

DECISION

BACKGROUND

1. On July 14, 2004, the Administrator denied the Claimant's request for compensation as a Primarily-Infected Person under the Transfused HCV Plan. The claim was denied on the basis that the donors of the blood transfused to the Claimant during the Class Period tested negative for the HCV antibody.
2. On July 28, 2004, the Claimant requested that the Administrator's denial of his claim be reviewed by a referee.
3. The Claimant did not file submissions. However, I reviewed all the material in his claim file from The 1986-1990 Hepatitis C Claims Centre.
4. Fund counsel, on behalf of the Administrator, filed written submissions on January 4, 2005.
5. The hearing concluded on August 23, 2005 when neither party filed any further submissions.

EVIDENCE

6. It is not disputed that the Claimant is infected with Hepatitis C.
7. The Claimant received two units of blood at Toronto Western Hospital on June 20, 1989.
8. On April 26, 2004, Canadian Blood Services provided its final report on the traceback of the units of blood transfused to the Claimant. The traceback established that the donors of the two units of blood issued to the Claimant had tested negative for the HCV antibody.
9. The Claimant indicated on his Request for Review form dated July 28, 2004 that he was transfused with two units of blood at Etobicoke General Hospital.
10. On September 17, 2004, Canadian Blood Services confirmed there was no record of the Claimant being admitted to Etobicoke General Hospital between 1986 and 2004.

ANALYSIS

11. The Claimant seeks compensation as a Primarily-Infected Person under the Transfused HCV Plan. 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 and who is or was infected with HCV unless:

- (a) it is established on the balance of probabilities by the Administrator that such person was not infected for the first time with HCV by a Blood transfusion received in Canada during the Class Period ...”

12. The 1986-1990 Hepatitis C Settlement Agreement defines “Class Period” as meaning “the period from and including 1 January 1986 to and including 1 July 1990.” “Class Period” is defined identically in the Transfused HCV Plan.

13. Article 3.01 of the Transfused HCV Plan requires that a person claiming to be a Primarily-Infected Person must deliver to the Administrator an application form together with, among other things, medical “records demonstrating that the Claimant received a Blood transfusion in Canada during the Class Period ...”

14. I find that the Claimant did provide the evidence required by Article 3.01 to establish that he received a blood transfusion during the Class Period. Based on the evidence before me, the Claimant received blood transfusions on June 20, 1989, which is within the Class Period.

15. However, Article 3.04(1) of the Plan provides as follows:

Notwithstanding any other provision of this Agreement, if the results of a Traceback Procedure demonstrate ... that none of the donors or units of Blood received by a Primarily-Infected Person ...during the Class Period is or was HCV antibody positive, subject to the provisions of Section 3.04(2), the Administrator must reject the Claim of such HCV Infected Person ...”

16. A Traceback Procedure is defined in Article 1.01 of the Plan as follows:

“Traceback Procedure” means a targeted search for and investigation of the donor and/or the units of Blood received by a HCV Infected Person.

17. A traceback has been conducted which confirms that the donors of the blood used to transfuse the Claimant have tested negative for the HCV antibody. The Claimant has not provided any evidence, as provided for by Article

3.04(2), to refute the results of the Traceback Procedure.

18. I find that the Administrator has established on the balance of probabilities that the Claimant was not infected with HCV by a blood transfusion received during the Class Period. Therefore, the Claimant does not qualify as a Primarily-Infected Person and is not entitled to compensation under the terms of the Transfused HCV Plan. Article 3.04(1) requires that the Administrator must reject the Claim in circumstances such as these.

19. 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. Neither an arbitrator nor a referee may vary the terms of the Plan when asked to review the Administrator's decision.

CONCLUSION

20. I uphold the Administrator's denial of the Claimant's request for compensation.

August 29, 2005

JUDITH KILLORAN

DATE

Referee