

CLASS ACTION - Hepatitis C 1986-1990
Application for judicial reference No. 17769

DECISION

The Claimant submitted a claim for compensation as a Primarily Infected Person under the Transfused HCV Plan established under the 1986-1990 Hepatitis C Settlement Agreement hereinafter referred to as the "Settlement Agreement".

The Claimant based her claim on the fact that she had received one or some blood transfusion(s) following an emergency hospitalization at the North York General Hospital Branson Site while holidaying in the Toronto area.

By letter dated October 26, 2007, the Administrator denied the claim because the Claimant had not provided evidence to the effect that she had received one or some blood transfusion(s) during the Class Action Period, i.e. between 1986 and 1990.

Therefore, the Claimant requested that the Administrator's decision to reject her claim be referred to a Referee.

The Hearing took place on March 27, 2008. The Claimant and her mother were present and both testified at the Hearing.

The Claimant testified in a very emotional way about the fact that she had to be hospitalized at the North York General Hospital, that she had spent seventeen (17) days there including ten (10) days in a comatose state, and that she was sure that she had received blood while she was in a coma, and also during the few days when she felt better but was still hospitalized. And she explained that she would go outside the hospital to smoke, and that during that time, she always had a bag holder for the blood that was being transfused.

I had written to the Claimant on January 4, 2008, then about 2 1/2 months before the Hearing, stressing to the Claimant that I did not have a copy of her North York Hospital

file, and that if she thought that this file could be useful and could support her allegations, it was incumbent upon her to obtain copies for Hearing purposes. I also know that the Administrator's Legal Counsel sent two letters with the usual consent forms, inviting the Claimant to sign and return them to him, so that she could obtain a copy of the hospital file.

Unfortunately, the consent forms were never signed and the Claimant never submitted copies of her file to me. However, she stated at the Hearing that getting a copy of this hospital file would be of no help because she said that all transfusion references had been withdrawn from the file. In this context, and on the faith of the Claimant's words, I did not make any additional attempt to get a copy of her hospital file.

In addition, the Claimant had confirmed that in 1983, she had received at least one blood transfusion at the Hôpital Ste. Justine following a serious road accident.

The Claimant's mother testified that she had visited her daughter at the Toronto Regional Hospital, the evening of her accident, and said she remembered that she was being transfused a solute and a "pint of blood". The Claimant's mother testified to the fact that she saw her daughter the next morning, that she was beginning to feel better but was still being transfused the same solute.

Section 3.01 of the 1986-1990 Hepatitis C Settlement Agreement stipulates that a person who claims to be a Primarily Infected Person must provide to the Administrator a Claim for Compensation Form accompanied by medical records or Red Cross Society or Héma-Quebec records showing that he has actually received a blood transfusion in Canada, during the Class Action Period (1986-1990).

Section 3.01 (2) stipulates that notwithstanding the provisions of the above-mentioned paragraph, a Claimant who cannot comply with the provisions of that paragraph must give the Administrator corroborative evidence establishing on a balance of probabilities that he has received a blood transfusion during the Class Action Period. This 3.01 (2)

paragraph also mentions however that corroborative evidence must be "independent of the personal memories of the Claimant or of any person who is a member of the family."

But in this case, the evidence presented to me is that of the Claimant and of her mother. I also examined an affidavit signed by the Claimant's brother confirming that he had seen that a unit of blood had been transfused to his sister while she was unconscious at the Branson Site Hospital (North York / Toronto).

None of these testimonies or affidavit seem to be independent of the personal memories of the Claimant or of any person who is a member of her family.

On the contrary, I found in the North York General Hospital file a document confirming that the patient's file was available ("patient record available"), and concluded that she had not received a transfusion ("not transfused").

The record indicates that the Claimant had received in August 1983, at the St-Jerome Hospital, six (6) blood products and that five (5) donors had been traced back and had tested negative for Hepatitis C. Unfortunately, one donor has refused to cooperate, and there was no information about his condition.

Having heard the Claimant and her mother, having examined and analyzed all documents that had been provided to me, I must note that there is no evidence independent of the testimony of the Claimant or of her family members to support her claim, as required by the Agreement. On the contrary, the documents that have been provided to me indicated that there had been no transfusions during the Class Action Period covered by the Agreement.

I have stressed the 1986-1990 dates several times in the context of this decision, in the hope that the Claimant realized that even if there had been transfusions during that period of time, there was no evidence that Hepatitis C had been contracted following a transfusion she claimed to have received, especially since she had received six (6)

transfusions in 1983, one of which came from a donor whose status had not been verified since. A 1983 transfusion obviously falls outside the scope of the 1986-1990 Agreement. This Agreement deals only with the January 1, 1986 to July 1, 1990 period and I must conclude that there is no evidence to the effect that the Claimant had received a transfusion during that period. And since this is an essential requirement to be recognized as a member of the Class Action and to be entitled to a compensation, I consider that this current action is groundless.

The Administrator's decision must therefore be upheld.

Montreal, May 15, 2008

Original signed by

Jacques Nols
Referee