

## **DECISION**

### **BACKGROUND**

1. On November 3, 2005, the Administrator denied the Claimant's request for compensation as a Primarily-Infected Person under the Transfused HCV Plan on the basis that the Claimant had not provided sufficient evidence that she received a Blood transfusion during the Class Period (January 1, 1986 to July 1, 1990).
2. On August 18, 2006, the Claimant requested that the Administrator's denial of her claim be reviewed by an arbitrator.
3. On October 23, 2006, both parties agreed to have this review conducted by a referee by way of written hearing.
4. The Claimant did not file written submissions. I have reviewed all the material in her claim file from The 1986-1990 Hepatitis C Claims Centre.
5. Fund counsel, on behalf of the Administrator, filed written submissions on November 13, 2006. The written hearing concluded on December 5, 2006 when representatives for both parties confirmed that they had no further submissions to file with me.

### **Facts**

6. The Claimant is infected with Hepatitis C.
7. In her application for compensation dated April 18, 2005, the Claimant indicated that she believed she had received a Blood transfusion twice in her lifetime between 1982-1990. She stated she did not know how many transfusions she received prior to 1986 or during the Class Period.

8. The physician who signed the Treating Physician Form on April 8, 2001 stated that the Claimant had a history of Blood transfusion both prior to and after the Class Period.

9. In a gastrointestinal office consultation note dated February 19, 2001, Dr. Scully refers to the fact that the Claimant "had apparently a blood transfusion but she is not quite sure when."

10. Canadian Blood Services conducted a traceback. As Ottawa Civic Hospital and the Queensway-Carleton Hospital were identified by the Claimant as hospitals where she received blood transfusions, both hospitals were contacted.

11. The final updated traceback dated September 14, 2005 reports that although the Claimant was cross-matched for two units of red cell concentrate, there were no records at either hospital to confirm that these products were transfused. Also, the cross-matches occurred on September 29, 1982, prior to the Class Period.

12. The Hospital Record Confirmation Forms from Ottawa Civic Hospital and the Queensway-Carleton Hospital confirm the availability of medical records for the Claimant but the absence of any record of blood transfusion.

## **ANALYSIS**

13. The Claimant seeks compensation as a Primarily-Infected Person under the Transfused HCV Plan. The Transfused HCV Plan defines "Primarily-Infected Person", in part, as meaning "a person who received a Blood transfusion in Canada during the Class Period ...".

14. The 1986-1990 Hepatitis C Settlement Agreement defines "Class Period" as meaning "the period from and including 1 January 1986 to and including 1 July 1990." "Class Period" is defined identically in the Transfused HCV Plan.

15. Article 3.01 of the Transfused HCV Plan requires that 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." Article 3.03 itemizes the additional proof that may be requested by the Administrator.


16. The Claimant has not submitted any medical evidence that supports her claim that she received a blood transfusion during the Class Period.

17. While I sympathize with the Claimant's situation that she remains infected with Hepatitis C and suffers from the consequences, I am bound by the terms of the 1986-1990 Hepatitis C Settlement Agreement. The terms of the Settlement Agreement are restricted to those claimants who were infected with Hepatitis C as a result of a blood transfusion between January 1, 1986 and July 1, 1990. I have received no evidence that the Claimant received a blood transfusion during the Class Period. Therefore, she does not qualify for compensation under the terms of the Settlement Agreement.

18. The Administrator under the Settlement Agreement is required to administer the Transfused HCV Plan in accordance with its terms. The Plan sets out the requirements for compensation which is limited to a defined class of individuals. Unfortunately, the Claimant does not qualify for compensation as she did not provide any evidence that she received a blood transfusion during the Class Period. The Administrator does not have authority to vary the terms of the Plan. An arbitrator or a referee also cannot vary the terms of the Plan when asked to review the Administrator's decision.

## CONCLUSION

19. I uphold the Administrator's denial of the Claimant's request for compensation.

  
Judith Killoran  
Referee

January 21, 2007