

DECISION

BACKGROUND

1. On March 31, 2004, the Administrator denied the Claimant's request for compensation as a Primarily-Infected Person under the Transfused HCV Plan (the "Plan") on the basis that the Claimant had not provided sufficient evidence that she received a blood transfusion within the Class Period.
2. On May 3, 2004, the Claimant requested that the Administrator's denial of her claim be reviewed by a referee.
3. Fund counsel, on behalf of the Administrator, filed written submissions on April 28, 2005. The Claimant filed responding submissions on April 7, 2006.
4. A summons was served on St. Joseph's Healthcare Centre for production of all medical and blood bank records relating to the Claimant. Additional records were received on July 21, 2006.
4. Several attempts were made to schedule a hearing. After a number of adjournments, I conducted a hearing on June 6, 2007.

EVIDENCE

5. The Claimant is infected with Hepatitis C.
6. On June 19, 2001, the Claimant stated in the Blood Transfusion History Form that she received a blood transfusion at St. Joseph's Hospital when she was hospitalized on January 4, 1989. On February 12, 2004, Canadian Blood Services confirmed that St. Joseph's Hospital had located the Claimant's patient records which disclosed no record of a blood transfusion during the Class Period.

7. Medical records from January 3, 1989 indicate that the Claimant attended the hospital but provide no evidence of a transfusion. There are also no records in either the nursing notes or the anesthetist's notes about a blood transfusion.

8. Carol Miller, the Appeals Coordinator for the Fund, testified at the hearing. She reviewed the Claimant's entire file. Ms. Miller confirmed from the nursing notes, the anesthetist's notes, the recovery room record and the record from the blood bank that no cross-matching of blood occurred and no blood transfusion.

9. The Claimant and her common law spouse both testified that they recall she received a blood transfusion during her stay in hospital in 1989. However, they also testified that the Claimant had hospital admissions after the Class Period, including a very complicated labour and birth.

ANALYSIS

10. The Claimant seeks compensation as a Primarily-Infected Person under the Transfused HCV Plan. The Plan defines "Primarily-Infected Person", in part, as meaning "a person who received a Blood transfusion in Canada during the Class Period ..."

11. The 1986-1990 Hepatitis C Settlement Agreement defines "Class Period" as meaning "the period from and including 1 January 1986 to and including 1 July 1990". "Class Period" is defined identically in the Plan.

12. Section 3.01 (1) (a) of the Plan requires that a person claiming to be a Primarily-Infected Person must deliver to the Administrator an application form together with:

medical, clinical, laboratory, hospital, the Canadian Red Cross Society, Canadian Blood Services or Hema-Quebec records demonstrating that the claimant received a Blood transfusion in Canada during the Class Period.

13. In circumstances where a Claimant cannot provide the required proof for compensation under Section 3.01(1) (a), Section 3.01(2) of the Plan states:

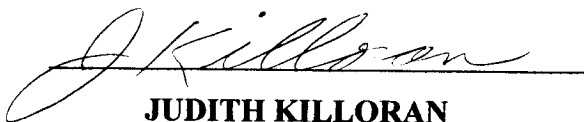
Notwithstanding the provisions of Section 3.01(1) (a), if a claimant cannot comply with the provisions of Section 3.01(1)(a), the claimant must deliver to the Administrator corroborating evidence independent of the personal recollection of the claimant or any person who is a Family Member of the claimant establishing on a balance of probabilities that he or she received a Blood transfusion in Canada during the Class Period.

14. I find that the Claimant did not provide the proof required by Section 3.01 to establish on a balance of probabilities that she was infected as a result of a blood transfusion during the Class Period. She did not provide the medical or hospital records demonstrating that she received a Blood transfusion in Canada during the Class Period. As well, the Claimant did not provide corroborating evidence independent of her personal recollection and that of a Family Member. The blood bank record states that there is a record for the Claimant beginning as of August 1990. Fund counsel submitted that it is possible that the recollection of a blood transfusion shared by the Claimant and her common law spouse may be traceable to a later blood transfusion outside the Class Period for the Plan.

15. The Administrator under the Settlement Agreement is required to administer the Plan in accordance with its terms. Unfortunately, the Claimant has not provided the evidence required by the Plan to prove that she received a Blood transfusion during the Class Period. The Administrator does not have authority to vary the terms of the Plan nor does an arbitrator or a referee when asked to review the Administrator's decision.

CONCLUSION

16. I uphold the Administrator's denial of the Claimant's request for compensation.


JUDITH KILLORAN

Referee

July 8, 2007

DATE