

**IN A MATTER OF A REFERENCE TO REVIEW THE DECISION OF THE
ADMINISTRATOR UNDER THE HCV 1986-1990 SETTLEMENT AGREEMENT**

Claim No: 1300729

Vincent R.K. Orchard, Q.C., Referee

Decision

Claim ID: 1300729

1. This is an appeal from the Administrator's decision dated March 13, 2008 denying the Claimant compensation for Loss of Income under Section 4.02 of the Transfused HCV Plan (the "Plan"), Schedule "A" to the 1986-90 Hepatitis C Settlement Agreement (the "Agreement"). The Administrator concluded that the Claimant did not meet the requirements of s.4.02(2)(b) of the Plan, a provision which defines the conditions an Approved HCV Infected Person must meet to qualify for compensation for loss of income where, *inter alia*, that person is 18 years of age or more when infected but has yet to enter the workforce on a permanent and full-time basis.
2. The Administrator has accepted the Claimant as an Approved HCV Infected Person within the meaning of the Plan. The Claimant is recognized as an Approved Class Member.
3. Since the sole issue in this Appeal relates to s.4.02 of the Plan and specifically s. 4.02(2)(f), I will set out the pertinent parts of that section:

4.02 – Compensation for Loss of Income

Each Approved HCV Infected Person who normally had Earned Income (as defined below, **except as provided in Section 4.02(2)(f)**) who delivers to the Administrator proof satisfactory to the Administrator that his or her infection with HCV caused loss of income will be paid compensation for past, present and future loss of income.

- ...
- f. Notwithstanding any of the foregoing, an Approved HCV Infected Person who was not working prior to his or her infection with HCV and who was infected either before he or she attains 18 years of age or, **if the person had attained 18 years of age, while the person was in full-time attendance at an accredited education institution in Canada and at a time when the person was yet to enter the workforce or a permanent and full-time basis, will be deemed to have Pre-claim Gross Income for the year which includes the date he or she attains 18 years**

of age and each subsequent year or, if the person had already attained 18 years of age, the year of completion of full-time attendance at an accredited education institution and each subsequent year, in an amount equal to the then most recently available Average Industrial Wage in Canada (such amount will be prorated for the year in which the person attains 18 years of age or, completes full-time attendance at an accredited education institution for the number of days in the year in which the person has attained 18 years of age or, completes full-time attendance at an accredited education institution), or, if such person demonstrates on a balance of probabilities that his or her Earned Income for such year would have been higher than such amount, such higher amount.

[Emphasis Added]

4. At the time of her infection with HCV the Claimant was over 18 years of age and was not in the workforce on a permanent and full-time basis. However, she was in attendance at a college. No one has suggested that the college she attended at the time of her infection was not an accredited institution in Canada. The Administrator denied the Claim for loss of income on the basis that the Claimant, although attending a college at the time of infection, was not in "full-time attendance" at the college. According to correspondence from the Student Records Office of the college, the Claimant was not assigned full-time status because she was not registered in three or more courses at the relevant time.
5. The Claimant has raised a number of arguments suggesting that the Administrator erred in law and in fact in denying the Claim.
6. Before me on this Appeal is additional evidence of the Claimant's attendance at the college which was not before the Administrator. There are affidavits of the Claimant and her then common law spouse which satisfy me that in fact, despite the official status the college may have conferred on the Claimant, she was attending the college on a full-time basis at the material time. That affidavit evidence could have been challenged but it was not. Moreover, there are additional records in the claim file which satisfy me that the Claimant was pursuing a GED Program with a view to possibly becoming a draftperson and she did so from early 1989 until early 1990, a time period which includes the date of transfusion and infection.

7. I also agree with the submissions on behalf of the Claimant that the Administrator has erred by accepting without further consideration of the facts the student status designation of the college. The official status assigned a student by the education institution is only one factor that ought to be considered in determining whether a student is in full-time attendance at an accredited educational institution in Canada under the relevant section. A student may be in full-time attendance, as the facts before me reveal, and yet may be taking only one or two specific courses. The evidence in the claim file satisfies me, on a balance of probabilities, that the Claimant was in full-time attendance at the college in question.

8. Accordingly, the Appeal is allowed and the decision of the Administrator dated March 13, 2008 is set aside. The Claimant is entitled to compensation for loss of income under Section 4.02 of the Plan.

DATED at Vancouver, British Columbia, this 5th day of September, 2008.



Vincent R.K. Orchard, Q.C., Referee