

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

Nº: 500-06-000016-960

DATE: January 24, 2008

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 1200033

THE APPELLANT

REASONS FOR REVIEW OF REFEREE'S DECISION

RENDERED ON JANUARY 15, 2007

(HEPATITIS C CLASS ACTION SETTLEMENT AGREEMENT-JANUARY 1, 1986-JULY 1, 1990)

[1] Involved in an automobile accident in December 1987, the Claimant received five units of blood. In 1997, he learned that he had contracted Hepatitis C. On August 15, 2000, he submitted a claim for compensation to the Administrator under the Hepatitis C Settlement Agreement relating to the individuals who had been infected through blood transfusions received between January 1, 1986, and July 1, 1990.

[2] The traceback procedures were completed. The test results for four out of five donors involved in this case turned out to be negative. The fifth donor was not tested because he had died. The Applicant wanted that information be provided on the reasons for his death. This has not been possible.

[3] In conformity with the Settlement Agreement, the Administrator raised some questions regarding references to his use of non-prescription intravenous drugs in order to eliminate any possibility of contamination through intravenous injections.

[4] On March 4, 2004, the Administrator informed the Claimant that his claim for compensation would be rejected unless he could provide additional evidence to the effect that he had been infected for the first time with the Hepatitis C virus through a blood transfusion received in Canada between January 1, 1986 and July 1, 1990, and this, because according to the information that he had provided, he had used non-prescription intravenous drugs.

[5] The Administrator finally rejected the claim on September 24, 2004, because the Claimant was unable to provide the additional evidence required.

[6] In a well-supported decision dated January 15, 2007, the Referee rejected his appeal. The Claimant now asks the Superior Court to review the Referee's decision.

[7] There is no challenge raised regarding the illness and the severity of the Claimant's health condition. However, he must satisfy the requirements of the Settlement Agreement involved in this case, as his medical records contain many references to his non-prescription intravenous drug use.

[8] Before the undersigned, the Claimant tries to deny the many references to his cocaine drug use. He does not dare make categorical declarations. He merely says that he simply does not think, that he does not remember.

[9] Yet, his medical records at L'Hôpital St Luc and at L'Hôpital Maisonneuve-Rosemont contain at least 16 references to his alcohol problems and drug addiction and this going back to 1988. In September 1997, there is a reference to his cocaine addiction and hepatitis when he was 20 years old. He is now 57 years old. Thus, his drug use problems must have occurred in 1970. Others references dating back to 1994, 1997, 1998, 1999, 2003 and 2004 mention that he used drugs from age 13 to age 38 and another reference, that he started his drug use when he was 25 or 30 years old. There are confirmations on various occasions that he was a cocaine and crack addict and that he often sniffed or smoked it but also injected it intravenously.

[10] The courts explained on various occasions that the Administrator does not have the authority to waive the terms of the Settlement Agreement involved in this case, nor have the arbitrators, the referees and the courts.

[11] This Settlement is meant to compensate, with regards to the Class Members who have been primarily infected, those who were infected through blood transfusions and, in the case of hemophiliacs, because of the use of contaminated blood products during the said period. The entitlement of those

people to receive compensations under the Agreement is subjected to strict conditions that cannot be circumvented.

[12] The Claimant's allegations as well as his shy denials of his drug use do not meet the test. Nothing here allows me to overturn the Referee's decision.

FOR THESE REASONS, THE COURT:

REJECTS the Claimant's challenge.

CONFIRMS the decision of January 15, 2007 rendered by Referee Nols

ALL THIS, without costs.

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

Me Christine Kark
MCCARTHY TÉTRAULT
Fund Counsel

Claimant No. 1200033

Me Martine Trudeau
Me Michel Savonitto,
Ex officio Member of the Joint Committee
MARCHAND MELANÇON FORGET

Hearing Date: January 17, 2008