

HEPATITIS C CLASS ACTION SETTLEMENT

IN THE MATTER OF AN APPEAL FROM THE DECISION OF THE ADMINISTRATOR
DATED JULY 31, 2001

DATE OF HEARING: September 11, 2002

IN ATTENDANCE:

CLAIMANT REPRESENTATIVE: No.1400532

FOR THE ADMINISTRATOR: Carolyn J. Horkins

REFEREE: C. Michael Mitchell

AWARD

This is an Ontario-based claimant, claim #1400532.

HISTORY

1. The Claimant is an 18 years old who has a 40% disability as a result of his illness. His level of illness was initially set at level 3, and then subsequently upgraded to a level 4. Under Article 4.03 of the Hemophiliac HCV plan, an approved infected person who normally performed household duties in his or her home is entitled to compensation for loss of services in the home to a maximum of 20 hours a week at \$12.00 per hour.

2. The application form for compensation under this section has eight categories: shopping, meals, laundry, cleaning, home maintenance activities, financial activities, child care and "other". The Claimant's mother, at that time his personal representative, claimed a total of nine and one half hours per week, including two hours for shopping for personal belongings, other supplies, school supplies, etc. All of these claims were approved by the Administrator, and none are in dispute.

3. In addition, under the category of "other", a claim was made for 17 hours a week for driving the Claimant to and from school. The Claimant is in a special arts program in grade 12 at a high school. Only one school, a 45 minute drive from his home, provides this program. The Claimant suffers from fatigue, with particular problems in the morning, and has had numerous problems in missing school with constantly feeling tired. He cannot function normally, and driving him to and from school was considered by his mother to be an essential part of allowing him to attend school. Accordingly, his mother claimed for the 45 minute drive to school and the 45 minute return trip home, along with the same trip later in the day, picking up the Claimant and returning him home. No issue was taken as to the bona fides of the necessity of driving the claimant to school or picking him up because of his illness.

4. The Administrator disallowed the claim on two bases. First, the Administrator maintains that, under Article 4.03, only services normally performed by the infected person could constitute household duties. Since the household duties in this case were performed not by the Claimant but by the Claimant's mother, there was no entitlement to the compensation. The second basis for rejecting the claim was that the driving did not constitute a "household duty in the home".

5. The relevant section of the agreement is Article 4.03 set out below:

4.03 Compensation for Loss of Services in the Home

(1) Each Approved HCV Infected Person who normally performed household duties in his or her home and who:

(a) elects to be paid compensation for the loss of such services instead of \$30,000 pursuant to section 4.01(3); or

(b) delivers to the Administrator:

(i) evidence demonstrating he or she has developed fibrous tissue in the portal areas of the liver with fibrous bands bridging to other portal areas

or to central veins but without nodular formation or nodular regeneration (i.e., bridging fibrous);

- (ii) the evidence referred to in Section 4.01(1)(d); or
- (iii) the evidence referred to in Section 4.01 (1)(e); and

who delivers to the Administrator proof satisfactory to the Administrator that his or her infection with HCV caused his or her inability to perform his or her household duties will be paid compensation for loss of such services.

(2) The amount of the compensation for the loss of services in the home pursuant to Section 4.01(1) is \$12 per hour to a maximum of \$240 per week.

(3) Notwithstanding any of the provisions hereof, an Approved HCV Infected Person cannot claim compensation for loss of income and compensation for loss of services in the home for the same period.

6. The purpose of the provision is to provide a maximum of \$240 per week to compensate infected persons who normally perform household duties in their home but are unable to do so because of their illness. A Claimant cannot claim compensation both for loss of these services in the home and at the same time claim compensation for loss of income. As I understand the Administrator's position, it is that the provision only compensates infected persons for loss of services that they normally performed. Accordingly, the Administrator concluded that, since the Claimant did not normally drive himself to school, someone else's driving him to school is not compensable. The second argument is that travelling to school in itself is not a household duty in the home and therefore doesn't qualify, even if it was normally performed by the infected person.

DECISION

7. In coming to the decision in this case, I have borne in mind that the purpose of the settlement document is the compensation of Claimants who qualify for benefits, as this Claimant undoubtedly does. Clearly the purpose of this section was to make benefits available to the infected persons. Thus, I would interpret this settlement document as one whose purpose is to provide benefits to the infected class in a way that is analogous to the decision of the Supreme Court of Canada in *Canada (Attorney General) v. Abrahams*, [1983] 1 S.C.R. 2 and *Hills v. Canada*, [1988] 1 S.C.R. 513. There, in the context of interpreting statutes (here, of course, I am interpreting a contract, not a statute), the Court stated there should be a liberal interpretation of the entitlement provisions where the purpose of the statute is to make benefits available to a particular group and correspondingly, a narrow interpretation of the disentitlement provisions. I think this approach is appropriate in these circumstances, although I recognize that the situation here is by no means identical to the facts in the cases I have cited.

8. The first question is whether travelling to school is "a household duty in his or her home". Obviously in deciding whether a household duty generally is one that is "in his or her home", the Administrator has taken the view that this can include activities that do not occur in the home, and that take place away from the home. Thus, for example, shopping both for groceries and for "other" items, (categories specifically listed on the application form), and

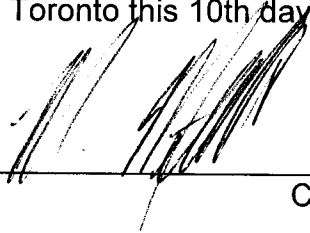
which obviously takes one outside the physical confines of the home, is clearly considered by the Administrator to be a household duty "in the home". Moreover, the shopping that is approved is not only shopping in relation to the home, but is shopping generally for all the normal purchases of the infected person. In this very case, the Administrator approved two hours per week for shopping outside the home that the infected person normally performed because that constituted "household duties in his or her home" within the meaning of this section.

9. The question then becomes whether or not a teenager's normal household duties in his or her home includes getting himself or herself to school. While there may be some exceptions, it is a normal expectation for a 17 year old in grade 12 to get herself or himself to and from school independently. In earlier years of childhood and even adolescence, parents or guardians may generally make arrangements to have the child transported to and from school, but it is certainly normative by the time of high school (and usually much earlier) for teenagers not to rely on anyone else in the household to get them to school, but to do so independently. It is irrelevant whether it is done by the teenager walking, using public transportation or driving. In this case, there is no dispute that it was the Claimant's responsibility to get himself to school, but that he was now being driven because of his fatigue and illness. That the term "household duties in his or her home" should be read and interpreted in keeping with the purposes of the provision is apparent even from the Administrator's own form. Not only does it include the category of shopping, which I have already indicated strictly speaking occurs outside of the home, but it contains a category of "other" which acknowledges that not all the categories that are listed on the form will cover every household activity in the home that entitle Claimants to compensation.

10. For these reasons I find that travelling to and from home to the high school was a normal household duty of the infected person in the home. Because of his illness, the Claimant is unable to do this himself, either through public transportation or otherwise. Thus, his being driven by someone else to and from school is a service which can be compensated. However, as necessary as it may be for the person driving the Claimant to return home or to go elsewhere after that trip to the school, and then subsequently to return to pick up the Claimant, only the one trip to and from school that the Claimant himself would have taken is compensable within the meaning of the section. I also find that only the activities that an infected person would perform him or herself are compensable. Therefore, any time spent by the driver returning from the school home and back again to pick up the Claimant are not compensable. Therefore, of the three hours per day claimed in this case, only one and one half hours per day, i.e., the trip to the school and the return trip which the Claimant himself would have made, are compensable for a total of 7.5 hours per week.

11. I remain seized to deal with any issues arising from the implementation of this decision.

DATED at Toronto this 10th day of October, 2002



C. Michael Mitchell
Referee