

## **DECISION**

### **BACKGROUND**

1. On September 10, 2008, 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 she received a blood transfusion during the class period.
2. On September 23, 2008, the Claimant requested that the Administrator's denial of her claim be reviewed by an arbitrator. On January 23, 2009, the Claimant changed her election to request that her claim be reviewed by a referee.
3. Both parties waived their entitlement to an oral hearing.
4. The Claimant requested that the referee review all the material in her claim file from The 1986-90 Hepatitis C Claims Centre.
5. Fund counsel, on behalf of the Administrator, filed written submissions on March 2, 2009. The written hearing concluded on March 20, 2009 when the Claimant confirmed that she would not be filing any further documents or submissions.

### **FACTS**

6. The Claimant is infected with the Hepatitis C virus. The Claimant believes that she may have been transfused at the Hotel Dieu Montmagny in 1989 after a car accident in which she was involved while driving through Montmagny.
7. The Hepatitis C Claims Centre requested that Hema-Quebec conduct a traceback to determine whether the Claimant received a blood transfusion during the class period. Hema-Quebec summarized its results in a letter dated August 15, 2008. Hema-Quebec

confirmed that according to the information received from the Le Centre de santé et de services sociaux de Montmagny-L'Islet's (CSSSML) blood bank, the Claimant did not receive any blood products. The correspondence also confirmed that the hospital's blood bank database and the medical file were complete. On August 19, 2008, Hema-Quebec forwarded to the Hepatitis C Claims Centre the health record confirmation from CSSSML.

8. In the Treating Physician Form dated February 28, 2008, the Claimant's family physician indicated that the Claimant was transfused during the class period. However, no documents have been provided as evidence of such a transfusion.

## **ANALYSIS**

9. 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."
10. 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 she 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.
11. 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.”

12. The Claimant does not have corroborating evidence which is independent of her personal recollection. Therefore, she has not met the requirements of section 3.01(2) of the Plan and is not entitled to compensation.
13. 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

14. I uphold the Administrator's denial of the Claimant's claim for compensation.

  
JUDITH KILLORAN

Referee

March 29, 2009

DATE