DECISION

Claim ID: 15307

1. On February 23, 2005, the Administrator denied the claim for compensation of the Claimant filed on the basis of qualifying as a Family Member of a deceased HCV Primarily Infected Person under the transfused HCV Plan. The claim was denied on the grounds that the Claimant did not qualify under the definition of Family Member in accordance with Section 3.07 of the Plan.

2. The Claimant requested that the Administrator's denial of her claim be reviewed by an Arbitrator.

3. Following a pre-hearing telephone conference call and an exchange of correspondence, the Claimant submitted documentation in support of her claim, which has been reviewed and considered in connection with these proceedings. The Claimant was given a full opportunity to provide additional information and to make her submissions and representations.

4. The relevant facts are not in dispute and can be summarized as follows:

   (a) The Claimant's brother-in-law passed away May 6, 2003. At the time of death, he was a Primarily Infected Person. There is no question or issue that HCV contributed to his passing.

   (b) The Claimant's husband passed away September 22, 2004. No claim as a Family Member had been made by him concerning his brother's death, as at the time of his own death.

   (c) On November 24, 2004 a claim was submitted by the Claimant, seeking compensation for a Family Member on behalf of her husband's Estate.

   (d) The Administrator determined that while the Claimant's husband fell within the definition of Family Member as defined in Section 3.07 of the Settlement Agreement and could have made a proper claim had he filed before he passed away, the Estate of a Family Member does not fall within the required definition and thus denied the claim.

5. The Claimant, on behalf of her husband's Estate, has provided information to the effect that there was confusion and miscommunication between relatives of her husband as to who would assist him in making a claim on his own behalf.

administer the Plan in accordance with its terms and he does not have the authority to alter or ignore the terms of the Plan. An Arbitrator, called upon to review a decision of the Administrator is also bound by the terms of the Plan and can not amend it or act contrary to its terms.

10. I acknowledge the personal feelings and frustrations of the Claimant in having her claim rejected. It is understandable that she feels as she does regarding the circumstances. Unfortunately, while that is an unsatisfactory result for her, neither the Administrator nor an Arbitrator appointed under the Plan has the authority or discretion to Award her claim.

11. Accordingly, for the reasons set out above, I find that the Administrator has properly determined that the Claimant was not entitled to file a claim for compensation under the Plan. I therefore find that the Administrator's decision must be sustained.

Dated at Vancouver, British Columbia, this 10th day of February 2006.

John P. Sanderson, Q.C.
Arbitrator

Unfortunately, he passed away before making any such claim. She submits that since he intended to make a claim and would have done so if he had been given the correct information, the claim should succeed because she is simply carrying out his intentions on behalf of his Estate.

6. Unfortunately for the Claimant, I am obliged to find the claim cannot succeed. Section 3.07 of the Agreement reads in part as follows:

> *3.07 A person claiming to be a Family Member referred to in clause (a) of the definition of Family Member in Section 1.01 of a deceased HCV Infected Person must deliver to the Administrator, within two (2) years after the death of such HCV infected person or within two (2) years after the Approval Date or within one (1) year of the claimant attaining his or her age of majority, whichever is the last to occur, an application for prescribed by the Administrator...*

Clause (a) of the definition of Family Member in Section 1.01 reads as follows:

> *"Family Member" means:*
> *(a) The Spouse, Child, Grandchild, Parent, Grandparent or Sibling of a HCV Infected Person;*

It is clear that the Claimant's husband met the definition of a "sibling". However, in this case it is not the sibling who is applying; it is the Estate of the sibling who is the Claimant. Section 3.07 requires that the application must be filed by the Family Member, and the prescribed form must be completed by the Family Member within the specified time limits. While the time limits were met, the other required conditions were not.

7. While I consider the circumstances to be unfortunate, I do not have any discretion to ignore the terms of the Settlement Agreement.

8. Based on these facts, it is clear the Administrator's decision to deny the claim must be sustained.

9. It is the role and responsibility of the Administrator, under the settlement agreement, to administer the Plan in accordance with its terms. The Administrator has an obligation under the Plan to review each claim to determine whether the required proof for compensation exists. The words of Article 3.07 of the Plan are clear and unambiguous that the Administrator has no alternative but to reject the claim in circumstances such as these. The Administrator has no discretion to allow a claim where the required proof that the Claimant herself is a Family Member, as defined, has not been produced. The Administrator must