

HEPATITIS C 1986-1990 CLASS ACTION
Appeal Request # 18371

DECISION

The Claimant filed a Claim's Form in order to obtain compensation under the Transfused HCV Plan. She claimed that she had been infected with HCV after having received a blood transfusion during the Class Action Period as covered by the Settlement Agreement, that is, between January 1, 1986 and July 1, 1990.

The Class Action Settlement Administrator rejected the Claim on October 30, 2008. The Administrator considered that there was no corroborating evidence to the effect that the Claimant had received blood during the Class Action Period, that is, between January 1, 1986 and July 1, 1990.

The Claimant filed an appeal on November 12, 2008, in which she'd asked that a Referee review her case. In her request for an appeal, the Claimant indicated that she had undergone a hysterectomy at the *Centre hospitalier Pierre-Boucher* and that she had subsequently been hospitalized three times for various postoperative complications. In the documentation accompanying her appeal request, the Claimant added that she must certainly have received blood or blood products during one or the other of her hospitalizations.

Given that the documents provided to me could have been incomplete and in order to avoid any misunderstanding, I obtained the Claimant's complete file from the *Centre hospitalier Pierre-Boucher* covering, among other things, the January 1986 to July 1990 Period. I finally had access to this voluminous file with which I quite obviously became familiar. I found no evidence to the effect that the Claimant might have received a blood transfusion or any other blood product during the period covered by the Settlement Agreement.

The Claimant indicated that she did not wish to testify in person before me, but sent me a two-page letter dated June 14, 2009 in which she provided explanations and representations regarding her appeal request. The Fund Counsel, who also filed written submissions, chose not to reply to the Claimant's letter.

The Claimant told us that because of her poor health condition, blood or blood products must necessarily have been used during her hospitalization, but as mentioned above, I found no such evidence in the file, which otherwise seems to be complete. Paradoxically, the Attending Physician's Form (Tran 2) indicated that the Primarily-Infected Person, that is the Claimant, had not received a transfusion during the 1986 to 1990 Period, and the doctor who completed this Form refers rather to spousal transmission. However, in her June 2009 letter, the Claimant disputes this fact.

This having being said, I come to the conclusion that the Claimant has not established that she had received a blood transfusion during the period covered by this Settlement, that is, from January 1, 1986 to July 1, 1990, and I must therefore uphold the Administrator's decision to refuse compensation under the Transfused HCV Plan for the 1986-1990 Period.

The Claimant has already been suffering from serious medical complications for several years, but my sympathy for her does not allow me to override the terms and conditions of the Settlement Agreement and the Transfused HCV Plan, and I can not change them to allow the Claimant to obtain compensation.

The Settlement Agreement and Transfused Plan do not apply to this Claim, and I therefore uphold the Administrator's refusal to compensate the Claimant under the Transfused HCV Plan 1986-1990.

Montreal, September 24, 2009

(s) Jacques Nols

Jacques Nols
Referee