

REFEREE'S DECISION  
HEPATITIS C CLASS ACTION  
JANUARY 1, 1986 – JULY 1, 1990

Claimant:	Claimant #14162
File No.:	416611 – 28
Province of Infection:	Alberta
Province of Residence:	Alberta
Date:	January 30, 2007

## Decision

1. On June 29, 2006 the Administrator denied the claim for compensation as a Primarily-Infected Person pursuant to the Transfused HVC Plan, on the basis that the Claimant had not provided sufficient evidence that she had received a transfusion of blood within the Class Period.
2. The Claimant requested an in-person hearing by a Referee to review the decision of the Administrator.
3. The hearing took place in Calgary, Alberta on December 4, 2006 but was adjourned for delivery of further hospital records from the Calgary Health Region, which arrived later that day.
4. The hospital records from Calgary related to treatment after 1990.
5. Neither party disputed the following facts:
  - (a) The Claimant was diagnosed with Hepatitis C in February of 2000;
  - (b) The records from the Royal Inland Hospital in British Columbia date back to the Claimant's birth;
  - (c) The parties reviewed all of the hospital records produced from the Royal Inland Hospital; and
  - (d) None of the hospital records revealed any blood transfusion either within the Class Period or otherwise.
6. The Claimant testified that she was one of eighteen children and had herself lived in foster homes through her childhood.
7. The hospital records confirm that the Claimant was one of at least nine children at the time of her birth and reveal an extremely difficult life history including numerous references to physical and sexual abuse, relationship problems, anxiety, depression, psychiatric problems and substance abuse.
8. The records specifically reference drug abuse, including addictions to opiates, narcotics and alcohol.
9. The Claimant testified that she underwent surgical procedures for removal of an ovarian cyst, sterilization, hysterectomy and breast reduction.
10. The Claimant testified that in respect of the first procedure, she had received two transfusions from the Royal Inland Hospital in 1983, and in the last procedure six transfusions at the Holy Cross Hospital in 1991.

11. The Claimant referenced two surgical procedures in April and December 1989, the latter of which resulted in three transfusions in the Royal Inland Hospital (the "1989 procedures").
12. The Claimant claimed she underwent both 1989 procedures involuntarily, and that she was heavily sedated on each occasion.
13. The hospital records contained only one document that could relate to the subject appeal. This document referenced a blood bank cross match dated December 3, 1989, which is indicative of the fact that blood was taken from her in the event that a transfusion might be required. However, the records disclose that the only fluid she received at the time of the procedure was a mixture of Dextrose and water.
14. I questioned her on each reference in the hospital records to drug abuse, particularly where she would be expected to be the source of such information.
15. The Claimant adamantly denied drug addiction or use of needles in each instance, although later in her testimony she reluctantly admitted that there might have been some instances in her childhood, when drugs were forced upon her by other cohabitants of her various foster homes.
16. The Claimant admitted in testimony as was reported in the records that she has two tattoos. She believed she received one in Vancouver and one in Ontario from certain "tattoo specialists" but could not recall the dates or the places of such procedures.
17. The records also reveal that she had undergone dialysis, however, her testimony was that she underwent that process at a date after the Class Period.
18. I reviewed with her the statement on the Tran 2 by her physician, Dr. Hergett, that indicated she underwent a transfusion in the Class Period.
19. The Administrator made a follow-up inquiry to Dr. Hergett for particulars of that transfusion and he responded in writing that he had heard from the Claimant that she had a needle incident in a Calgary hospital. However Dr. Hergett had no record himself of any transfusion.
20. Fund counsel noted that a trace back was requested from Canadian Blood Services but the results were that no traceback was conducted because the records did not reveal that any transfusion was given to the Claimant at Royal Inland Hospital.
21. The Claimant presented no supporting testimony from any other person or physician to substantiate her claim that she received a transfusion in the Royal Inland Hospital in Class Period.

22. The Claimant displayed no symptoms of any major psychiatric problems at the time of the hearing, and despite the very trying and stressful life circumstances over long periods of her life, with the assistance of her friend, answered all my questions coherently and appropriately.
23. Given the severity of the physical, sexual and likely emotional abuse this Claimant undoubtedly suffered in her life, it would not be surprising that one of the consequences of her suffering would be a difficulty in memory recall for many periods of her life particularly when hospitalized for psychiatric problems.
24. However, the medical records from the date of her birth appear to me to be not only corroborative of her tragic life circumstances but also of the likelihood that during some of those most challenging periods in her life, she ingested drugs through injections even in circumstances where she may have not made such a choice had she had appropriate support mechanisms at the time.
25. Article 3.01 of the Plan requires that a person claiming to be a Primarily- Infected Person must deliver to the Administrator an application form together with, among other things, medical “records demonstrating that the Claimant received a blood transfusion in Canada during the Class Period”.
26. Section 3.01(2) of the Plan provides as follows:

“Notwithstanding the provisions of Section 3.01(a), if the Claimant cannot comply with 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.”
27. The Claimant has been unable to marshal any evidence independent of her personal recollection to establish on the balance of probabilities that she received a blood transfusion in Canada during the Class Period.
28. In addition, she presented with a number of risk factors including tattoos, use and likely overuse of drugs at an early age and overuse of alcohol. Moreover, she has had severe medical problems that have compromised her ability to recall many details in her life history.
29. Accordingly, on her own evidence, I consider it more probable that she sustained Hepatitis C from some source other than a blood transfusion in the Class Period or otherwise.
30. Because I could not accept her testimony that she did undergo transfusions in the Class Period and because the Claimant delivered no corroborating evidence to the Administrator as required by Section 3.01(2) of the Plan that she had received a

blood transfusion in Canada during the Class Period; I must uphold the Administrator's decision to deny the Claimant's request for compensation as a Primarily-Infected Person under the Plan.

Dated January 30, 2007.

A handwritten signature in black ink, appearing to read 'Shelley L. Miller', written over a horizontal line.

**Shelley L. Miller, Q.C. Referee**

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