

DECISION

BACKGROUND

1. On February 28, 2007, the Administrator denied the Claimant's request for compensation as a Primarily-Infected Person under the Transfused HCV Plan (the "Plan") on the basis that the Claimant had not provided sufficient evidence that he received a blood transfusion during the Class Period.
2. On March 14, 2007, the Claimant requested that the Administrator's denial of his claim be reviewed by a referee.
3. A number of hearing dates were scheduled and subsequently adjourned.
4. The Claimant retained counsel and an in-person hearing date was set for May 11, 2010.

EVIDENCE

5. On May 11, 2010, an in-person hearing was conducted before me. The Claimant testified that he was admitted to St. Michael's Hospital on February 11, 1987 for removal of a thyroglossal duct cyst. When he woke from surgery, he had difficulty breathing due to a large hematoma on his neck wound. The incision was opened resulting in some relief and a large amount of bleeding. The Claimant was taken for a second surgery and woke in the Intensive Care Unit to find that he was receiving a blood transfusion intravenously. He described the bag of blood which he said was hanging on a pole.
6. On cross-examination, the Claimant testified that he was dating a woman at the time of his surgery. They lived together for a short time when he was healing after surgery. He testified that his girlfriend visited him in hospital after his first and second surgeries and witnessed his blood transfusion.

7. The Claimant's former girlfriend testified that she accompanied the Claimant when he went for surgery at St. Michael's Hospital. She confirmed that she witnessed a bag of blood being transfused intravenously to the Claimant after the emergency surgery following the initial surgery. She also remembered the Claimant and his parents explaining to her while he was in hospital what the doctor had explained to them about the reason for the blood transfusion.

8. Carol Miller, the Appeal Coordinator for the 1986-1990 Hepatitis C Claims Centre, testified about the Claimant's hospital records and the traceback procedure. The surgical records disclosed no evidence of a blood transfusion. Ms. Miller also reviewed the traceback notice and response received from Canadian Blood Services on February 13, 2007. The hospital response stated that the patient records were available with no record of transfusion found.

9. Claimant's counsel submitted that based on the testimony of the two witnesses about the circumstances surrounding the blood transfusion and the subsequent need to move the Claimant between floors for the second surgery, which would have involved significant blood loss, the Claimant established on the balance of probabilities that he had received a blood transfusion during the Class Period.

10. Fund counsel submitted that the surgery reports were detailed and mentioned no blood transfusion. Also, there is no record of a blood transfusion in the blood bank records. She highlighted inconsistencies in the witnesses' testimony, the cauterization during surgery which required a dry surface, and the potential for other sources of infection for the Claimant.

ANALYSIS

11. Under Section 3.01 (1) (a) of the Plan, a person claiming to be a Primarily-Infected Person must deliver: "medical, clinical, laboratory, hospital, the Canadian Red Cross Society, Canadian Blood Services or Hema-Quebec records demonstrating that the claimant received a Blood transfusion in Canada during the Class Period." The Claimant in the case before me has not provided such records.

12. However, Section 3.01 (2) of the Plan states:

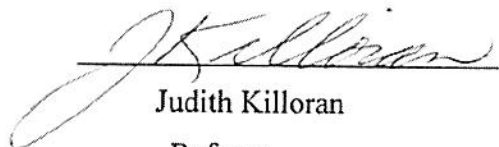
Notwithstanding the provisions of Section 3.01(1)(a), if a claimant cannot comply with the provisions of Section 3.01(1)(a), the claimant must deliver to the Administrator corroborating evidence independent of the personal recollection of the claimant or any person who is a Family Member of the claimant establishing on a balance of probabilities that he or she received a Blood transfusion in Canada during the Class Period.

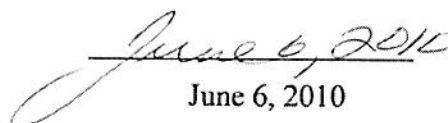
13. It is not disputed that the Claimant is infected with Hepatitis C. Although the Claimant may have other risk factors, I accept the evidence of the two witnesses and find, on a balance of probabilities, they were not the source of infection. I find that the Claimant's testimony and that of his former girlfriend about a blood transfusion in 1987 was persuasive. To the extent there were any inconsistencies in the witnesses' testimony, I attribute the inconsistencies to the passage of time and not to a lack of candour on the part of the witnesses.

14. Although the Claimant has not provided records demonstrating that he received a blood transfusion in Canada during the Class Period, I find that he has complied with the requirements for compensation under the Plan. During the hearing before me, I heard corroborating evidence, independent of his personal recollection, from a witness who was not a Family Member. The evidence before me established on a balance of probabilities that the Claimant was infected for the first time with HCV by a blood transfusion in Canada during the Class Period. Consequently, I find that the Claimant is entitled to compensation under the 1986-1990 Hepatitis C Settlement Agreement.

CONCLUSION

15. The Claimant is successful in his appeal of the Administrator's decision and is entitled to compensation under the 1986-1990 Hepatitis C Settlement Agreement.


Judith Killoran
Referee


June 6, 2010