

SUPERIOR COURT

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

N°: 500-06-000016-960

DATE: May 16, 2011

PRESIDING JUDGE: THE HONORABLE PAUL CHAPUT, JSC

THE CLAIMANT NO. 19430

The Applicant

v.

THE ATTORNEY GENERAL OF CANADA

&

THE ATTORNEY-GENERAL OF QUEBEC

&

THE CANADIAN RED CROSS

The Respondents

&

ME JACQUES NOLS, REFEREE

The Respondent

&

THE FONDS D'AIDE AUX RECOURS COLLECTIFS

&

LE CURATEUR PUBLIC DU QUÉBEC

The Impleaded Party

DECISION

1. This is to dispose of Claimant 19430's dispute notice against the Referee's decision to not review the Administrator's decision to reject her claim application.

2. The Claimant submitted a claim for compensation under the Hepatitis C Settlement for the January 1, 1986 to July 1, 1990 period.

3. Following the review of the documents submitted, the Claims Administrator denied the claim for compensation on July 20, 2010. The Administrator held that the Claimant had received injections during the period covered by the Settlement. The injections were Rh immunoglobulin known as WinRho. However, this blood product is not among those covered under the definition used in the Settlement Agreement.
4. The Claimant has exercised her right to appeal to the Referee. Assisted by her daughter for her appearance before the Referee, she acknowledged that the WinRho product was excluded from the definition of blood used in the Settlement Agreement.
5. In a notice dated January 27, 2011, the Referee wrote that he had reviewed the documents submitted. He also indicated that he had obtained and reviewed the Claimant's hospital records for the said period.
6. He wrote that he had reviewed all submitted documents and concluded that it was certainly possible that the Claimant had contracted Hepatitis C from one of the WinRho injections, especially since it had not been possible to test one of the products that had been transfused in July 1987, and no one could confirm that it was not contaminated.
7. What the Claimant argued before the Referee was that the definition of blood as provided under the Settlement Agreement was incorrect, too restrictive, and would need to be amended. For reasons clearly explained, the Referee refused to do.
8. By letter dated February 16, 2011, the Claimant gave notice that she objected to the Referee's decision and requested to be heard in person before the Courts.
9. At the hearing, the Claimant was not represented by Counsel, but assisted by her daughter. The latter presented several documents of a general nature on WinRho, but her position was the same, i.e. she requested that an amendment be brought to the definition of blood under the Settlement Agreement.
10. It is clear that the situation in which the Claimant finds herself inspires sympathy. However, the Settlement regarding the tainted blood victims, as generous as it may be, cannot have any broader meaning than as provided under its terms.
11. As provided under Article 12.02 of the Settlement Agreement, any amendment to this Agreement must proceed from an agreement between the Governments and the members of the Joint Committee:

“12.02 Amendments

Except as expressly provided in this Agreement, no amendment or supplement may be made to the provisions of this Agreement and no restatement of this Agreement may be made unless agreed to by the FPT Governments and all members of the Joint Committee in writing and any such amendment, supplement or restatement is approved by the Courts without any material differences. »

12. Outside of such an Agreement, the Court cannot amend any provision of the Settlement Agreement on its own initiative.

FOR THESE REASONS, THE COURT

13. **REJECTS THE DISPUTE NOTICE SUBMITTED BY THE APPLICANT**

14. **WITHOUT COST.**

Signature on original
PAUL CHAPUT, JCS

Me Martine Trudeau
Lapointe Rosenstein Marchand Melançon
Amicus curiae

Me Philippe Dufort-Langlois
McCarthy Tétrault
Counsel for Le Fonds d'aide aux recours collectifs

Hearing Date: May 13, 2011.