

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

Claimant:	Claimant #17041
File No.:	416611 – 31
Province of Infection:	Alberta
Province of Residence:	Alberta
Date:	December 3, 2009

Decision

1. On October 26, 2007 the Administrator denied the claim for compensation as a Primarily-Infected Person pursuant to the Transfused HVC Plan, on the basis that the deceased Claimant had not provided sufficient evidence that she had received a transfusion of blood within the Class Period.
2. The deceased Claimant succumbed to liver disease in 2006 and the appeal was continued by her surviving spouse who requested an in-person hearing by a Referee to review the decision of the Administrator.
3. The hearing took place in Calgary on March 31, 2009 but was adjourned for delivery of further hospital records from the Foothills Hospital.
4. Neither party disputed the following facts:
 - (a) The Claimant was diagnosed with Hepatitis C in 2005;
 - (b) The parties reviewed the hospital records which disclosed that on October 14, 1987 the Claimant received Rh Immune Globulin at the Holy Cross Hospital.
5. Information received from the surviving spouse and other family members was that the deceased Claimant was born on July 3, 1952.
6. Information provided from her surviving brother was that he grew up with deceased Claimant on the family farm in Saskatchewan. He said she was healthy after a natural birth at hospital. He said she was not sick during her childhood. She attended school until age 16 when she delivered a baby in 1969 at hospital in Saskatchewan. Further, the surviving brother reported that after the delivery of her baby, the deceased Claimant returned home with her child to the farm for three years before relocating to Alberta.
7. The surviving brother reported that to his knowledge, the deceased Claimant had no hospitalizations or illnesses thereafter and had never been ill apart from the normal transient childhood and adulthood afflictions
8. The deceased Claimant married the surviving spouse on April 17, 1976.
9. The deceased Claimant underwent "in vitro" fertilization resulting in the birth of twins in 1987.
10. The surviving brother reported that to his knowledge the deceased Claimant had never had any blood transfusions except at the time her twin children were born.

11. The records from Holy Cross Hospital in Calgary confirmed that the deceased Claimant was admitted in October and November of 1987. Further it is indicated that she received Rh Immune Globulin by injection.
12. Inquiries were made to Foothills Hospital prior to the Appeal for hospital records but it indicated on two occasions that earlier records for the deceased Claimant had been destroyed.
13. At the hearing, I was concerned, as were the parties, that there might be additional medical records that could verify the possibility of a transfusion to the deceased Claimant in the Class Period. As a result, the hearing was adjourned pending my inquiries to the family physician and Alberta Health Services for records from Calgary hospitals that may have provided treatment.
14. The chart I received from the family physician revealed that he had provided treatment only from August, 1995 to May 8, 2006. Apart from a reference to treatment for asthma, there is nothing to indicate any preexisting chronic conditions or any discussion of the reasons for contracting the Hepatitis C virus.
15. I received a response eventually from Alberta Health Services advising that no treatment records were located for the deceased Claimant during the period from January 1, 1986 to December 31, 1990 from either Foothills Medical Centre or Grace Hospital.
16. Neither the surviving spouse nor the twin children could produce any evidence to suggest that the deceased Claimant had received a blood transfusion other than the fact that she received Rh Immune Globulin by injection.
17. It appeared to me that the Claimant's Representative's submission rested on the contention that the deceased Claimant must have been infected with Hepatitis C from a gamma globulin transfusion by reason that there was no other reasonable explanation for its occurrence.
18. Fund Counsel delivered a written submission noting that the Settlement Agreement requires that the Applicant on behalf of the deceased Claimant demonstrate that there was a transfusion of Blood during the Class Period.
19. The definition of "Blood" contained in the Settlement Agreement provides as follows:

"Blood" means whole blood and the following blood products: packed red cells, platelets, plasma, (fresh frozen and banked) and white blood cells. Blood does not include Albumin 5%, Albumin 25%, Factor VIII, Porcine Factor VIII, Factor IX, Factor VII, Cytomegalovirus Immune Globulin, Hepatitis B Immune Globulin, Rh Immune Globulin, Immune Serum Globulin, (FEIBA) FEVIII Inhibitor Bypassing Activity, Autoplex (Activate Prothombin Complex), Tetanus Immune Globulin, Intravenous Immune Globulin, (IVIG) and Antithromin III (ATIII)".

20. Fund Counsel submitted that gamma globulin is not contained in the definition of "Blood" under the Transfused HCV Plan and as such the deceased Claimant is not eligible for compensation and further, neither the Administrator nor a Referee has any authority to alter the definitions under the Settlement Agreement.
21. Unfortunately, I have no alternative but to accept the submission of Fund Counsel and to reject the Claimant's submissions for the following reasons:
22. The Claimant's Representative cannot bring the claim of the deceased Claimant within the definition of "Blood" contained in the 1986-1990 Hepatitis C Settlement Agreement or the Transfused HCV Plan since it excludes Rh Immune Globulin as well as intravenous immune globulin (IVIG) also known as gamma globulin, the former of which was the multiple donor product the Claimant received.
23. Further, a Referee has no authority to alter or disregard the terms of the Plans.
24. Accordingly, I uphold the Administrator's denial of the Claimant's request for compensation.

DATED at Edmonton, Alberta, this 3rd day of December, 2009



Shelley L. Miller, Q.C.
Referee

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