

DECISION

BACKGROUND

1. On August 18, 2000, the Administrator advised the Claimant that his application for compensation as a Primarily-Infected Person under the HCV Hemophiliac Plan (the "Plan") was approved.
2. On September 20, 2000, the Claimant received compensation in the form of a Fixed Payment, in accordance with the Plan. The Claimant was assessed as a Level 3 claimant. The Claimant has continued to receive periodic payments as reimbursement for out-of-pocket expenses and uninsured medical expenses.
3. On October 1, 2004, the Administrator wrote to the Claimant advising him that he might be eligible for further compensation relating to his completion of a number of months of HCV Drug Therapy. The Administrator requested that the physician who monitored the HCV Drug Therapy complete a form after the therapy was completed or after 6 months of therapy had been completed, whichever came first.
4. On October 4, 2004, the Administrator received confirmation from the supervising physician that the Claimant had completed HCV Drug Therapy on June 2, 2004. Therefore, the Administrator approved compensation to the Claimant related to the HCV Drug Therapy.
5. On October 6, 2004, the Claimant asked for a review based on the following: 1) his disagreement with the way his claim for drug therapy compensation was handled by the Administrator; and 2) his disagreement with the Administrator's Standard Operating Procedure as it relates to making a claim for drug therapy compensation.
6. The Claimant filed written submissions on November 12 and 29, 2004.

7. Fund Counsel, on behalf of the Administrator, filed written submissions on November 8, 2004. The written hearing concluded on December 6, 2004 when Fund Counsel confirmed that she had no further submissions to file in reply to the Claimant's submissions.

ANALYSIS

8. The 1986-1990 Hepatitis C Class Action Settlement Fund (the "Fund") has been established as part of a settlement agreement reached in the 1986-1990 Hepatitis C Class Action (the "Settlement Agreement"). The Settlement Agreement incorporates two plans, the Transfused HCV Plan and the HCV Hemophiliac Plan. In addition, there are court approved protocols to be followed by the Administrator in the processing and payment of claims. One of the court approved protocols deals with the Rules for Reference.

9. Article 5 of the Settlement Agreement sets out the duties and powers of the Administrator. The relevant portions of Article 5.02 specify the following:

Subject to obtaining the approval of the Courts, the Administrator's duties and responsibilities will include the following:

- (b) developing, installing and implementing systems and procedures for receiving, processing, evaluating and making decisions respecting Claims including making all necessary inquiries (including consulting medical personnel) to determine the validity of any Claim and requiring any claimant to have a medical examination;
- (f) receiving and responding to all enquiries and correspondence respecting Claims, supplying claim forms, reviewing and evaluating all Claims, making decisions in respect of Claims ...

Article 5.03 states:

The Administrator will give notice of its decision in respect of a Claim to a claimant promptly after the decision is made. A decision of the Administrator in respect of a Claim will, subject to the claimant's right to refer the decision to a Referee or an Arbitrator pursuant to provisions of the Plans, be final and binding upon the claimant and the Administrator.

10. Article 4.05 is the relevant provision governing the compensation scheme for the HCV Hemophiliac Plan. It states as follows:

An approved HCV Infected Person who delivers evidence satisfactory to the Administrator that he or she has received Compensable HCV Drug Therapy is entitled to be paid \$1,000 for each completed month of therapy.

11. The Claimant disagrees not only with the Administrator's manner of processing the claim but also in establishing and implementing the Standard Operating Procedure as well as the degree of support offered to the Claimant through the Administrator's website.

12. The Claimant outlines in some detail his disagreement with various aspects of the Administrator's procedure which he labels "decisions" of the Administrator.

13. I respectfully disagree with the Claimant's submission that many of the features of the Administrator's procedure constitute "decisions" under the Settlement Agreement. In my view, the only decisions subject to review by a referee are those which deal with the merits of each case and the potential entitlement of each claimant. The Claimant has not filed a claim in connection with the amount of benefits he has received or in connection with any decision made by the Administrator of the Fund, but rather, in connection with the manner in which his claim has been processed by the Administrator.

14. The jurisdiction of referees is determined by the terms of the Settlement Agreement, the Plan, and the Rules for Reference. The relevant provisions of the Plan with respect to the jurisdiction of referees is as follows:

10.01 Reference to Referee or Arbitrator

A person making a Claim may, within 30 days after he or she receives notice of the Administrator's decision respecting his or her Claim, refer that decision to, at his or her option, a Referee or an Arbitrator, by filing with the Administrator a notice

requiring a reference or arbitration and setting out the objection to its decision and the reasons in support of the objection. If no notice requiring a reference or arbitration is filed within the 30 day period, the Administrator's decision will be automatically confirmed and be final and binding.

10.03 Forwarding Claims

Upon receipt of a notice requiring a reference or arbitration, the Administrator will forward to a Referee or Arbitrator, as the case may be, in the Province or Territory where the claimant resides or is deemed to reside and to the Fund Counsel the following:

(c) a copy of the Administrator's decision.

15. Article 5.02 of the Settlement Agreement requires and enables the Administrator to establish procedures for the processing of claims. There is nothing in the Settlement Agreement, the Plan or the Rules for Reference which confers any power on referees with respect to reviewing procedures for processing claims by the Administrator. The provisions all relate to the review by referees of the Administrator's decisions.

16. The request for review in the case before me does not challenge a decision by the Administrator relating to the merits of a claim under the Settlement Agreement. Instead, it calls into question the procedures which the Administrator has established for processing claims under the Settlement Agreement.

CONCLUSION

17. I do not have jurisdiction in the case before me to proceed with a reference under the Settlement Agreement.


JUDITH KILLORAN

Referee

December 20, 2004

DATE