

## **DECISION**

### **BACKGROUND**

1. On November 13, 2000, the Administrator advised the claimant that his application for compensation as a Primarily-Infected Hemophiliac under the HCV Hemophiliac Plan (the “Plan”) was approved.
2. The claimant has been assessed at disease level 5 and is receiving loss of income benefits under the Plan.
3. On March 22, 2005, the claimant requested a review of the manner in which his loss of income payments are calculated under the Plan. The claimant objected to the manner in which CPP premiums and tax-deferral strategies, such as RRSPs and RESPs, are dealt with under the Plan.
4. The claimant filed written submissions on March 22, April 30 and May 2, 2005.
5. Fund counsel, on behalf of the Administrator, filed written submissions on April 27, 2005. The written hearing concluded on May 9, 2005 when the claimant and fund counsel confirmed that they had no further submissions to file with me.

### **ANALYSIS**

6. The 1986-1990 Hepatitis C Class Action Settlement Fund (the “Fund”) has been established as part of a settlement agreement reached in the 1986-1990 Hepatitis C Class Action (the “Settlement Agreement”). The Settlement Agreement incorporates two plans, the Transfused HCV Plan and the HCV Hemophiliac Plan. The HCV Hemophiliac Plan is relevant to this case.

7. Section 4.02 of the Plan sets out a formula for calculation of loss of income. Fund counsel submitted that in accordance with the formula set out in section 4.02, CPP premiums (along with employment insurance premiums and income tax) are considered to be “ordinary deductions,” which are applied to pre-claim and post-claim gross income, for purposes of arriving at pre-claim and post-claim net income. The claimant’s annual loss of net income is calculated as the difference between the claimant’s pre-claim and post- claim net income.
8. The claimant submits that his loss of income calculation should not include his gross CPP disability amounts in the net income portion of the payment. Rather, that amount should be used to reduce his pre-claim gross income before taxes, as it is money paid as taxable income. Also, he submits that his RRSP contributions should be considered in the calculation of taxable income.
9. The claimant objects that although CPP or QPP contributions are deducted in calculating his net income, they are not remitted by the Administrator of the Fund to CPP. He is concerned that his CPP retirement benefit may be reduced as a result.
10. The claimant has suggested that in fairness, the Plan should provide an investment vehicle which can be claimed at age 65 as part of his CPP without additional tax loading or, in the alternative, provide this money to him to invest on his own without tax loading.
11. With respect to his RRSP contributions, the claimant asserts that if the fund is providing for loss of income then the claimant’s loss of ability to contribute to an RRSP should be addressed. He is concerned that the Fund fails to recognize that in his pre-claim years he was making regular contributions to an RRSP and RESP, thereby reducing his taxable income and minimizing his income tax. Therefore, his pre-claim net income has been understated as has been his annual net loss of income. The claimant submits that he has also suffered a disadvantage as he is not able to participate in tax deferral strategies as his loss of income benefit received from the Plan is non-taxable.

12. The claimant suggests that the Fund should provide the continued average amount of the RRSP contributions directly to his personal RRSP account, for the same 3 years used for the calculation of the pre-claim value; or an amount equal to the tax relief of the averaged contributions into his personal RRSP account; or either of the two previous values placed in trust at a guaranteed rate equal to that of the Fund rate. The claimant argues that the amounts should be available to him at age 65 or payable to his estate in the same manner as his RRSPs.
13. The claimant submits that as the Settlement Agreement and the Plan do not address the issues raised by him, this constitutes gross misconduct and results in a lack of fairness.
14. I agree with the submissions of fund counsel that regardless of the precise impact of the manner in which CPP premiums and registered tax deferral strategies are dealt with under section 4.02 of the Plan, the Administrator has not been given any discretion to deviate from that formula for the purposes of calculating loss of income. Section 4.02 expressly requires CPP premiums to be deducted in the calculation of pre-claim and post-claim net income. There is also no obligation or authority on the part of the Administrator under the Settlement Agreement or the Plan to remit CPP contributions on behalf of the claimant.
15. While I sympathize with the concerns expressed by the claimant, I find that the Administrator correctly applied the formula for calculating the claimant's loss of income as set out in the Plan. The Administrator has no discretion to alter this formula. There is also no discretion granted to an Arbitrator or Referee to modify the terms or provisions of the Plan.

## **CONCLUSION**

16. I dismiss the claimant's appeal of the Administrator's decision.

---

**JUDITH KILLORAN**  
Referee

---

May 27, 2005  
**DATE**