

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

Claimant:	<b>15726</b>
File No.:	416611-23
Province of Infection:	Alberta
Province of Residence:	Alberta

## **DECISION**

1. On September 19, 2005, the Administrator denied the claim for compensation under the Transfused HCV Plan as a Family Member of the HCV Infected Person who died prior to January 1, 1999 on the basis that the Claimant had not provided sufficient evidence that the death of the HCV Infected Person was caused by his infection with HCV.
2. The Claimant requested an oral hearing by a Referee to review the decision of the Administrator.
3. The hearing was held on November 28, 2005 at Edmonton, Alberta.
4. Neither party disputed the following facts:
  - (a) The HCV Infected Person was born on March 6, 1928.
  - (b) The HCV Infected Person was diagnosed with anemia prior to the transfusions in question.
  - (c) The HCV Infected Person resided in Edmonton, Alberta, and received two units of transfused blood on May 9, 1989 at the Grey Nuns Hospital in Edmonton, Alberta.
  - (d) An attending physician's medical certificate of death certified the date of death of the HCV Infected Person as December 18, 1992.
  - (e) The aforesaid medical certificate of death stated that "the causes of death were pulmonary metastasis (2 months) and bladder cancer (3-4 years)."
  - (f) A Tran2 form signed by Dr. Bain dated June 17, 2005 contained the following question and answer:

"31. If the HCV Infected Person has died, did his...infection with the Hepatitis C virus materially contribute to his...death?"

No. Not to my knowledge. I've not seen him for 13 years."
5. The Claimant contended that the Hepatitis C materially contributed to her spouse's death.
6. The Claimant contended that while he had been diagnosed with bladder cancer in the late 1980s or earlier 1990s, he likely would have beaten the cancer had he not been weakened by the infection from the Hepatitis C virus.
7. The Claimant contended that her spouse was infected in May of 1989 with the Hepatitis C virus although it was not diagnosed until August of 1992.
8. The Claimant contended that until the Hepatitis C infection, the cancer treatment was producing effective results.

9. The Claimant contended that it was not until July and August of 1992 that her spouse began to display jaundice and weakness.

10. The Claimant contended that the oncologist, Dr. Venner, referred her spouse to Palliative Care in about October of 1992 on the basis that he could do no more for him.

11. The Claimant testified that her spouse was seen for only one visit at Palliative Care, and underwent no treatment or testing.

12. The Claimant contended that she and her son, who had been a registered nurse sixteen or seventeen years previously, were the sole caregivers of her spouse from October to December 17, 1992.

13. The Claimant contended that she and her son observed her spouse deceased to display symptoms of jaundice during that interval and both believe it was the Hepatitis C that prevented her spouse's recovery from cancer.

14. In support of her contention, the Claimant referred to a letter dated 20 August 1992 from Dr. Bain to Dr. Peter Venner which stated, *inter alia*, as follows:

“We had initially seen Mr. \_\_\_\_ with acute hepatitis in early August. The lab investigations that we have done have shown hepatitis C positivity...His symptoms seem to be resolving with some improved sense of well being and a slight increase in his energy level and decreased level of jaundice. ...He has a 50% change of clearing the hepatitis on his own, and if he does not clear the hepatitis, chances are the enzymes will bounce up and down, but we will simply monitor these.”

15. In further support of her contention, the Claimant referred to a report by Dr. Venner dated August 12, 2005 that was specifically prepared at her request to support her claim for compensation. His report states, *inter alia*, as follows:

*My last note on Mr. \_\_\_\_ is October 28, 1992. .... My last note indicates that he had a recurrence of his bladder cancer and this is obviously making him unwell. The last information I had from Dr. Bain which suggested his Hepatitis C was under control (letter dated October 21, 1992).*

*Although his Hepatitis C appeared to be inactive in October, I am not aware of what happened between October and December with regard to the Hepatitis C.*

*Therefore in summary, it would not appear that Hepatitis C contributed to his bladder cancer which I would suspect was the most likely cause of his death. You may be able to find further information from the caregivers who were looking after Mr. \_\_\_\_ at the time of his death.*

16. Fund Counsel in its written submission indicated, *inter alia*, that

- The 1986-1990 Hepatitis C Settlement Agreement, Transfused Plan (the “Plan”) sets out what a claimant must demonstrate in order to be entitled to compensation.

- Section 3.05(1) A person claiming to be the HCV Personal Representative of a HCV Infected Person who has died must deliver to the Administrator, within three years after the death of such HCV Infected Person...an application form prescribed by the Administrator together with:

(a) Proof that the death of the HCV Infected Person was caused by his or her infection with HCV;

17. The Claimant admitted that she had no medical evidence to submit in support of Section 3.05 above.

18. The Claimant gave her evidence in a candid fashion and I found no reason to disbelieve any of her testimony.

19. I had great sympathy with the Claimant's circumstances and her honestly held beliefs and observations.

20. However, upon a review of all the documentation mentioned above and upon consideration of all the Claimant's oral evidence at the hearing, I could find no probative evidence to show on a balance of probabilities or otherwise, that the cause of death was due to Hepatitis C.

21. I conclude the medical evidence contained in the death certificate, the Tran2 and letters from Dr. Bain and Dr. Venner supports the position of Fund Counsel.

22. Accordingly, I uphold the Administrator's denial of the Claimant's request for compensation.

Dated at Edmonton, Alberta, this 15 day of December, 2005

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