

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***HCV Settlement Agreement Claim #14162,***
2007 BCSC 1787

Date: 20071212
Docket: C965349
Registry: Vancouver

**In the Matter of the HCV 1986-1990
Transfused Settlement Agreement
Re Claim No. 14162**

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] On January 30, 2007, a Referee issued reasons dismissing the Claimant's appeal from the Administrator's decision to deny her benefits under the 1986-1990 Hepatitis C Transfused Settlement Agreement.

[2] The Claimant now applies to oppose confirmation of the Referee's decision. As contemplated by the Settlement Agreement, Fund Counsel has submitted all of the documentation that was before the Referee to the court for its review, and has made written submissions setting forth the reasons for which the Claimant's application to oppose confirmation should be dismissed. No submissions or additional evidence have been submitted by the Claimant.

[3] I have reviewed the documents before the Referee and her reasons for decision. I conclude the decision was reasonable and it must be confirmed.

[4] The Claimant's history and the facts pertaining to her claim are fully set forth in the Referee's decision. I do not propose to recite them in detail.

[5] The Claimant believes she was infected with the Hepatitis C antibody by a blood transfusion which she received during a hysterectomy procedure performed in 1989 at Royal Inland Hospital, Kamloops, British Columbia. The hospital records indicate that in anticipation of the procedure, the Claimant's blood was cross-matched so that blood would be readily available for transfusion should the need arise in the course of the procedure. The hospital records detailing the procedure indicate that no blood was transfused. The surgeon's report on the procedure refers to the fact that blood loss was moderate but not excessive. The report contains no reference to the need for, or fact of, a blood transfusion.

[6] It may be that the Claimant, who was anaesthetized for the procedure, mistakenly believed that post-operative fluids administered intravenously were, in fact, blood products. The fluids with which the Claimant was provided post-operatively are described in the hospital records. None of the products was blood.

[7] The Referee was required to assess the claim with due regard for the provisions of the Settlement Agreement by which Claimants, the Administrator, Referees and the Court are bound. No one is empowered to depart from its terms.

[8] Section 3.01(a) of the Settlement Agreement requires a person claiming to be a primarily infected person to provide records from a hospital, the Canadian Red Cross Society, or Canadian Blood Services, demonstrating that the Claimant received a blood transfusion in Canada during the Class Period, in this case, during the procedure in 1989. The Claimant did not assert that any other transfusion in the period 1986 to 1990 was the source of her infection.

[9] Section 3.01(2) of the Settlement Agreement provides as follows:

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.

[10] The Claimant was the only person to testify on her behalf in proceedings before the Referee. No other person testified with a view to corroborating her claim that she received a blood transfusion. The only evidence before the Referee

independent of the Claimant's recollection was the hospital documentation indicating that no transfusion was received.

[11] In these circumstances, the Referee concluded that the Claimant's infection was attributable to factors other than a blood transfusion. Difficult as the Claimant's personal circumstances may be, the Referee's decision is reasonable and entirely supportable by the evidence. There is no basis upon which to interfere with the result.

[12] The Claimant's application to oppose confirmation of the Referee's decision must be dismissed.

"Mr. Justice Pitfield"