

CLAIM # 1400297

Province of Infection: Ontario
Province of Residence: Ontario

IN THE MATTER OF A REFERENCE
TO REVIEW THE DECISION OF THE ADMINISTRATOR

Before: Tanja Wacyk

Heard: January 11, 2006, at Toronto, Ontario

Appearances: Kenneth E. Snider for the Claimant
Belinda Bain and Carol Miller for the Administrator

Decision

Background:

1. The Claimant is infected with Hepatitis C.
2. The Claimant submitted an application for compensation as a Primarily Infected Person under the Transfused HCV Plan ("the Plan"), as set out under the terms of the 1986-1990 Hepatitis C Settlement Agreement ("the Settlement Agreement").
3. By letter dated June 15, 2004, the Administrator denied his claim on the basis that the Claimant did not provide sufficient evidence to support his claim that he received blood during the period from January 1, 1986 - July 1, 1990 ("the Class Period").
3. The Claimant requested that a Referee review the decision of the Administrator in an in-person hearing.

The Terms of the Settlement Agreement:

4. In order to qualify for compensation under the terms of the Transfused HCV Plan the Claimant must satisfy the criteria set out in that Plan.
5. Article 3.01 of the Transfused HCV Plan provides that a person claiming to be a Primarily-Infected Person must provide the Administrator with, amongst other things, "records demonstrating that the Claimant received a blood transfusion in Canada during the Class Period." The Settlement Agreement establishes the "Class Period" to be "the period from and including 1 January 1986 to and including 1 July 1990."

Evidence:

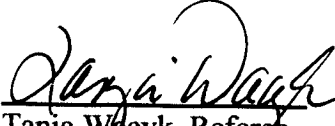
6. The Claimant recounted the events leading up to his hospitalization at the Peterborough Civic Hospital, in September 1989. He testified that he had been stabbed, and an ambulance called to deliver him to the hospital. The applicant maintained that he lost a lot of blood as a result of the stabbing and suggested that this would have required a transfusion. The hospital discharge summary indicated that he lost approximately two cups.
7. The Claimant also referred to a hospital record which indicated that five units of blood were "cross-matched" for him at the time of his admission. However, the document does not indicate that the units were ever transfused.

8. Carol Miller is the Appeal Co-ordinator for the Fund. She is a Registered Nurse with more than 20 years of nursing experience in various hospital settings. Ms. Millar testified that a "cross-match" is a procedure in which Blood is requested and saved in the hospital Blood bank in the event it is needed for a transfusion. Ms. Miller further testified that it is not unusual that blood which is cross-matched is not transfused. Consequently, the fact a crossmatch has occurred is not evidence that a Blood transfusion has occurred.
9. In response to an inquiry on behalf of the Fund, on April 5, 2004, Canadian Blood Services wrote to the Traceback Coordinator at the Administrator, advising that the Peterborough Civic Hospital had searched their records relating to the Claimant from 1980 to 1989, and there is no record of a Blood transfusion within that timeframe.

Analysis:

10. No hospital records demonstrating that the Claimant received a blood transfusion in Canada during the Class Period, as required by the Plan, were produced. Rather, the preponderance of evidence suggests the Claimant did not receive a blood transfusion during his hospitalization.
11. Neither the Administrator, nor I, as a Referee, have discretion to grant compensation to individuals infected with Hepatitis C who cannot show they received a transfusion within the time lines of the Class Period.
12. Accordingly, I find the Administrator correctly determined that the Claimant is not entitled to compensation pursuant to the Hepatitis C 1986-1990 Class Action Settlement, as he has not demonstrated that he received a Blood transfusion during the Class Period.
13. The decision of the Administrator to deny the Claimant compensation pursuant to the Hepatitis C 1986-1990 Class Action Settlement is upheld.

DATED AT TORONTO, THIS 14TH DAY OF JANUARY, 2006.


Tanja Wacyk, Referee