

DECISION

In May 2004, the Claimant completed a claim form, pursuant to the Transfused HCV Plan. Even if the original claim for compensation contained several errors suggesting that the Claimant was at the same time a Primarily-Infected Person and a Secondarily-Infected Person, this question was clarified and the Claimant is really submitting his claim as a Primarily-Infected Person.

The claim was rejected by letter dated January 10, 2005. The Administrator responsible for the 1986-1990 Hepatitis C Class Action Settlement justified his rejection on the basis that the Claimant had not provided sufficient evidence that he had received blood during the Class Action Period (1986-1990).

The Claimant is appealing this decision and I have been asked to review it in my capacity as Referee.

A hearing was scheduled to take place in our Montreal office on June 16, 2005, but the Claimant, alleging financial and health problems, indicated that it was impossible for him to come to Montreal. The hearing finally took place in Quebec City, on June 27, 2005 and I thank the Fund Counsel for having accepted to travel for this hearing.

The Claimant, now 43 years old, had a serious road accident in 1980 and the records show that he then received 3 transfusions of blood products. The record also indicates, and this is not disputed by the Fund side, that the Claimant is indeed HCV infected.

The Claimant explained in detail his 1980 accident and the extent of his injuries and even stated at the hearing “ that he surely contracted Hepatitis C following the 1980 transfusions“. He recognized without hesitation that he never had any blood

transfusions other than those received in 1980. The Claimant said that he personally consulted his file at the local hospital and confirmed that he did not find any transfusion records for the 1986-1990 period.

This Claimant has otherwise presented a claim under the provincial assistance plan and received financial aid from one or the other of the transfusions received in 1980.

I am satisfied that the Claimant did not try to mislead the Administrator nor the undersigned, but he submitted his original claim and Request For Review in the context where he had difficulty in distinguishing between the provincial program and the current agreement concerning the 1986-1990 Class Actions, and specifically in the context of media coverage suggesting that the authorities were looking at the possibility of extending the federal compensation plan to people infected before January 1, 1986.

Having heard the Claimant and examined all his submissions, I must uphold the Administrator's decision to reject all claims for compensation under the 1986-1990 Transfused HCV Plan. During the hearing, mention was made of several significant risk factors relevant to the Claimant's case, but I do not need to discuss this here, as there weren't any transfusions during the period covered by the current claim and the Claimant has therefore not met the basic condition to be eligible to any compensation under this program.

The Administrator does not have the power to approve compensation to a HCV Infected Person, if such a person is unable to demonstrate that he received a transfusion during the Class Action Period. The Claimant did not demonstrate that he had received a transfusion during the 1986-1990 period. Therefore his claim is bound to fail.

In my capacity as referee, and like the Administrator, I am unable to ignore the wording of the agreement and compensate a person who does not meet the Settlement Agreement's criteria. Perhaps one day, the Settlement Agreement will be modified and

extended to cover victims prior to 1986, but such is not the criterion that must currently guide me.

The Agreement does not apply in this case and I therefore uphold the Administrator's decision to refuse to compensate the Claimant in the context of the 1986-1990 HCV Transfused Plan.

Montreal, July 8, 2005

Jacques Nols
Referee