

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

Claimant:	Claimant #16862
File No.:	416611 – 32
Province of Infection:	Alberta
Province of Residence:	Alberta
Date:	September 9, 2009

Decision

1. On March 26, 2008 the Administrator denied the claim for compensation as a Primarily-Infected Person pursuant to the Transfused HVC Plan, on the basis that the Claimant had not provided sufficient evidence that she had received a transfusion of blood within the Class Period.
2. The Claimant requested an in-person hearing by a Referee to review the decision of the Administrator.
3. The hearing took place in Edmonton on March 25, 2009 but was adjourned for delivery of further hospital and medical records.
4. Neither party disputed the following facts:
 - (a) The Claimant was diagnosed with Hepatitis C in 2005;
 - (b) The parties reviewed the hospital records produced from the University of Alberta Hospital;
 - (c) The University of Alberta Hospital records disclosed the transfusion of one unit of blood on December 19, 1986 which was within the Class Period;
 - (d) The traceback of that unit of blood found that the donor was negative for Hepatitis C.
5. The Claimant testified that:
 - (a) she was born and grew up in Edmonton and attended local schools until graduation;
 - (b) her health history prior to giving birth to her children was negative for any hospital or surgical procedures other than removal of her appendix at age 6;
 - (c) she met and married her husband shortly after completing high school in 1976;
 - (d) she gave birth to her first child in 1978 and her second in 1979. In neither case were any transfusions or unusual surgical procedures required;
 - (e) in late 1986 she had been feeling unwell and suspected she had low iron in her blood. One day she collapsed at home and was taken to her local hospital in Athabasca where she was discovered to have been pregnant but suffered a miscarriage and was thus transported by ambulance to the University of Alberta Hospital for treatment;

(f) after return from the operating room to the ward, she wanted to be released from hospital but was advised by hospital staff that her health would be endangered if she left hospital without undergoing transfusions of blood. Her evidence is that the doctor on call indicated 5 units of blood were required and he was quite insistent that she not be discharged unless the blood was received;

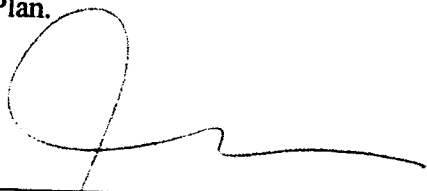
(g) she had a vivid memory of the circumstances, because she was strongly against having any transfusions and that her two sisters were witnesses to the discussion with the doctor on call;

6. One of the Claimant's sisters attended the hearing to give oral evidence that she herself negotiated a compromise agreement between the Claimant and the hospital personnel to have 2 units of blood transfused.
7. The Claimant testified that she did not think the doctor on call who insisted on these transfusions was the treating physician.
8. The records of the University of Alberta Hospital disclose that the Claimant was treated on December 19, 1986 and transfused. The summary record of the operation stated that "she was discharged home no longer bleeding in good condition after an uneventful D & C."
9. The Claimant made efforts to contact the treating physician who performed the operation and the family physician who treated the Claimant prior to and after the procedure. He advised that he had nothing to add to the chart. The Claimant did make efforts to meet with her own family physician but encountered difficulties and finally advised me that she was satisfied that he would have no relevant recollection of the matters in issue here.
10. It is the Claimant's contention that she contracted the Hepatitis C virus from the units of blood transfused at the University of Alberta after the operation but prior to her discharge on December 20, 1986.
11. However, the Claimant presented no supporting testimony from a physician or from any other person who was not a relative to substantiate her claim that she received another transfusion at the University of Alberta Hospital in Class Period.
12. The Claimant contended that it was only logical and natural that any potential witnesses to this event would be family members.
13. There was no evidence to suggest she had engaged in any high risk activities.
14. Moreover, I could find no facts to suggest there were present in her case any risk factors including tattoos, use and likely overuse of drugs or overuse of alcohol.
15. Section 3.01(2) of the Plan provides as follows:

“Notwithstanding the provisions of Section 3.01(a), if the Claimant cannot comply with 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.”

16. It is understandable in these circumstances that the Claimant holds the belief that she must have been infected with the Hepatitis C virus during her hospitalization in 1986.
17. Regrettably, the Claimant could not marshal any evidence independent of her personal recollection and that of her sister to establish on the balance of probabilities that she received other blood transfusions in Canada during the Class Period.
18. Also regrettably, I note that there is no discretion granted to the Administrator to alter the formula in the Plan or to an Arbitrator or Referee to modify the terms or provisions of the Plan.
19. Accordingly, since the Claimant delivered no corroborating evidence to the Administrator as required by Section 3.01(2) of the Plan that she had received a second blood transfusion in Canada during the Class Period; I must uphold the Administrator's decision to deny the Claimant's request for compensation as a Primarily-Infected Person under the Plan.

Dated September 9, 2009



Shelley L. Miller, Q.C. Referee

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