

DECISION

BACKGROUND

1. On December 14, 2007, the Administrator denied the Personal Representative's claim on behalf of the deceased's estate for compensation under the Transfused HCV Plan on the basis that a traceback conducted by Canadian Blood Services (CBS) found that the donors of the Blood transfused to the deceased during the Class Period tested negative for HCV.
2. On February 13, 2008, the Personal Representative requested that the Administrator's denial of her claim on behalf of the deceased's estate be reviewed by an arbitrator.
3. Fund counsel, on behalf of the Administrator, filed written submissions on October 28, 2008.
4. An oral hearing was conducted before me on November 5, 2008. Both the Personal Representative for the deceased's estate and Carol Miller, the Appeal Coordinator for the 1986-1990 Hepatitis C Claims Centre, testified at the hearing.

Facts

5. The deceased died on June 27, 2007 at the age of 54.
6. The deceased filed a claim under the HCV Transfused Plan prior to his death. His physician indicated on the Treating Physician Form that he had received a blood transfusion in Winnipeg, Manitoba on September 26, 1987. His physician assessed him at Disease Level 6.
7. On July 5, 2007, CBS confirmed that a search had been conducted of the Winnipeg Health Sciences Centre records. This search revealed that 4 units of blood, 2 units of red cells and 2 units of plasma had been given to the deceased on March 27, 1987.

8. On July 13, 2007, a Traceback Procedure conducted with respect to the donors of the units of blood transfused to the deceased confirmed that all the donors had tested negative for HCV.
9. On December 14, 2007, the Administrator wrote to the Personal Representative advising her that the estate's claim had been denied on the basis of a negative traceback. The Administrator asked that the Personal Representative indicate if she intended to provide further evidence that the deceased was infected for the first time with HCV by a Blood transfusion received in Canada during the Class Period.
10. The Personal Representative did not submit any further evidence to the Administrator or to me to demonstrate that the deceased was infected for the first time with HCV by a Blood transfusion during the Class Period.

ANALYSIS

11. The Personal Representative seeks compensation on behalf of the deceased's estate under the Transfused HCV Plan. In order for this claim to be successful, the deceased must meet the definition of "Primarily-Infected Person". 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...". Class Period is defined as meaning "the period from and including 1 January 1986 to and including 1 July 1990." The deceased did receive more than one Blood transfusion in Canada during the Class Period.
12. Section 3.05(1) of the Transfused HCV Plan requires that a Personal Representative claiming on behalf of an HCV Infected Person who has died must deliver to the Administrator, an application form together with: (a) proof that the death of the HCV Infected Person was caused by his or her infection with HCV; (b) unless the required proof has already been previously delivered to the Administrator: (i) if the deceased was a Primarily-Infected Person, the proof required by Sections 3.01 and 3.03. This section also

states that for greater certainty, nothing in this section will relieve any claimant from the requirement to prove the death of the Primarily-Infected Person was caused by his or her infection with HCV.

13. Section 3.01(1) requires that the following proof be provided: (a) medical, clinical, laboratory, hospital, The Canadian Red Cross, Canadian Blood Services or Hema-Quebec records demonstrating the claimant received a Blood transfusion in Canada during the Class Period; and (b) an HCV antibody test report, PCR test report or similar test report pertaining to the claimant.
14. The Personal Representative did provide the evidence referred to in Sections 3.01 and 3.05 of the Transfused HCV Plan to support the estate's claim. However, section 3.04 states that if the results of a Traceback Procedure demonstrate that none of the donors or units of blood received by a Primarily-Infected Person were HCV antibody positive, the Administrator must reject the claim, subject to Section 3.04(2).
15. Section 3.04(2) of the Settlement Agreement states that a claimant may prove that the Primarily-Infected Person was infected, for the first time, with HCV by a Blood transfusion received in Canada during the Class Period, notwithstanding the results of the Traceback Procedure. However, the Personal Representative did not provide any evidence to refute the results of the Traceback Procedure. Therefore, the Administrator was correct in denying the Personal Representative's claim on behalf of the deceased's estate.
16. The Administrator under the Settlement Agreement is required to administer the Transfused HCV Plan in accordance with its terms. The Administrator does not have authority to vary the terms of the Plan nor does an arbitrator or referee when asked to review the Administrator's decision.

CONCLUSION

17. I uphold the Administrator's denial of the Personal Representative's claim for compensation on behalf of the deceased's estate.

JUDITH KILLORAN
Arbitrator

November 30, 2008
DATE