

DECISION

Claim ID: 18293

1. On June 25, 2009, the Administrator denied the claim for compensation of the Claimant filed on the basis of qualifying as a primarily-infected person under the transfused HCV Plan and incurring out-of-pocket expenses related to gambling expenses incurred at the Great Canadian Casino at Victoria, British Columbia. The claim was denied on the grounds the claim is not provided for under Section 4.07 of the Plan.
2. The Claimant requested that the Administrator's denial of her claim be reviewed by a Referee.
3. Following a pre-hearing telephone conference call and an exchange of correspondence, a hearing to receive evidence and the submissions of the parties took place in Victoria on September 17, 2009. The Claimant was self-represented and Mr. John Callaghan appeared as Fund Counsel on the matter.
4. The relevant facts are not in dispute and can be summarized as follows:
 - (a) The Claimant is an approved HCV Infected Person.
 - (b) In her claim, the Claimant stated that her gambling expenses were a consequence of the medical treatment she received once she was diagnosed with Hepatitis C. In her own words she stated:

I do believe that going to the casino and playing the slot machines was at that time part of my treatment. It allowed my brain to focus on something else besides the pain.
 - (c) The Claimant's medical history is somewhat complicated. Initially, her doctors considered that her condition could be linked to Fibromyalgia. Various medications were prescribed. Several months later, the Claimant was diagnosed as being infected with Hepatitis C. A new and different treatment plan was instituted, involving medication suitable to treat Hepatitis C. The Claimant's multiple visits to the casino occurred after this treatment plan was begun. Unfortunately, the Claimant's gambling losses were a very substantial sum and it is this sum that is the basis of this claim.

- (d) In a separate and earlier claim, the Claimant was awarded the sum of \$36,000 as compensation under the Plan for becoming infected with Hepatitis C. She signed a Release in the usual form.
- (e) The Administrator denied the claim before me with regard to the gambling expenses incurred at the casino because such expenses are not included in the definition of Out-of-Pocket Expenses under Section 4.07 of the Plan. That section reads as follows:

4.07 Compensation for Out-of-Pocket Expenses

An approved HCV Infected Person who delivers to the Administrator evidence satisfactory to the Administrator that he or she has incurred or will incur out-of-pocket expenses due to his or her HCV infection that are not recoverable by or on behalf of the claimant under any public or private health care plan is entitled to be reimbursed for all reasonable costs so incurred provided:

- a. out-of-pocket expenses will include (i) expenses for travel, hotels, meals, telephone and other similar expenses attributable to seeking medical advice or generally accepted medication or treatment due to his or her HCV infection and (ii) medical expenses incurred in establishing a Claim; and
- b. the amount of the expenses cannot exceed the amount therefor in the guidelines in the Regulations issued under the Financial Administration Act (Canada) from time to time.

The Administrator's interpretation of the words "seeking medical advice or generally accepted medication or treatment" is that this applies only when the Claimant cannot apply his or her own medication or treatment and must travel to a medical facility to have medical personnel perform the treatment or provide the medication.

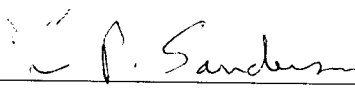
The Administrator denied the claim for the expenses associated with the gambling expenses because such a claim is not covered or contemplated by Section 4.07 of the Plan.

- 5. Based on these facts, the Administrator's decision to deny the claim must be sustained.
- 6. The language of Section 4.07 is clear and succinct. The allowable out-of-pocket travel expenses under Section 4.07 must be attributable to seeking either medical

advice or generally accepted treatment or medication due to a person's HCV infection. In the circumstances of this case, I cannot disagree with the Administrator's decision. The claimed expenses were not concerned with seeking either medical advice or treatment as defined under Section 4.07. The gambling losses were unfortunate but the out-of-pocket gambling expenses incurred by the Claimant do not fall within the ambit of Section 4.07.

7. It is the role and responsibility of the Administrator, under the settlement agreement, to administer the Plan in accordance with its terms. The Administrator has an obligation under the Plan to review each claim to determine whether the required proof for compensation exists. The words of Section 4.07 of the Plan are clear and unambiguous that the Administrator has no alternative but to reject the claim in circumstances such as these. The Administrator must administer the Plan in accordance with its terms and he does not have the authority to alter or ignore the terms of the Plan. A Referee, called upon to review a decision of the Administrator is also bound by the terms of the Plan and can not amend it or act contrary to its terms.
8. I acknowledge the personal feelings and frustrations of the Claimant in having her claim rejected. While that is a result which is unsatisfactory for her, neither the Administrator nor a Referee appointed under the Plan has the authority or discretion to award her claim.
9. Accordingly, for the reasons set out above, I find that the Administrator has properly determined that the Claimant was not entitled to compensation under the Plan. I further find that the Administrator's decision must be sustained.

Dated at Vancouver, British Columbia, this 2nd day of October 2009.



John P. Sanderson, Q.C.
Referee