

DECISION

Claim Number 1027

The Claimant applied for compensation for the estate of her daughter pursuant to the 1986-1990 Hepatitis C Settlement Agreement.. Her daughter, who was infected with HCV, died on April 12, 2000.

The claim was denied by the Settlement Plan Administrator on June 4, 2003, and on June 20, 2003, the Claimant requested a review of that decision by a Referee. The basis of the denial by the Administrator was that the Claimant had not established that her daughter had a blood transfusion in Canada between January 1, 1986 and July 1, 1990.

The facts are as follows. The Claimant has submitted a TRAN1 form on which she indicated “unknown” in answer to the question asking if the HCV infected person received a blood transfusion in the Class Period (January 1, 1986-July 1, 1990). In the TRAN2 form, the treating physician indicated that the Primarily Infected Person had not received a blood transfusion in the Class Period. A traceback was conducted by Canadian Blood Service which indicated that there were no records of a transfusion given to the Claimant’s daughter.

On the TRAN5 form, the Claimant does not state when her daughter received any transfusions.

Records of the Nanaimo Regional General Hospital show that the Claimant’s daughter had surgery in 1982, 1985 and 1991. Red blood cells were crossmatched for the surgery in 1988 but

there is no evidence that any blood products were administered at that time. In 1982, two units of whole blood were requested to be cross matched “stat”. Again, there is no record of blood being given.

The Claimant’s daughter, according to the autopsy report, had a small tattoo. She also had a history of intra-nasal cocaine use.

A Blood recipient Notification Program letter from Dr. Pi indicates that a notification letter sent to the Claimant’s daughter may have been sent due to a data entry error.

The Claimant requested an oral hearing and this proceeded on October 30, 2003.

Fund Counsel made written submissions on this matter to the effect that there was no evidence upon which the administrator could have concluded that the Claimant’s daughter received a blood transfusion in Canada in the Class Period.

At the oral hearing, it became apparent that the Claimant wished to obtain and review additional hospital records relating to her daughter and the hearing was adjourned to allow this to be done. The records were ultimately obtained in May, 2005. A review of these records indicates that the Claimant’s daughter died following a cardiorespiratory arrest. The records also indicate that she was in hospital in October, 1988 for a Caesarean section. Blood was crossmatched, but there is no record that any blood was given during this admission. On the Blood Bank Requisition in those records, the box “no” is marked next to “previous transfusions”. There is nothing to

indicate that this was a “stat” crossmatch. The Claimant’s daughter was also in the hospital in May, 1985 for a gastric bypass but no blood was crossmatched during that admission and there is nothing to suggest that there was any transfusion at that time. The hospital records also show that the Claimant’s daughter was admitted to hospital in September, 1982 for a Caesarean section, during which there was a requisition for a stat cross match but there is no record of blood actually being given.

A telephone conference in this matter was held on September, 13, 2005. The Claimant was, during that conference, asked whether she had had an opportunity to review the records provided in May of 2005 and how she wanted to proceed. She indicated that the only information she wished to refer to was the fact that blood was ordered crossmatched on a “stat” basis for her daughter in 1982, and that she had been advised by her doctor that because the blood was ordered on a “stat” basis, there might not be a record of its actual administration. Fund counsel pointed out that even if blood was administered at that time, this was still outside the class period. The Claimant also advised that there was no way, apart from a blood transfusion, that her daughter could have contracted HCV, as she was not a drug user and did not have tattoos.

The Claimant indicated at that point that she had no further submissions to make and that she wished me to proceed to render my decision on the evidence presented to date.

Article 3.01 of the Transfused HCV Plan (Schedule A to the 1986-1990 Hepatitis C Settlement Agreement) provides that a claimant must provide medical records or other third party documentary evidence demonstrating that a blood transfusion was received in Canada during the

Class Period. If this cannot be done, a Claimant must, according to Article 3.01(2) deliver evidence establishing on a balance of probabilities that the HCV infected person received a blood transfusion in Canada during the Class Period.

The Claimant has failed to adduce any documentary evidence to show that her daughter received a blood transfusion in the Class Period, nor has she adduced evidence establishing on a balance of probabilities that her daughter received blood in the Class Period. Her position is that there is no other way that her daughter could have contracted the disease. She has also specifically referred to the requisition for a stat cross match during the 1982 hospital admission and advised during the September 13 telephone conference that her doctor told her that there might not be a record of the blood being administered where the cross-match was requested on a stat basis. Even if this is correct, the 1982 hospital admission is outside the class period.

Fund Counsel, in his submissions, referred to the “Hepatitis C Medical Information Update” published by the Canadian Liver Foundation which indicates that according to U.S. data, in 10 % of cases of Hepatitis C, the source of infection cannot be identified. I also note that there are other risk factors present in this case.

Based on the lack of evidence of a blood transfusion in the Class Period I do not have the discretion to allow compensation in this case. I therefore uphold the decision of the administrator.

DATED at Vancouver, British Columbia, this 4 day of November, 2005.

Robin J. Harper