

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***HCV Settlement Agreement Claim #1300017,***  
2007 BCSC 1020

Date: 20070711  
Docket: C965349  
Registry: Vancouver

**In the Matter of the HCV 1986-1990  
Transfused Settlement Agreement  
Re Claim No. 1300017**

Before: The Honourable Mr. Justice Pitfield

## **Reasons for Judgment**

Counsel for the Claimant:

Self-Represented

Counsel for the British Columbia Fund:

William A. Ferguson

Place of Hearing:

Vancouver, B.C.

[1] Claimant 1300017 applies to oppose confirmation of a Referee's ruling confirming the Administrator's rejection of his claim for benefits under the 1986-1990 Hepatitis C Transfused Settlement Agreement.

[2] The Claimant is infected with the HCV antibody. If eligible for benefits, he would be compensated as a Level 1 beneficiary under the Settlement Agreement.

[3] The Claimant filed his claim with the Administrator in early 2001. He claimed to have been infected with the Hepatitis C antibody for the first time by a blood transfusion which he received in 1987 following a motor vehicle accident. In his application, he openly acknowledged that he had been an intravenous drug user.

[4] The Administrator initiated a traceback. Five of the donors of the transfused blood tested negative for the HCV antibody. The sixth donor was deceased. As a result, the traceback could neither confirm nor deny the relationship between transfusion and infection.

[5] Because of the history of intravenous non-prescription drug use and the inconclusive traceback, the Claimant had the burden of persuading the Administrator, on a balance of probabilities, that the blood transfusion was the source of the infection.

[6] The Administrator concluded that the evidence adduced by the Claimant was not persuasive and the claim was rejected. The claimant appealed the decision to a Referee.

[7] An oral hearing took place before a Referee who was charged with the task of determining whether it was more likely than not that tainted blood from the deceased donor, rather than non-prescription intravenous drug use, was the cause of the Claimant's infection.

[8] The Referee provided lengthy and considered reasons which I need not repeat. The Referee described the Claimant's lifestyle in considerable detail, important characteristics of which were a number of sexual partners, and alcohol and intravenous drug use and abuse. The Referee confirmed the Administrator's decision to reject the Claimant's application for benefits. The Claimant now applies in the manner contemplated by the Settlement Agreement to oppose confirmation of the Referee's decision.

[9] It has often been stated that the role of the court in considering an application to oppose confirmation is to determine whether the Referee erred in principle or failed to properly appreciate all of the evidence so that the decision should be reversed. It is not the court's role to re-hear the appeal from the Administrator's decision, or to weigh and assess the evidence that was adduced before the Referee.

[10] A factor which is frequently overlooked but which must be accepted in the application, appeal, and confirmation process is that the Administrator, the Referee, and this court are bound by the terms of the Settlement Agreement. The agreement charges Claimants who have had a history of intravenous non-prescription drug use with the very difficult task of demonstrating, on a balance of probabilities, that infection resulted from a transfusion rather than non-prescription intravenous drug

use. There is no doubt that the requirement imposed by the agreement is one that is difficult to satisfy, but it cannot be modified or ignored.

[11] In present circumstances, five of six donors tested negative for the HCV antibody. Because of death, the sixth donor could not be tested. The question the Referee had to address was whether, on her assessment and appreciation of all of the evidence adduced on the appeal to her, one could conclude that it was more likely than not that infection resulted from the fact that the sixth donor was infected with the HCV antibody as opposed to some act or action associated with a risk-prevalent lifestyle. The Referee concluded that it was more likely that infection resulted from intravenous drug use than the transfusion of blood from the deceased donor who could not be tested.

[12] Having reviewed all of the material presented on the application and the reasons of the Referee, I can detect no error in principle, and no basis upon which it could be said that the Referee failed to appreciate and consider the nature and impact of all relevant evidence.

[13] The application to oppose confirmation of the Referee's decision must be dismissed.

"Mr. Justice Pitfield"