

CLAIM # 17789

Province of Infection: Ontario
Province of Residence: Ontario

**IN THE MATTER OF AN ARBITRATION
TO REVIEW THE DECISION OF THE ADMINISTRATOR**

Before: Tanja Wacyk

Submissions: Claimant's Husband and Claimant on behalf of the Claimant
Belinda Bain and Carol Miller on behalf of the Fund

Decision

Background:

1. The Claimant submitted an application for compensation as a Primarily Infected Person under the Transfused HCV Plan ("the Plan"), as set out under the terms of the 1986-1990 Hepatitis C Settlement Agreement ("the Settlement Agreement").
2. By letter dated November 16, 2007, the Administrator denied her claim on the basis that the Claimant did not provide sufficient evidence to support her claim that she received blood during the period from January 1, 1986 - July 1, 1990 ("the Class Period").
3. The Claimant requested that an Arbitrator review the decision of the Administrator in an in-person hearing. The hearing was initially scheduled for January 29, 2009, but the Claimant failed to attend, and her appeal was dismissed as abandoned.
4. The Claimant subsequently contacted myself and Fund Counsel and explained she had missed the hearing date through inadvertence. Consequently, the matter was rescheduled for hearing.

The Terms of the Settlement Agreement:

5. In order to qualify for compensation under the terms of the Transfused HCV Plan the Claimant must satisfy the criteria set out in that Plan.
6. Article 3.01(1)(a) of the Transfused HCV Plan provides that a person claiming to be a Primarily-Infected Person must provide the Administrator with, amongst other things, "...records demonstrating that the Claimant received a blood transfusion in Canada during the Class Period." The Settlement Agreement establishes the "Class

Period” to be “the period from and including 1 January 1986 to and including 1 July 1990.”

7. If a person claiming to be a Primarily-Infected Person cannot comply with Article 3.01(1)(a), Article 3.01(2) provides that that individual 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.

Evidence:

8. The Claimant experienced two hospitalizations during the class period. Both were for a cervical Dilation and Curettage (“D & C”). The first hospitalization occurred in January 1987 at the Welland County General Hospital, and the second occurred in June 1988 at the St. Catherines General and Hotel Dieu Hospital.
9. The Claimant’s husband indicated that he believed his wife had been transfused during her 1987 hospitalization. He recounted that he had taken the day off from work and was in the Claimant’s room when the nurse entered and hooked up a bag. When he asked the nurse “what that was about” she responded that the Claimant needed some plasma. The Claimant was still unconscious at the time, and her husband could not recall any other details.
10. The only reference in any of the documents related to either of the Claimant’s hospitalizations that could be seen to suggest she received a transfusion is a hand written notation on the anaesthetic record related to the Claimant’s 1988 hospitalization. That note is next to another note which appears to refer to the Claimant’s recovery being “uneventful”, and simply refers to “2 units”.

11. Carol Miller is the Appeal Coordinator for the Fund. She is a Registered Nurse with more than 20 years of nursing experience in various hospital settings. Ms. Miller testified that the reference to “2 units” could mean that two units of blood had been “cross-matched” for the Claimant. “Cross-match” is a procedure in which Blood is requested and saved in the hospital Blood bank in the event it is needed for a transfusion. Ms. Miller further testified that it is not unusual that blood which is cross-matched is not transfused. Consequently, the fact a cross-match may have occurred is not evidence that a Blood transfusion has occurred. She also testified that the “2 units” could also refer to medication, also at times administered in units.
12. In response to an inquiry on behalf of the Fund, on August 17, 2007, Canadian Blood Services ("CBS") wrote to the Administrator and confirmed that they had contacted both the Welland County General Hospital, and the St. Catharines and Hotel Dieu Hospital regarding any possible transfusions received by the Claimant. The Welland County General Hospital confirmed the Claimant had been typed, screened and crossmatched, but was not transfused. The St. Catharines General and Hotel Dieu Hospital reported that the Claimant’s records were available and she was not transfused.
13. Further, while the Claimant’s Physician, on the Treating Physician Form, ("TRAN 2") indicated the Claimant received a blood transfusion during the Class Period, he subsequently wrote to the Administrator indicating that he had no written documentation to support this assertion, and that his response was based on a history obtained from the patient.

Analysis:

14. No hospital records demonstrating that the Claimant received a blood transfusion in Canada during the Class Period, as required by the Plan, were produced. Rather, the preponderance of evidence suggests the Claimant did not receive a blood transfusion during either of her hospitalizations. Further, she has not provided, as

required by Article 3.01(2), corroborating evidence independent of the personal recollection of any person who is a family member, establishing on a balance of probabilities, that she received a Blood transfusion in Canada during the Class Period.

15. Neither the Administrator, nor I, as an Arbitrator, have discretion to grant compensation to individuals infected with Hepatitis C who cannot show they received a transfusion within the time lines of the Class Period.
16. Accordingly, I find the Administrator correctly determined that the Claimant is not entitled to compensation pursuant to the Hepatitis C 1986-1990 Class Action Settlement, as she has not demonstrated that she received a Blood transfusion during the Class Period.
17. The decision of the Administrator to deny the Claimant compensation pursuant to the Hepatitis C 1986-1990 Class Action Settlement is upheld.

DATED AT TORONTO, THIS 22ND DAY OF JULY 2009.

“Tanja Wacyk”
Arbitrator