

DECISION

1. The Claimant, an Ontario resident, has submitted an application for compensation as a primarily infected person under the HCV Transfused Plan.

2. By letter dated June 20, 2002 the Administrator denied the claim on the basis that the Claimant did not provide sufficient evidence that she received blood during the Class Period. The Claimant requested that a Referee review the decision of the Administrator.

Facts

4. In her application for compensation, the Claimant submitted a blood transfusion history in which she stated that she had received blood transfusions on three occasions. In each instance she claimed to have been transfused during hernia surgery at Central Hospital, Sherbourne Street, Toronto. The Claimant did not provide the date of her surgeries or the accompanying hospital records .

5. There was evidence that refuted the Claimant's position that she obtained a blood transfusion between January 1, 1986 and July 1, 1990. In the Treating Physician Form, the Claimant's physician responded negatively when asked whether the Claimant had received a blood transfusion in the Class period.

6. As well, the Administrator had requested that the Canadian Blood Services determine whether they could locate any records of transfusion at the hospitals identified by the Claimant. The Canadian Blood Services made enquiries at the relevant hospitals and in neither case were they able to locate any records of transfusion for the Claimant. The Administrator subsequently denied the Claimant's request for compensation.

7. On this Reference, the Claimant has submitted that, despite her best efforts, she has been unable to obtain any medical documentation to support her claim. A number of teleconference calls were convened to discuss possible means of obtaining the required evidence of transfusion. The Claimant's representative contacted a number of sources in an effort to gather supporting documentation:
 - a. The Claimant's former employer, a health care provider: No medical records were obtained;
 - b. The College of Physicians: The surgeon who performed the Claimant's surgeries is deceased, however, the College was unable to provide a copy of the Claimant's medical files;
 - c. The Claimant had also contacted the hospital where her surgeries were performed¹. In her Request for Review, the Claimant stated that the hospital is closed, that her records have disappeared and that no one at the hospital "knows whether she received a transfusion".

¹ Although the hospital was identified as the Central Hospital, that hospital resulted from the merger of St. Michael's Hospital and Wellesley Central Hospital, and is now known as the Wellesley Central Site.

8. By letter dated October 30, 2003, the Claimant's representative advised that the Claimant wished me to proceed to review the decision of the Administrator on the basis of the written materials previously submitted to me. The Claimant acknowledged that "through no fault of her own" she has been "unable to obtain any of her medical records".

9. Upon receiving this correspondence I allowed the parties time to submit final written submissions. Fund Counsel filed submissions on November 6, 2003. The Claimant's representative did not provide any further submissions nor was any further evidence provided to me that was not originally considered by the Administrator.

Analysis

10. The Claimant has applied for compensation under the terms of the Hepatitis C 1986-1990 Class Action Settlement, as approved by Court Order dated October 22, 1999. The terms of the settlement provide a detailed outline of who is eligible for compensation, and how eligibility can be proven:

**ARTICLE THREE
REQUIRED PROOF FOR COMPENSATION**

3.01 Claim by Primarily-Infected Person

- (1) A person claiming to be a Primarily Infected Person must deliver to the Administrator an application form prescribed by the Administrator together with:
 - a. medical, clinical, laboratory, hospital, The Canadian Red Cross Society, or Canadian Blood Services or Hema Quebec

records demonstrating that the claimant received a Blood transfusion in Canada during the Class Period;

...

(2) 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.

11. In order to qualify as an eligible class member, the Claimant must demonstrate that she received a blood transfusion in Canada in the period January 1, 1986 to July 1, 1990. She can do this by producing one of the approved documents listed in the settlement, such as a medical or laboratory record. Or, if the designated records are not available, she can prove her entitlement by supplying independent evidence to support her claim.
12. In this case the Claimant was afforded every opportunity to gather the required evidence, to appear at an oral hearing or to make further written submissions in aid of her claim for compensation. Regrettably for her, the Claimant has not been able to supply any evidence to support her claim that she was transfused between January 1, 1986 and July 1, 1990. The Claimant could not provide any medical records that she received blood in the class period. Nor did a search by the Canadian Blood Services locate any records of transfusion at the hospitals identified by the Claimant.
13. A careful review of the Claimant's submissions lead me to conclude that the Claimant herself does not know whether she was transfused during her hernia

surgeries. Her claim for compensation appears to be based not on positive information of transfusion but on the absence of an alternative explanation for her diagnosis of Hepatitis C. I cannot, however, rely on speculation alone to conclude that she was transfused.

14. Based on the evidence and submissions provided on this Reference, I find that the Claimant has not demonstrated that she received blood in the Class Period and she is therefore not eligible for compensation under the terms of the class action settlement. I recommend that the decision of the Administrator be upheld.

Dated December 29, 2003



Reva Devins, Referee

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Gowling Lafleur Henderson LLP | Barristers & Solicitors | Patent & Trade Mark Agents



Suite 4900
Commerce Court West
Toronto, Ontario
Canada
M5L 1J3
Telephone (416) 862-7525
Facsimile (416) 369-7250
www.gowlings.com

Incorporating the practice of SMITH LYONS

Facsimile

John E. Callaghan
Direct (416) 369-6693
Assistant (416) 369-6692
John.Callaghan@gowlings.com

TO: C. Miller
cc: R. Dagenais
J. Lynch

Firm	Hepatitis C Claims Centre	City/Country	Ottawa
Fax	1-613-569-1763	Date	January 5, 2004
Re	Claimant: 1402592		
Total Pages Sent (including cover memorandum)	8	Copy Trak #	8052

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Message: Copy of Decision received today