CLASS ACTION - Hepatitis C 1986-1990
Request for Review N° 10102

DECISION

The Claimant submitted a Claim for Compensation in April 2002 as an Infected Person, pursuant to the Hemophiliac HCV Plan (Appendix B of the Settlement Agreement). The Request was rejected because the Administrator determined that there was no proof to support the fact that the Claimant had effectively contracted Hepatitis C.

The Claimant submitted a Request for Review and an In-Person Hearing was held on this case on November 28, 2006. As an Arbitrator, I then heard the Claimant, her husband and their adult son.

According to the written documents tabled before me and the testimonies that I heard, I retain that the Claimant had been until May 1989 an active and generally healthy person. She had undergone surgeries during the 70s without incurring any problem of coagulation or other problems connected to blood. She had to be hospitalized in May 1989 following a sprain to an ankle, and her condition deteriorated to such a point that she quickly had to be cared for by a hematology team. She received a Factor VIII transfusion and since then, continued to show severe hemorrhagic problems. Her Treating Physician describes her as being a patient suffering from severe coagulopathy, "similar to a hemophiliac condition", and to present frequent and severe hemorrhagic complications. The Claimant is described as being a carrier of an acquired anticoagulant circulant anti-factor VIII and I understand that this is a very rare case.

During this current Request for Review hearing, the Counsel representing the Fund Administrator recognized that the Claimant's disease allows her to meet the definition of a Hemophiliac as described in Appendix B, i.e. the Hemophiliac HCV Plan.

The Fund Counsel also recognized that the products, which the Claimant received at the Centre hospitalier de St-Jérome in May 1989, meet the definition of "blood" as provided for in the same Appendix B.

From the above facts, one must ask whether the Claimant suffers from Hepatitis C or not, and should the answer be affirmative, whether she can provide the Declaration under oath as provided for in article 3.01(1)c) of Appendix B.

Among the documents submitted by the Claimant, a microbiology report dated October 16, 2001 can be found in which the Anti-HCV Test is described as being non-reactive. The person responsible for the laboratory added:

> "The absence of anti-HCV antibodies does NOT eliminate the presence of an acute HCV infection or of an acute or chronic infection with the immune-compromised person. If need be, please contact the Microbiologist."

The Claimant who had asked for an extension period in order to submit as evidence the results of blood tests undergone at the Hôtel-Dieu de St-Jérome in March 2006 did in fact table another microbiology report which was dated March 8, 2006. The results of the anti-HCV analyses still confirmed that they were non-reactive. The person responsible for the laboratory added a message absolutely identical to the one written in 2001, to the effect that the absence of anti-HCV antibodies does not eliminate an acute HCV infection or another acute or chronic infection with the immune-compromised person.

The Claimant readily recognized before me that she was not HCV infected, but she added that she considered herself at risk of contracting the disease.

On the basis of this testimony and of all the documents which I examined, I can only conclude that the Claimant did not give any evidence that she was HCV infected.

The Claimant's spouse's testimony and that of their son did not change anything to the Claimant's testimony regarding the non-existence of Hepatitis C disease with the latter.

The Claimant, now a 70-year-old, is fighting a serious illness, which changed in a dramatic manner her way of life and her activities. She went from a life of physical activity and sports to a life of house confinement, having to often use a walker to move around. The sympathy that the

undersigned has for the Claimant does not allow him to modify the terms and conditions of the Hemophiliac HCV Plan.

The Administrator must administer the Plan according to its terms and conditions. The same rules apply to me as an Arbitrator, and as such, I have no power to alter the terms and conditions of the Plan.

Paragraph 3.01 of the Hemophiliac HCV Plan stipulates, at sub-paragraph (1) b), that the following proof is required in order to be entitled to a compensation:

> "an HCV Antibody Test report, PCR Test report or similar test report pertaining to the Claimant."

And yet, not only was the Claimant not able to table such a report, she indicated clearly that she recognized that she was not HCV infected .The proof as required under paragraph 3.01 (1) b) not having been made, I must maintain the decision of the Administrator and reject the Claim for Compensation submitted by the Claimant.

Montreal, January 15, 2007

Jacques Nols
Arbitrator