

CLASS ACTION - Hepatitis C 1986-1990
Request for Review number 17732

DECISION

The Claimant submitted a Claim Form in order to obtain compensation under the 1986-1990 Transfused HCV Plan. He argued that he had been infected by HCV after having received a blood transfusion during the 1986-1990 period.

His request for compensation was rejected on June 30, 2008 by the Class Action Settlement's Administrator who was of the opinion that the Claimant had not provided enough evidence to prove that he had received blood during the Class Action Period.

The Claimant submitted a Request for Review asking that an Arbitrator examine his Claim and it would seem that the Claimant based his Request for Review on a letter which he would have received from the *Régie de l'assurance maladie du Québec*, letter dated February 6, 2007. I will comment on this letter further on in this Decision.

The Claimant appeared before the undersigned on November 13, 2008 and the Claimant testified on his particularly serious medical history, having been operated on at the *Hôpital Jean-Talon* (1980), and at the *Hôpital Santa-Cabrini* (1974, 1989 and 1994). The Claimant also suffered from muscular dystrophy, and the Fund did not question the fact that he was Hepatitis C positive. Having said that, the Claimant readily recognized that he did not know whether or not he had received one or several transfusions in one or the other of these Hospital Centers.

The Claimant's wife also appeared before me on the same date, and she confirmed to me that she had indeed been present at each one of her husband's hospitalizations, but she didn't know whether or not he had received one or several blood transfusions.

In spite of having closely examined the file that had been submitted to me, the Undersigned did not find any evidence to the effect that the Claimant had received a blood transfusion during the 1986-1990 period.

However, I found in the file a letter from *Héma-Québec* dated October 19, 2007, indicating to me that according to information provided to *Héma-Québec* by the *Hôpital Santa-Cabrini*'s blood bank, the Claimant had not received a blood transfusion at that institution since 1978. The situation was the same at the CSSS blood bank of *Coeur-de-l'Île (Hôpital Jean-Talon)*. The Claimant had not received any blood transfusion at that institution since 1986.

Knowing that the Claimant had also been hospitalized at the *Hôtel-Dieu de Montréal*, the same verifications were made at that institution, and *Héma-Québec* confirmed that the *CHUM-Hôtel-Dieu de Montréal*'s blood bank indicated that the Claimant had not received any transfusion at that hospital institution.

In regards to this letter on which the Claimant's Request for Review was based, the *RAMQ*'s Evaluation Officer wrote the following:

"In the documents that you provided to us or according to our investigation, we note that you received blood transfusions or blood products during the January 1, 1986 to July 1, 1990 period..."

The Undersigned wrote to the *RAMQ*'s Evaluation Officer on July 31, 2008 to obtain further clarifications with regards to the letter. A reply was finally received on November 13, 2008 (the letter from the *RAMQ*'s Head of Legal Services was dated November 10, 2008), letter in which the following is stated:

"Regrettably, we are unable to answer your request as to the reasons which brought the *Régie* to conclude that (the Claimant) had received blood transfusions or blood products during the January 1, 1986 to July 1, 1990 period because we did not examine the Claimant's file.

For information purposes, please be advised that the February 6, 2007 letter from the *Régie* (to the Claimant) ... is a standard letter. This letter is transmitted to all applicants as soon as they confirm to the *Régie* that they received blood transfusions during the period covered by the Federal Government's Program (Hepatitis C 1986-1990 Claims Center)."

The Undersigned wrote to the Claimant on November 14, 2008 inviting him to provide comments, if any, concerning the *RAMQ* letter dated November 10, 2008, and the Claimant advised the Undersigned's Legal Assistant that he had no comments, nor any other argument to put forward.

After close examination of the documents and correspondence, I must conclude that this letter from the *Régie de l'assurance maladie du Québec* did not provide any evidence in support of this Claim.

I find that the Claimant has not provided evidence to the effect that he received a blood transfusion during the Settlement period, that is from January 1, 1986 to July 1, 1990, and I must therefore confirm the Administrator's decision to refuse compensation under the 1986-1990 Transfused HCV Plan.

During his entire life, the Claimant has been afflicted with several medical problems, and he has regrettably been suffering from muscular dystrophy for some years now. He and his wife have been living together for more than 50 years and no one deserves to be afflicted with such physical and other problems as the Claimant is faced with. However, the Administrator has no discretion to approve a compensation to a person infected by the Hepatitis C Virus if that person cannot provide evidence that he has received a transfusion during the Class Action Period. As stated above, the Claimant did not provide evidence that he had received a transfusion during the 1986-1990 period and therefore his request was doomed to failure.

In my capacity as Arbitrator, I cannot ignore the wording of the Agreement and allow compensating a person who does not meet the Settlement Agreement's criteria, and this, in spite of all the sympathy which I may have towards the Claimant and his wife.

The Agreement does not apply to this Claimant's case and therefore, I confirm the Administrator's decision to refuse to allow compensation to the Claimant under the 1986-1990 Transfused HCV Plan.

Montreal, December 2, 2008

Original signed by

Jacques Nols
Arbitrator