

DECISION

CLAIM NUMBER 1300243

The Claimant submitted a claim under the Transfused HCV Plan as a Primarily Infected Person. His claim was initially approved and a number of payments were made from 2000 to 2002. His claim was subsequently denied when completion of a Traceback Procedure indicated that the Claimant did not receive a Blood Transfusion in the Class Period from a donor who was determined to be HCV antibody positive.

The Claimant received 6 blood transfusions in January 1988 at St. Paul's Hospital in Vancouver. The initial Traceback Procedure indicated that 5 donors were negative and one was inconclusive.

On January 15, 2003, the Administrator received a letter from Canadian Blood Services indicating that a Traceback search had been completed and the 6th donor was HCV negative. The Administrator then denied the claim.

An updated final report shows the HCV status of all donors as negative based on second and third generation testing. One unit was tested in Japan.

The Claimant has requested a review of the denial of his claim. An oral hearing was held on November 21, 2007.

At the hearing, the Claimant submitted that the results of an abdominal ultrasound and liver biopsy done in 1988 after his blood transfusions should be compared with the results of a biopsy done in 2001. The Claimant submits that the progression of his illness based on these documents, suggests that he was infected in 1988. He says his doctors seem to agree that he was infected with HCV as a result of a blood transfusion. He has not provided any reports to that effect from his doctors.

The Claimant is now 57 years old. He was born and grew up in the East Kootenay area and began working at age 14. At age 17, he took a logging course, and then worked in logging camps up and down the coast of B.C. until 1969. He had an accident while working as a logger as a result of which he was flown to hospital and received 4 stitches.

After 1969, he began logging in the Kootenays. In September, 1971, he had a serious car accident in which he broke his neck and spend a month in hospital in Nelson, B.C. He may have been in hospital for more than a month and had a cut as a result of the accident. He was also in traction and had to wear a collar for some months. He was in extreme pain in the initial period after the accident and was on Demerol for a week.

When he was ready to return to work, there was apparently no job available for him in the forest industry and he became a “tramp miner”, working in various underground mines. He did this for about 5-7 years. He stopped working in mines after a friend was killed at work.

He married in 1978 and then worked as a logger in the Kootenays until about 1982. He stopped logging because of knee damage.

His marriage broke up in 1981 or 1982. He began to abuse alcohol and did so for 2 years on and off. He says in this period he “lost everything” including his home. He did not drink while he was working in logging camps as he says he always worked in “dry” camps. His hobbies were hiking and being an amateur prospector. When he was drinking he would drink up to 12 beers a day. He denies the use of any illegal drugs. There were drugs in the logging camps but he did not use them.

He does not really remember what he did between 1984 and 1988. He says he did odd jobs in this period. He had a new partner who worked as a police clerk. They were together for about 5years.

He says his partners did not abuse alcohol or use drugs.

The Claimant has never been incarcerated.

He developed an ASA dependency as a result of ongoing pain from his broken neck, according to some of the medical records. The Claimant says that he took ASA as he needed it and did not have a dependency. He still has neck pain and occasionally still takes ASA.

Every now and then he will drink beer while watching sports on TV but says alcohol is not an issue for him.

The Claimant acknowledged at one point, when trying to recall when he moved to the Lower Mainland, that the past is “fuzzy sometimes”.

He met his current partner in 1995. She tested negative for HCV in 1997. He has not lived with any other women and says he was not promiscuous.

After moving to the lower mainland in the mid-1980s, the Claimant took a computer course through Canada Manpower but could not find work in that field. He worked as a security guard until 1990. He stopped working at that job because he was weak after his 1988 surgery and because of a change in policy at the company involving a supervisor being brought in from Toronto. Thereafter, the Claimant says he “bummed” his way through life, staying with friends and “couch surfing.”

He has had the same general practitioner since 2001. He was able to identify his doctors for the four years prior to that. Between 1971 and 1982 he saw Drs. Cardwill and Stuart in the Kootenays. He says did not have a regular doctor between 1982 and 1997.

No clinical records have been provided from the Nelson Hospital or from any of the Claimant’s physicians. The only medical records provided are copies of the

The Claimant questions the results of the traceback. He suggests that results of testing may be affected by Interferon treatments being taken by the donor. He provided two affidavits from

individuals indicating that Interferon caused their HCV disease to “hide”. He questions the validity of the donor testing done in Japan on one of the donors. He also suggests that traceback results may be invalid if, for example, someone other than the actual donor took the test.

Fund counsel submits that the Claimant has not adduced the necessary evidence to challenge the traceback results. He says that the Claimant has not provided any medical opinion to support his submission that the progression of his liver disease is consistent with infection from blood transfusion in 1988. He also suggests that the Complainant was in the hospital for at least one lengthy period and that he abused alcohol for two years, when he may not always have known what he was doing.

The Claimant provided some additional medical records to fund counsel on July 20, 2007. Those records include an ultrasound of April 27, 1988 which indicated that the liver appeared normal, and the results of a liver biopsy dated May 11, 1988 which showed incomplete cirrhosis with mild chronic hepatitis. It was noted that the changes could be due to past alcohol abuse although there was no evidence of acute alcoholic damage. The report also states “ the biopsy does not have any evidence of infectious causes.”

At the hearing of this matter, the Claimant provided the following additional medical records:

- Vancouver Hospital and Health Sciences Centre Laboratory report dated 21/04/98
- Document from Vancouver General Hospital dated 21/04/98 re protein electrophoresis, with “chronic inflammatory pattern” handwritten on it.
- Vancouver Hospital and Health Sciences Centre Laboratory report dated 21/04/98, re enzymes and proteins
- Vancouver General Hospital Surgical Pathology report dated May 5, 1988
- Emergency record from Vancouver General Hospital dated April 15, 1988
- Vancouver General Hospital Operation report dated May 4, 1988
- Vancouver General Hospital Operation report dated May 2, 1988

He did not adduce any medical evidence to explain the significance of these records, nor did I see anything in them relevant to the issues on this review.

He also provided a letter from his current general practitioner dated November 9, 2007. The letter indicates that the Claimant is a person of good character who has been a patient at the doctor's medical clinic for several years. The doctor confirms that the Claimant is not now and never has been, an intravenous drug user and that he is Hepatitis C positive. The doctor notes that the Claimant had a blood transfusion in 1988 during bowel surgery and that according to records he has seen, was diagnosed at some point with Hepatitis C at some point after the transfusion. It is not clear what records were available to and reviewed by this doctor.

The Claimant has not provided any additional medical information.

The Transfused HCV Plan provides that where all of the donors of blood received by a person claiming to be a Primarily Infected Person are determined not to be HCV antibody positive, the Administrator shall reject the claim.

The leading decision on this point is the decision of the Honourable Mr. Justice Pitfield dated May 9, 2003. In that case, the judge said as follows:

While the primary basis for the determination of eligibility is the traceback process, a Claimant may adduce evidence on appeal in support of the claim that he or she was infected for the first time in the class period notwithstanding a negative traceback result. In my opinion, Article 3.04(2) does not permit a Claimant to conduct his or her own traceback procedure. The Article contemplates that there might be evidence which would establish that the source of the infection, more likely than not or on the balance of probabilities, was a transfusion received in the period. It is not an answer to a Claimant's attempt to provide such evidence to say that some small percentage of the population may be infected by HCV from unknown sources. Were such an assertion an answer, a Claimant could never refute the traceback result because the Claimant could never prove that he or she was not one of the small percentage of the population who might have been so infected.

The evidence the Claimant would be required to adduce on appeal would include, at the least, complete family and personal medical history and detailed evidence of all aspects of the Claimant's lifestyle including evidence of the absence of opportunity to be infected by needles or injections, however and for whatever purpose received. The kinds of

evidence I have described are not intended to be exhaustive. Rather, they are intended to point to the process that must be followed in the attempt to refute the traceback result.

A simple denial by a Claimant of personal history or actions that have been identified as potential non-transfusion sources of HCV infection will not suffice. The reliability of the assertion which is subjective in nature would have to be tested by reference to all known objective evidence. One of the pieces of objective evidence is the negative traceback result following upon the application of and adherence to, the approved traceback protocol. Contradictory objective evidence would have to be very persuasive if the traceback result is to be refuted.

Based on all of the evidence before me, I conclude that the Claimant has not adduced persuasive evidence to refute the negative traceback result. He has not provided the complete medical history contemplated by Mr. Justice Pitfield and at the hearing, demonstrated that his recollection of parts of his past is very vague. Because of his lack of clear recollection, I do not think he has provided the necessary detailed evidence of all aspects of his lifestyle. The Claimant has not, in my opinion, shown “evidence of the absence of opportunity to be infected by needles or injections, however and for whatever purpose received”.

The documents produced by the Claimant relating to his liver biopsy in 1988 and the presence of incomplete cirrhosis and mild chronic hepatitis are, in my opinion, are not in keeping with recent HCV infection from the transfusions in 1988 but suggest an infection in the more distant past, as it usually takes many years for cirrhosis to develop following HCV infection (see, for example, Decisions 120 and 122). In any event, the Claimant did not provide any medical evidence as to the significance of these records in relation to the progression of his disease.

With regard to the submission of the Claimant that the virus could “hide” in cases where someone is being treated with interferon as a possible explanation for the negative traceback, fund counsel submitted that it is not the virus which is tested for in the traceback procedure. Again, the Claimant has not provided any medical evidence on this issue.

Accordingly, the decision of the Administrator is upheld.

Dated at Vancouver, British Columbia, this 8th day of August, 2008

Robin J. Harper
Referee