT: #1002

FOR THE ADMINISTRATOR: John Callaghan  
Carol Miller

REFEREE: C. Michael Mitchell

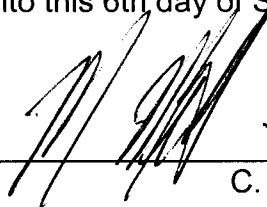
## DECISION

1. This is an Ontario-based claimant, claim #1002.
2. The Claimant appeals the decision of the Administrator dated November 29, 2002, in which the Administrator found that there was not sufficient evidence to support the claim that the Claimant received blood during the Class Period.
3. The Claimant states that she was transfused at St. Joseph's Hospital in Sarnia in October, 1987. No hospital records from that period were made available to the Administrator, since the hospital claimed that it had destroyed its records. A traceback was performed through Canadian Blood Services, and there were no records of a transfusion for the Claimant during the relevant period. Accordingly, the Administrator denied the claim for compensation because there was no evidence of a transfusion of blood between January 1, 1986 and July 1, 1990.
4. In her appeal, the Claimant indicated that her spouse had witnessed the blood transfusion, and that she was attempting to track down an "ex-coworker", who may have witnessed the transfusion. The hearing was adjourned on consent without setting a date while the Claimant pursued this matter.
5. On July 29, 2003, counsel for the Administrator wrote to the Claimant confirming the Claimant's advice that the potential witness had been located but had no recollection of the transfusion. The letter further confirmed a subsequent conversation in which the Claimant was to make further inquiries of the hospital in Sarnia.
6. In addition, since the Claimant had been a regular donor of blood, the Administrator was authorized by the Claimant to do a "Look back examination" to determine which of the Claimant's blood donations may have been transfused and the status of the recipients.
7. In October, 2003, the Administrator wrote to the Claimant indicating that the Canadian Blood Services had conducted the Look back examination, and the records indicated that she donated blood on 12 occasions between 1983 and 1988. One recipient who received a transfusion in 1985 and another who received a transfusion in 1988 subsequently tested negative for the Hepatitis C antibody.
8. After several inquiries from counsel for the Administrator to the Claimant in 2004, asking whether she wished to proceed with the appeal, a conference call was held on February 11, 2005, at which time it was determined that a summons would be issued to the hospital for production of the records, despite the hospital's continued assertion that it had destroyed all medical records.
9. Indeed, notwithstanding its continuous claim that all medical records had been destroyed, the hospital did produce medical records pursuant to the summons. These records had apparently been preserved on microfilm. A notation on the

records indicated that they were the only records available on microfilm, and that the rest of the Claimant's medical records had been destroyed. What was produced was a patient history and admitting diagnosis, an anaesthetic record of the operation, a recovery room record, and a document called an operative record, which is a summary by the physician of the surgical procedure. None of those medical records indicated that a transfusion was given, and the anaesthetic records positively indicated that no blood was given.

10. The medical records were reviewed on a conference call on June 14, 2005. It appears that the evidence of the Claimant's spouse would be that he observed a blood transfusion while the Claimant was on the ward. There are no medical records from the ward because these records were apparently destroyed. The Claimant indicated that she had no independent evidence of a transfusion, since her ex-coworker who visited her at the hospital does not specifically remember seeing a transfusion.
11. In the course of the conference call, the Claimant indicated that she did not wish to proceed to a formal hearing, or to make argument in writing, but was content to let me act in my capacity as Referee to determine the matter based on the available evidence. In making this determination, the Claimant indicated that she understood that there did not appear to be a legal basis upon which she could satisfy the requirement to provide evidence of a transfusion during the relevant Class Period, through medical records or through other evidence independent of her family members, as would be required under the Class Action Settlement Agreement.
12. In this case, the Administrator's decision is upheld as there is no basis upon which a different conclusion can be reached. There is simply no indication in any of the medical records (including those obtained after the Administrator's decision) that a blood transfusion was provided to the Claimant. In fact, all of the medical records tend to the conclusion that no blood was administered to the Claimant. There is also no independent evidence in this case of the kind described in Confirmed Referee decisions 96 and 150 and Unconfirmed Referee decisions 185 and 190, which could corroborate the evidence of a family member.
13. In the result, the Administrator's decision is upheld.

DATED at Toronto this 6th day of September, 2005



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C. Michael Mitchell  
Referee