CLASS ACTION – Hepatitis C 1986-1990
Request for Review # 10910

D E C I S I O N

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.

> " **Blood"** means whole blood and the following blood products: packed red cells, platelets, plasma (fresh frozen and banked) and white blood cells. Blood does not include Albumin 5%, Albumin 25%, Factor VIII, Porcine Factor VIII, Factor IX, Factor VII, Cytomegalovirus Immune Globulin, Hepatitis B Immune Globulin, Rh Immune Globulin, Varicella Zoster Immune Globulin, Immune Serum Globulin, (FEIBA) FEVIII Inhibitor Bypassing Activity, Autoplex (Activate Prothrombin Complex), Tetanus Immune Globulin, Intravenous Immune Globulin (IVIG) and Antithrombin III (ATIII)."

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.

Having examined all the documents provided to me, I conclude that the Administrator's decision to refuse to compensate this Claimant was correct and I maintain the Administrator's decision. The Request for Review is therefore dismissed.

Montreal, July 21, 2005

Jacques Nols
Referee