DECISION

Claim ID: 12808

1. On February 25, 2005, the Administrator denied the claim for compensation of the Claimant filed on the basis of qualifying as a primarily-infected person under the transfused HCV Plan. The claim was denied on the grounds there was insufficient evidence that the Claimant received blood within the Class period from a donor who was determined to be HCV antibody positive.

2. The Claimant requested that the Administrator's denial of her claim be reviewed by a Referee.

3. Following a pre-hearing telephone conference call and an exchange of correspondence, the Claimant requested a hearing to review the Administrator's denial of the claim. On October 13, 2005 a hearing was held in Parksville, British Columbia, where the Claimant resides.

4. The Claimant submitted documentation in support of her claim, which has been reviewed and considered, initially by the Administrator and subsequently in connection with these proceedings. At the hearing, the Claimant was given a full opportunity to provide additional information and to make her submissions and representations.

5. The relevant facts are not in dispute and can be summarized as follows:

   (a) The Claimant is infected with Hepatitis C.

   (b) In her claim, the Claimant stated she believed she received two blood transfusions: one in January 1989 and the other in March 1990, both at Nanaimo Regional General Hospital.

   (c) As a consequence of information that required clarification in the file, including the Claimant's doctor's notes on file, further documentation and analysis of the records from Nanaimo Regional General Hospital was sought by the Administrator.

   (d) The Administrator directed that a Traceback Procedure be carried out by Canadian Blood Services.

   (e) The results of these initiatives disclosed there were no transfusions of blood at Nanaimo Regional General Hospital. The Claimant did receive Rh Immune Globulin at the time in question.

(f) Examination of the medical records also disclosed the Claimant has tattoos. On January 13, 1989 and January 10, 1990, blood was ordered and cross-matched, but it was not used.

6. When the information noted above was provided to her, the Claimant made additional submissions and supplied further documentation and records. Those records do not contain any indication that a blood transfusion was given to her. In her testimony at the hearing the Claimant was unable to provide any further information to support her contention that she was transfused.

7. The principle concern of the Claimant is that she is convinced she contracted Hepatitis C through tainted blood transfused to her in the hospital in 1989 or early in 1990. The claimant has the burden of proof of showing she received a blood transfusion in the Class Period. In light of the information, the Administrator was unable to find a basis to reverse the decision to deny the claim.

8. Based on these facts, it is clear the Administrator's decision to deny the claim must be sustained.

9. The 1986 - 1990 Hepatitis C Settlement Agreement defines "Class Period", as the title implies, as the period "from and including 1 January 1986 to and including 1 July 1990." The Transfused HCV Plan provides the identical definition. The Plan defines a "Primarily-Infected Person", a status a successful Claimant must achieve, as "a person who received a Blood transfusion in Canada during the Class Period . . . ".

10. Pursuant to Article 3.01 of the Plan, a person claiming to be a Primarily-Infected Person is required to produce to the Administrator medical records "demonstrating that the Claimant received a Blood transfusion in Canada during the Class Period."

11. Blood is specifically defined in the "Transfused HCV Plan" (Article 1.01) as follows:

> "Blood" means whole blood and the following blood products: packed red cells, platelets, plasma (fresh frozen and banked) and white blood cells. Blood does NOT include: Albumin 5%, Albumin 25%, Factor VIII, Porcine Factor VIII, Factor IX, Factor VII, Cytomegalovirus Immune Globulin, Hepatitis B Immune Globulin, Varicella Zosten Immune Globulin, **Rh Immune Globulin,** Immune Serum Globulin, (FEIBA) FEVIII Inhibitor Bypassing Activity, Autoplex (Active Prothrombin

Complex), Tetanus Immune Globulin, Intravenous Immune Globulin (IVIG) and Antithrombin III (ATIII). (emphasis added)

12. It is clear from the definition of blood quoted above that Rh Immune Globulin is an excluded blood product. The Plan specifically provides that if a Claimant does not receive "blood" as defined by the Plan within the Class period, the Claimant is not entitled to receive compensation and the claim must be denied because an essential element has not been met.

13. It is the role and responsibility of the Administrator, under the settlement agreement, to administer the Plan in accordance with its terms. The Administrator has an obligation under the Plan to review each claim to determine whether the required proof for compensation exists. The words of Article 3.01 of the Plan are clear and unambiguous that the Administrator has no alternative but to reject the claim in circumstances such as these. The Administrator has no discretion to allow a claim where the required proof of receiving blood, as defined, has not been produced. The Administrator must administer the Plan in accordance with its terms and he does not have the authority to alter or ignore the terms of the Plan. A Referee, called upon to review a decision of the Administrator is also bound by the terms of the Plan and can not amend it or act contrary to its terms.

14. I acknowledge the personal feelings and frustrations of the Claimant in having her claim rejected. It is understandable that she feels as she does regarding circumstances which have left her with no clear evidence of how she could have contacted Hepatitis C. Unfortunately, in view of the various risk factors in her life experiences, it is possible she may never learn the cause of her illness. While that is a result that is unsatisfactory for her, neither the Administrator nor a Referee appointed under the Plan has the authority or discretion to Award her claim.

15. Accordingly, for the reasons set out above, I find that the Administrator has properly determined that the Claimant was not entitled to compensation under the Plan. I further find that the Administrator's decision must be sustained.

Dated at Vancouver, British Columbia, this 2nd day of November 2005.

John P. Sanderson, Q.C.
Referee