

SUPERIOR COURT

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
N°: 500-06-000016-960**

DATE: November 15, 2005

PRESIDED BY: JUSTICE NICOLE MORNEAU, S.C.J.

DOMINIQUE HONHON

The Applicant

vs.

THE ATTORNEY GENERAL OF CANADA

and

THE ATTORNEY-GENERAL OF QUEBEC

and

THE CANADIAN RED CROSS

The Respondents

and

CLAIMANT NO 10910

THE APPELLANT

**DECISION ON A MOTION TO OPPOSE CONFIRMATION OF A REFEREE'S
DECISION (JANUARY 1, 1986-JULY 1, 1990 HEPATITIS C SETTLEMENT
AGREEMENT RELATED TO THE CLASS ACTIONS)**

[1] The Claimant opposes confirmation of the decision of the Referee appointed pursuant to the provisions of the January 1, 1986-July 1, 1990 Hepatitis C Settlement Agreement related to the Class Actions.

[2] She submitted a claim for compensation. Her claim was rejected by the Administrator responsible for the distribution of compensations under the Agreement, which is the reason for her Request for Review.

[3] The Referee maintained the Administrator's decision and rejected the Request for Review. The Claimant opposes confirmation of the Referee's decision by the Superior Court.

Background

[4] The Settlement Agreement has a Canada-wide scope. It was approved by British Columbia, Ontario and Quebec Courts. According to the Agreement, Hepatitis C infected persons through a blood transfusion or blood products during the period beginning January 1, 1986 and ending July 1, 1990 are entitled to various compensations, depending particularly on the progress of the infection.

[5] The summary of the relevant facts is found in the Referee's decision of July 21 2005:

The Claimant presented a claim for compensation as a Primarily Infected Person, whose claim was refused by the Fund Administrator on May 3, 2005. The Administrator's refusal was based on the fact that there was no sufficient proof that the Claimant had effectively received blood during the Class Action Period covered by the 1986 -1990 Transfused HCV Plan.

I chose to write to the Claimant to obtain additional information regarding her Request for Review, in particular, to find out if she wished to have an oral hearing. By letter dated July 7, 2005, the Claimant confirmed that she did not intend to testify or call witnesses, asking me rather to make my decision based on the existing documents.

Therefore, I examined such documents and noted that the Claimant alleged that she had received one or several transfusions in February and April 1988, and seemingly one or several other transfusions in May 1989. The file did not provide any information as to why such transfusions would have been required, but the Claimant indicated that all such transfusions would have been received at the Centre hospitalier de St-François-d'Assise in Lasarre.

A post-transfusion report completed, apparently, by the assistant laboratory head at St-François-d'Assise in Lasarre, indicated that the Claimant has never received any transfusion at that Centre hospitalier, but rather that she had received « WinRho » in September and in November, 1986. I understand that this Rho human immunoglobulin is a product provided by a very large number of donors and that it is not covered under the definition of blood under section 1.01 of the Transfused HCV Plan.

(...)

The Treating Physician's Form (Tran 2) seemed to have been filled in a rather incomplete way, but on page 5, the question number 25 : " With regard to the definition of the term blood, did the Primarily Infected Person receive a blood transfusion during the January 1, 1986 to July 1, 1990 period " was answered in the negative.

Any person who claims to be a Primarily Infected Person must provide the Administrator with medical, clinical, laboratory, hospital, Canadian Red Cross or Héma-Québec files proving that he/she received a blood transfusion in Canada during the Class Action Period. Having examined the documents provided to me, it appeared that the Claimant has not provided any such file establishing that she had received blood (as defined in the Agreement) during the period of the Agreement. If she received one or several injections of "WinRho", such injections do not appear to me to be covered by the above-mentioned definition of blood.

The Transfused HCV Plan which I have to interpret in this case is not a universal agreement, but rather an Agreement concluded by the representatives of the persons having contracted Hepatitis C following the receipt of blood transfusions in Canada between 1986 and 1990, and certain medical and government authorities. This Agreement establishes very clear parameters, the first one being that the Claimant must establish, by direct proof or even by assumption, that he/she has effectively received at least one blood transfusion during the Agreement period. This Claimant has not

succeeded in meeting this basic condition and the Administrator had no alternative but to refuse to compensate her.

[6] Therefore the Referee rejects the Request for Review and maintains the Administrator's decision.

[7] Further to her notice to oppose the Referee's approval of the decision, the Claimant confirmed that she did not want an oral hearing but that she wished that the court would proceed on the basis of the existing file. The Claimant is entitled to proceed as she did. For its part, the court must make a decision based on the file as constituted.

Standard of Review

[8] Further to his motion to oppose confirmation of a Referee's decision in the same Class Proceeding, the standard of review set out in *Jordan v. McKenzie* (1987), 26 C.P.C. (2d) 193 (Ont. H.C., affd (1990), 39 C.P.C. (2d) 217 (C.A.)) was adopted as the appropriate standard to be applied on motions by a rejected claimant to oppose confirmation of a referee's decision. In *Jordan*, Anderson J. stated that the reviewing court "ought not to interfere with the result unless there has been some error in principle demonstrated by the [referee's] reasons, some absence or excess of jurisdiction, or some patent misapprehension of the evidence.

Analysis

[9] The Referee rejected the Claim on the basis that the Claimant was not, according to the proof, a Class Action Member entitled to receive compensation. In fact, the latter has not proven that she had received a blood transfusion as stipulated under the terms of the Agreement.

[10] In spite of the sympathy which one can have for the Claimant's situation, neither the Administrator, nor the Referee, nor this Court can modify or ignore the terms and conditions of the Plan.

[11] One has to recognize that the Claimant has not received a blood transfusion during the Class Action Period and that consequently, she is not entitled to receive compensation under the Agreement.

[12] It is important to note that the Settlement Agreement is not a general Compensation Plan covering all Hepatitis C infected persons. It is strictly an agreement concluded for a Class Action to compensate specific groups of HCV infected Canadians through the Blood System.

[13] Such groups are defined as the Hepatitis C infected persons through blood transfusions between January 1, 1986 and July 1, 1990. The Hepatitis C infected persons who have not received a blood transfusion during the Class Action Period are not entitled to a compensation. Consequently, the Court has no authority to grant them a compensation.

[14] Therefore, the Referee has committed no error of principle or of interpretation regarding the proof which was submitted to him. The Court cannot intervene. Rather, it must confirm his decision.

[15] **FOR THESE REASONS, THE COURT:**

[16] **REJECTS** the motion to oppose confirmation of Referee Nols' decision of July 21 2005.

[17] **UPHOLDS** the Referee's decision.

[18] **ALL THIS**, without costs.

Signature on original
NICOLE MORNEAU, S.C.J.

Me Christine Kark
MCCARTHY TÉTRAULT
Fund Counsel

Claimant No. 10910

Me Michel Savonitto,
Ex officio Member of the Joint Committee
MARCHAND MELANÇON MAGNON

Hearing Date: November 8, 2005