

Hepatitis C – 1986-1990 Class action settlement

Request for review
File no 1200083

DECISION

A hearing was held in this case on February 4, 2003 at which Mrs. D (the mother of the Claimant) as well as the Administrator's representatives were present.

In the case at hand, it must be determined whether the Claimant, N. (who was not present at the hearing), has a right to an indemnity in his capacity as a *Dependant*. It has already been conceded that the "*claims on behalf of the Estate and as Family Member*" have been dealt with and the amounts paid. Only the notion of *Dependant* remains at issue given the Administrator's refusal to accept N. as a *Dependant*. It is worth noting that the latter is defined in Section 1.01 of the *Settlement Agreement* as follows:

"Section 1.01 – "Dependant" means a Family Member of a HCV Infected Person referred to in clauses (a) and (c) of the definition of a Family Member in this Section 1.01 to whom that HCV Infected Person was providing support or was under a legal obligation to provide support on the date of the HCV Infected Person's death."

A review of the file and the evidence presented at the hearing reveal several relevant facts. The Claimant's mother provided elaborate explanations regarding the existing relationship between her son and her partner before the death of the latter in 1995. Notwithstanding the administrative red tape that the mother might have encountered at different times, there seems to be no doubt that, for the purposes of the present, genuine

family ties existed between the son, his mother and her partner. At the time of the infected person's death, N. was 24 years old. He was not enrolled in school nor did he really work, at least if we rely on the scant revenues he declared for the 1995 fiscal year. Therefore, it seems that at that time he was living in a precarious financial situation, although he did not live with his parents for various reasons mentioned during the hearing. Moreover, the Claimant's mother went on at length about her son being an artist and the related consequences regarding his revenues, needs and continuous training. She also insisted at length on the content and wording of a letter, dated December 3, 1990, which was addressed to her and signed by her now deceased partner. She maintains that it is a valid *will*. We can read the following passage relating to N.:

"I was there in support to the best of my abilities, and shall continue to support N. throughout his life in whatever means I have at my disposal."

The "natural harmony" that existed within this family is not being questioned in any way. The issue remains to determine whether, at the time of the mother's partner's death, the Claimant constituted a *Dependant* as defined above. Nothing in the file nor the evidence presented allows us to conclude to that effect. The Claimant undoubtedly needed the support of his parents in many aspects of his life. There is no doubt that the death of the mother's partner created a major loss for the Claimant and his mother. This is not at issue. However, the requirements of Section 1.01, cited above, are clear and unequivocal. Therefore, at the time of his death, the mother's partner was not providing for the needs of the Claimant and did not have a specific obligation to do so from a legal perspective. He had commendable intentions regarding his partner's son and sincerely

wanted to help him the best he could, but this does not make the Claimant a *Dependant* under the *Settlement Agreement*. Moreover, the Claimant's mother admitted this fact herself in a letter dated December 3, 2001 addressed to the Administrator. Regarding her deceased partner she writes:

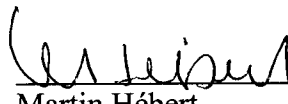
"In 1991, he began to feel the effects of a dreadful disease and could no longer accept others. He stopped supporting N. N. was 19 years of age (...)."

There is nothing to indicate that the situation had changed afterwards. N. was not a *Dependant* despite the precariousness of his situation at the time.

Under the circumstances, it is entirely legitimate that the Administrator maintained the distinction between *Family Member* and *Dependant*. Furthermore, he applied the terms of the *Settlement Agreement* appropriately.

The appeal must therefore be dismissed.

Montreal, February 19, 2003


Martin Hébert
Referee