

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***HCV Settlement Agreement Claim #1400016,***
2007 BCSC 498

Date: 20070413
Docket: C965349
Registry: Vancouver

**In the Matter of the HCV 1986-1990
Transfused Settlement Agreement
Re Claim No. 1400016**

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] The Claimant applies by notice of motion to oppose confirmation of a Referee's determination that the Administrator's decision to deny benefits under the 1989-1990 Transfused HCV Settlement Agreement was correct. The Administrator denied benefits on the basis that the Claimant had not established, on the balance of probabilities, that he was first infected with the Hepatitis C virus by means of a blood transfusion rather than intravenous non-prescription drug use.

[2] The single issue for determination on this application is whether or not the Referee's decision was reasonable. This application is not a new hearing.

[3] The Referee summarized his findings in detailed and considered reasons. The issue of concern was whether it was more likely than not that the Claimant was infected with the Hepatitis C antibody by a transfusion of blood rather than intravenous non-prescription drug use.

[4] In his reasons, the Referee determined that the Claimant had received 18 units of blood in the class period following a physical assault upon him. The traceback procedure determined that the donors of 17 units of the blood tested negative for the HCV antibody. The donor of the 18th unit could not be located.

[5] The Referee recited the Claimant's reports of his intravenous non-prescription drug use to medical personnel who had been involved in his care in and around 1998. The Referee determined that the reports made by the Claimant to physicians acting independently of each other were substantially consistent, and indicated self-reported drug use which was more than infrequent.

[6] Notwithstanding the Claimant's efforts to explain and limit his comments to the medical practitioners, it was open to the Referee to prefer the accuracy of the Claimant's statements to the practitioners over the Claimant's present evidence in the absence of any objective corroboration.

[7] In all of the circumstances, I conclude that the Referee reasonably concluded that it was more likely than not that the Claimant's infection arose from periodic intravenous non-prescription drug use rather than the transfusion of a single unit of blood in respect of which a donor could not be located.

[8] In the result, the Claimant's application to oppose confirmation of the Referee's decision is dismissed.

"Mr. Justice Pitfield"