

## **DECISION**

### **BACKGROUND**

1. On July 18, 2007, the Administrator denied the Claimant's claim for compensation under the Transfused HCV Plan on the basis that the Claimant had not provided sufficient evidence that he received a blood transfusion during the class period.
2. On July 23, 2007, the Claimant requested that the Administrator's denial of his claim be reviewed by an arbitrator. On December 10, 2007, the Claimant changed his election to request that his claim be reviewed by a referee.
3. Both parties waived their entitlement to an oral hearing.
4. The Claimant filed written submissions on January 14, 2008 and requested that the referee review all the material in his claim file from The 1986-90 Hepatitis C Claims Centre.
5. Fund counsel, on behalf of the Administrator, filed written submissions on February 6, 2008. The written hearing concluded on March 24, 2008 when the Claimant confirmed that he would not be filing any further documents or submissions.

### **Facts**

6. The Claimant is infected with the Hepatitis C virus. The Claimant believes that he was transfused during surgery at St. Joseph's Hospital in Guelph, Ontario in 1987.
7. In June 1987, the Claimant underwent back surgery. The medical notes do not indicate a transfusion. The records state the following: "The patient tolerated the anesthetic and procedure well. Approximate estimate of blood loss was 100cc."

8. Canadian Blood Services contacted The Guelph General Hospital (formerly St. Joseph's Hospital) to determine whether the hospital had any records of the Claimant receiving a blood transfusion.
9. On June 1, 2007, Canadian Blood Services was advised that the Claimant's hospital records were available. The records indicated that he was typed, screened and cross-matched but there was no record of a blood transfusion.
10. In the Treating Physician Form dated February 26, 2006, the Claimant's family physician indicated that the Claimant was transfused. When more information was requested of the physician, he stated that his information was based on a verbal response from the patient.
11. The Claimant, in his written submissions, relies on page 1 of the Report of Operative Procedure what states that "the blood loss was 100 cc" as a result of his surgery. He claims that he must have received transfused blood to replace his blood loss. Also, he recalls his physician saying "he had to give me some blood due to the length of the surgery and the amount of blood lost from the procedure." The Claimant submitted that the incision made in his lower back, which is approximately 6 to 7 inches long, would produce a large amount of blood loss.

## **ANALYSIS**

12. The Claimant seeks compensation under the Transfused HCV Plan. In order for this claim to be successful, the Claimant must meet the definition of "Primarily-Infected Person". 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 ...". Class Period is defined as meaning "the period from and including 1 January 1986 to and including 1 July 1990."
13. The Claimant's submissions must be considered in the context of the requirements for compensation set out in the Transfused HCV Plan. Under Section 3.01(1) of the Transfused HCV

Plan, the Claimant is required to deliver to the administrator records establishing that he received a blood transfusion in Canada during the Class Period. No records have been provided to me that demonstrate the Claimant received a blood transfusion in Canada during the Class Period.

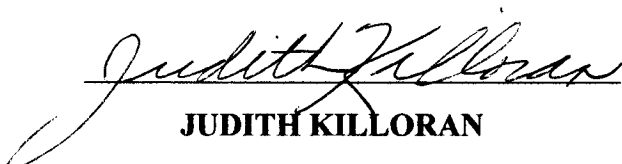
14. In circumstances where the Claimant is unable to provide the necessary documentation, section 3.01(2) of the Plan provides that “the claimant must deliver to the Administrator corroborating evidence independent of the personal recollection of the claimant or any person who is a Family Member of the claimant establishing on a balance of probabilities that he or she received a blood transfusion in Canada during the Class Period.”

15. The Claimant does not have corroborating evidence which is independent of his personal recollection. Therefore, he has not met the requirements of section 3.01(2) of the Plan and is not entitled to compensation.

16. The Administrator under the Settlement Agreement is required to administer the Transfused HCV Plan in accordance with its terms. The Administrator does not have authority to vary the terms of the Plan nor does an arbitrator or a referee when asked to review the Administrator’s decision.

**CONCLUSION**

17. I uphold the Administrator’s denial of the Claimant’s claim for compensation.

  
**JUDITH KILLORAN**  
Referee

April 9, 2008  
**DATE**