

## **DECISION**

**Claim No. 2726**

### **Province of Infection – New Brunswick**

1. The Claimant applied for compensation as a Secondarily-Infected Person pursuant to the Transfused HCV Plan.
2. In the TRAN 1 form, the Claimant stated she believed she was infected with the Hepatitis C virus by her spouse who, in turn, had been infected with the Hepatitis C virus through a blood transfusion received in Canada between January 1, 1986 and July 1, 1990.
3. By letter dated January 5, 2004, the Administrator denied her claim on the basis that the Master Claim (the claim of her spouse as the Primarily-Infected Person) had been rejected because it did not meet all the requirements set out in the Settlement Agreement.
4. The Claimant requested that the Administrator's denial of her claim be reviewed by a referee.

5. The Administrator's letter of January 5, 2004, stated, in part, as follows:

"The Settlement Agreement requires the Administrator to determine your eligibility for class membership. Section 3.02 of the Settlement Agreement provides that a person claiming to be a Secondarily-Infected Person must deliver to the Administrator:

*(a) evidence demonstrating on the balance of probabilities that the claimant was infected with HCV for the first time by a Spouse who is a Primarily-Infected Person or an Opted-Out Primarily-Infected Person or by a Parent who is an HCV-Infected Person or an Opted-Out HCV Infected Person including a statutory declaration of the claimant declaring that (i) he or she never used non-prescription intravenous drugs and (ii) to the best of his or her knowledge, information and belief, he or she was not infected with Hepatitis Non-A Non-B or HCV prior to 1 January 1986;*

*(b) an HCV Antibody Test report, a PCR Test report or similar test report pertaining to the claimant; and*

*(c) the evidence required by Sections 3.01 and 3.03 in respect of his or her Spouse or Parent, as the case may be, unless the required evidence has already been delivered by the Spouse or Parent in respect of his or her personal Claim.*

The Administrator carefully reviewed all the material provided in support of your claim as a Secondarily-Infected Person. The Master Claim (claim of the Primarily-Infected Person) did not meet all requirements as stipulated in Section 3.01 of the Settlement Agreement and was rejected. In the absence of such evidence, your claim as a Secondarily-Infected Person cannot be accepted under section 3.02."

6. In the Request for Review filed by the Claimant, she outlined the following reasons for wanting to have the Administrator's decision reviewed:

“My husband...primary infected) was unable to retrieve [sic] a hospital record pertaining to one of the units of blood that he was given. Tracebacks were done on the other units which proved negative for hep C but we beleive [sic] that the missing unit must have been the infected one.”

7. As provided in Section 3.02(c), a claim by a Secondarily-Infected Person cannot succeed unless the evidence required by Sections 3.01 and 3.03 in respect of his or her spouse or parent is provided to the Administrator. In the present case, the Claimant's spouse wasn't able to provide the evidence required by Sections 3.01 and 3.03 and, consequently, his claim was rejected by the Administrator. The Claimant's spouse requested that the Administrator's denial of his claim be reviewed by an arbitrator and I was appointed to conduct the review of his claim as well.

8. Since the Claimant's entitlement to compensation as a Secondarily-Infected Person is entirely dependent upon the question of whether the evidence

required under Section 3.01 and 3.03 has been provided with respect to her spouse's claim, it was agreed that both claims should be heard together.

9. By decision dated March 20, 2006, I upheld the Administrator's denial of the claim of the Claimant's spouse because there was no evidence to establish that he had been infected with the Hepatitis C virus by a blood transfusion received in Canada during the Class Period. The requirements of Sections 3.01 and 3.03 had not been met.

10. It follows, therefore, that the Claimant's claim as a Secondly-Infected Person must also be denied.

DATED at Halifax, Nova Scotia, this 20<sup>th</sup> day of March, 2006.

---

**S. BRUCE OUTHUSE, Q.C.**  
Referee