

DECISION

BACKGROUND

1. On January 21, 2004, the Administrator denied the Claimant's request for compensation as a Primarily-Infected Person under the Transfused HCV Plan on the basis that the Claimant had not provided sufficient evidence that she had received a blood transfusion in Canada within the Class Period.
2. On February 6, 2004, the Claimant requested that the Administrator's denial of her claim be reviewed by a referee.
3. A hearing scheduled for July 6, 2004 was adjourned to January 19, 2005.
4. On January 14, 2005, fund counsel, on behalf of the Administrator, filed written submissions.
5. On January 19, 2005, a hearing was held before me in Toronto. The hearing was recessed to allow time for the issuance of summonses in order to obtain and file further hospital and medical records.
6. On April 18, 2005, the hearing concluded when both parties confirmed that they had no further evidence or submissions to file with me.

EVIDENCE

7. On January 19, 2005, a hearing was conducted before me in Toronto. Five witnesses testified at the hearing: Carol Miller, the Appeal Coordinator for the Hepatitis C Claims Centre, the Claimant, the Claimant's husband, and two unrelated independent witnesses, on behalf of the Claimant. The parties agreed that the Claimant is infected with Hepatitis C.

8. The Claimant's Blood Transfusion History Form dated states that in January 1988, the Claimant was transfused with blood at the Toronto East General Hospital during surgery and that she was transfused with two units of blood in May 1975 at the Central Hospital.

9. During her testimony, Ms. Miller reviewed the documents in the Claimant's file from the 1986-1990 Hepatitis C Claims Centre. Ms. Miller testified about the Toronto East General Hospital records relating to the Claimant's October 1988 admission. None of these documents confirm that the Claimant received a blood transfusion during the Class Period. On February 14, 2003, Canadian Blood Services wrote to the Traceback Coordinator for the Administrator advising that the Central Hospital stated that the Applicant received two units of blood in May 1975, for which there were no records available.

10. On February 1, 2005, Toronto East General Hospital responded to my summons requesting medical records for the Claimant between 1986 and 1990. The records, which were forwarded to me, provided no evidence of a blood transfusion during the Class Period.

11. On February 21, 2005, the Claimant's physician provided a note stating that the Claimant had a blood transfusion in 1975 during the birth of her son and in 1988 during surgery. He stated that he had no documentation but was relying on the patient's history.

12. The Claimant testified at the hearing on January 19, 2005, in a candid and credible manner. She recounted the events surrounding her admission to hospital in 1988 for surgery. When she awoke after surgery, she saw a small, square bag containing blood attached to her arm. She testified that another patient, a woman, was in the bed across from her. The other patient was also receiving a blood transfusion.

13. The Claimant testified that a nurse informed her that she lost quite a bit of blood during surgery and required a blood transfusion. That same day of surgery, a neighbour of the Claimant came to visit her in the hospital. The Claimant remained in hospital for 9 or 10 days.

14. The Claimant testified about her unsuccessful attempts to obtain records

confirming the blood transfusion from either the hospital or her surgeon.

15. The Claimant's husband testified about driving his wife to the hospital on the day of the surgery. His memory of his wife's hospital stay was fairly vague.

16. Recently, the Claimant managed to locate the patient who was in the bed opposite hers when she had surgery in 1988. This witness had not seen the Claimant for 16 or 17 years.

17. The woman who was the patient in the bed opposite the Claimant when they were both in hospital testified that she remembered the Claimant's transfusion because her blood bag was changed at the same time as that of the Claimant. She testified that she does not have Hepatitis C. As with the Claimant, she has not been successful in obtaining her transfusion records.

18. The second independent witness for the Claimant was her former neighbour, who has known the Claimant since 1979. She testified that when she visited the Claimant in hospital on the day of the surgery, she saw a bag of blood being transfused into her arm.

19. The Claimant's former neighbour testified that she noticed, in recent years, that the Claimant developed medical problems. The Claimant often appeared extremely fatigued. It was only in the last couple of years that the Claimant told her former neighbour that she was infected with Hepatitis C.

20. Fund counsel submitted that there were inconsistencies in the testimony of the Claimant and the independent witnesses. He pointed to discrepancies, such as: the recollections of the witnesses and the Claimant about how many beds were in the hospital room, the time of the former neighbour's visit and the shape of the blood bag. He submitted that the witness who

had been a patient at the same time as the Claimant had her own medical and psychological problems which could cast doubt on her credibility.

21. I weighed the evidence of the two independent witnesses in light of fund counsel's submissions about their credibility. I find that the minor inconsistencies noted in their testimony were not of such significance to cast doubt on their credibility. Both witnesses were forthright and credible. I find that the two independent witnesses provided corroborating evidence independent of the personal recollection of the Claimant that the Claimant received a blood transfusion during the Class Period.

ANALYSIS

22. The Claimant seeks compensation as a Primarily-Infected Person under the Transfused HCV Plan (the "Plan"). The Plan defines "Primarily-Infected Person," in part, as meaning "a person who received a Blood transfusion in Canada during the Class Period ...".

23. The 1986-1990 Hepatitis C Settlement Agreement defines "Class Period" as meaning "the period from and including 1 January 1986 to and including 1 July 1990." "Class Period" is defined identically in the Plan.

24. Article 3.01 of the Plan requires that a person claiming to be a Primarily-Infected Person must deliver to the Administrator an application form together with, among other things, medical "records demonstrating that the Claimant received a Blood transfusion in Canada during the Class Period."

25. The Claimant has been unable to obtain medical records demonstrating that she received a Blood transfusion during the Class Period." However, section 3.01 (2) of the Plan states:

Notwithstanding the provisions of Section 3.01(a), if a claimant cannot comply with the provisions of section 3.01 (1)(a), the claimant must deliver to the Administrator corroborating evidence independent of the personal recollection of the claimant or any person who is a Family Member of the claimant establishing on a balance of probabilities that he or she received a Blood transfusion in Canada during the Class Period.

26. The Administrator under the Settlement Agreement is required to administer the Plan in accordance with its terms. Unfortunately, the Claimant delivered no corroborating evidence to the Administrator as required by section 3.01(2) of the Plan. At the hearing before me, I had the benefit of testimony from two witnesses who provided corroborating evidence independent of the personal recollection of the Claimant establishing on a balance of probabilities that she received a blood transfusion in Canada during the Class Period.

CONCLUSION

27. I find that the Claimant did provide the evidence required by the Plan to establish, on a balance of probabilities, that she received a blood transfusion in Canada during the Class Period. Consequently, I do not uphold the the Administrator's decision to deny the Claimant's request for compensation as a Primarily-Infected Person under the Plan on the basis that she did not provide sufficient evidence that she had received a blood transfusion in Canada during the Class Period.

JUDITH KILLORAN

May 3, 2005

DATE

Referee