

DECISION

The Claimant submitted a claim under the Transfused HCV Plan.

In the documents submitted to the Class Action Settlement Administrator regarding Hepatitis C (1986-1990), the Claimant argues that he received a blood transfusion in August 1987. According to the file, it seems that this would be the only blood transfusion the Claimant received during his lifetime.

The review of the Claimant's medical file's extracts which were sent to me indeed confirms that he received a blood transfusion at l'Hôtel-Dieu de Montréal, on August 27, 1987. The transfusion unit number appears in Hôtel-Dieu de Montréal file and we will see later in this document that the donor was eventually identified and that his blood underwent several tests.

The Claimant's claim for compensation was rejected by the Administrator on October 27, 2004, on the basis that there was insufficient evidence that the first infection had occurred during the Class Action Period. The letter sent by the Claim Centre Administrator also indicated that the Traceback Procedure had confirmed that the donor of the blood received by the Claimant proved to be anti-HCV negative.

This decision is the object of Claimant's Request for Review. The Claimant indicated in his Request for Review that he wanted to be heard by a Referee and wanted an oral hearing. The Claimant indicated also that following his original claim, 'someone' would have called him to try to settle for \$6500, which amount he would have refused.

On January 19, 2005, I informed the Claimant and the Fund Counsel that there would be an oral hearing on April 26, 2005, in my Montreal office. On April 21, the Claimant informed my assistant by phone that he could not proceed on April 26, explaining that his file had been exposed to rain and that he needed two months to obtain the documents that he alleged had been destroyed. The Claimant also indicated to my

assistant that he was ready to drop his request, should he be paid an amount of about \$500.

His request for a postponement was granted and a new notice of hearing was sent to him, again by registered mail dated May 26, 2005, this time for a hearing on September 1, 2005, again in my Montreal office. The Canada Post Corporation's documentation confirms that the notice was indeed delivered to the Claimant.

On August 26, the Claimant spoke to my assistant, and later that same day, to me, requesting a postponement because he had had a bicycle accident and needed to see the doctor 'every day'. I accepted postponing the hearing date, explaining however to the Claimant that he had to send me forthwith a letter from his doctor confirming that he was indeed under active treatment and that it was therefore impossible for him to appear on September 1.

This request for a written confirmation from the treating physician was also reiterated to the Claimant in a letter that I sent him by registered mail, and in which I indicated that the hearing was now postponed to November 2, 2005, at 10 A.M. It seems from the Canada Post Corporation's documentation that my letter was indeed delivered to the Claimant on September 1, 2005.

The Claimant did not show up at my office on Wednesday November 2, 2005, nor did he contact me or someone from my office, nor did he contact the Fund Counsel to advise her of a possible delay or of a possible reason which would have prevented him from proceeding. In order to find out why the Claimant was absent, the Fund Counsel tried to contact him by phone, and was able to talk to his mother who said that she did not know where her son was. The Claimant's mother contacted me by phone a few minutes later, still on November 2 in the morning, to tell me that she had reached her son and that he would not show up at the hearing. I did not obtain any other

explanation for his absence, neither did I receive any communication or letter from his treating physician regarding the postponement to September 1.

Therefore, there was no hearing in this matter and I now render my decision on the basis of the documentation originally transmitted to me by the 1986-1990 Hepatitis C Claim Centre Administrator. I also reviewed the written arguments submitted by the Fund Counsel a few weeks before the very first date set for the hearing of this matter.

The file documents confirm that the Claimant did receive a transfusion in August 1987 at the Hôtel-Dieu de Montréal and that the Claimant eventually was diagnosed as being HCV infected. The exact date of the first acknowledgement that the Claimant was HCV positive does not appear in the file, but we know at least that a test dated September 1994, administered at Hôpital St-Luc, revealed or confirmed that he was HCV positive. These facts are not disputed by the Fund Administrator.

The Hôpital Hôtel-Dieu de Montréal's documents allowed Héma-Québec to identify and retrace the donor of the unit transfused in August 1987. This donor's blood underwent various screening tests first in 1990, then again in 1992, in April 1995 and in September 1995, and always proved to be negative.

Section 3.04(1) of the 1986-1990 Transfused HCV Plan provides that if the results of the Traceback Procedure show that the donor is or was not anti-HCV positive, the Administrator must reject the claim of such an HCV Infected Person.

Also, Section 3.04(2) provides that in spite of the Traceback Procedure's results, the Claimant may prove, in certain circumstances, that he was infected for the first time by a transfusion.

I reviewed the traceback file closely, and I consider that the Claimant did not provide any evidence to this effect. On the other hand, I find various notes to the effect that the

Claimant had previously taken intravenous drugs without medical prescription, that he had made use of intranasal drugs, that he had undergone one surgery and that he was imprisoned at least on one occasion, which to me appears to be prior to the discovery of his HCV infection, the traceback form on other risk factors completed by the Claimant referring to an imprisonment at Ste-Anne-des-Plaines in 1993.

The file which was submitted to me provides no information regarding a settlement offer which the Claimant refers to in his Request for Review. Whether there existed such a proposal or not – and the Claimant himself does not identify the person who would have made him such a proposal – would not be binding for me or would not affect my decision. I have not taken such an offer into consideration in evaluating this Request for Review.

Thus, having reviewed the file, I consider that the Claimant did not establish that he had contracted HCV further to the transfusion received in 1987 and I consider that the Administrator had no alternative but to reject the claim submitted by the HCV infected Claimant.

As mentioned in several previous decisions, the Referee has no discretionary power to approve a claim or a Request for Review, if the proof required under the Agreement was not provided. I cannot, as a Referee, change, ignore or contravene to the terms and conditions or the modalities of the Agreement.

I conclude that the Claimant has not proven that the disease which afflicts him was contracted further to the transfusion he received in August 1987. The decision to refuse this claim is therefore well founded and I reject his Request for Review.

MONTREAL, November 29, 2005

Jacques Nols
Referee