

CLAIM #18669

Province of Infection: Ontario

State of Residence: Alabama

IN THE MATTER OF A REFERENCE
TO REVIEW THE DECISION OF THE ADMINISTRATOR
UNDER THE HEPATITITS C (86-90) CLASS ACTIONS SETTLEMENT

REFEREE: Reva Devins

SUBMISSIONS: Claimant, on his/her own behalf

John Callaghan, on behalf of the Fund

DECISION

1. The Claimant, an Ontario resident at the time of alleged infection, submitted an application for compensation as a Primarily Infected Person under the 1986-1990 Hepatitis C Settlement Agreement (the “Settlement Agreement”) HCV Transfused Plan (the “Plan”).

2. By letter dated January 21, 2010 the Administrator denied the claim on the basis that the Claimant did not provide sufficient evidence to support her claim that she received blood during the period from January 1, 1986 – July 1, 1990 (the “Class Period”).

3. The Claimant requested that a Referee review the decision of the Administrator.

Terms of the Settlement Agreement

4. The Claimant has applied for compensation under the terms of the Hepatitis C 1986-1990 Class Action Settlement. The terms of the settlement provide a detailed outline of who is eligible for compensation and how eligibility can be proven:

ARTICLE THREE REQUIRED PROOF FOR COMPENSATION

3.01 Claim by Primarily-Infected Person

- (1) A person claiming to be a Primarily Infected Person must deliver to the Administrator an application form prescribed by the Administrator together with:

- a. medical, clinical, laboratory, hospital, The Canadian Red Cross Society, or Canadian Blood Services or Hema Quebec records demonstrating that the claimant received a Blood transfusion in Canada during the Class Period;

...

(2) Notwithstanding the provisions of Section 3.01 (1) (a), if a claimant cannot comply with the provisions of Section 3.01(1)(a), the claimant must deliver to the Administrator corroborating evidence independent of the personal recollection of the claimant or any person who is a Family Member of the claimant establishing on a balance of probabilities that he or she received a Blood transfusion in Canada during the Class Period.

Evidence

5. The Claimant was hospitalized at the London Health Center on November 14, 1988, November 20, 1988 and April 1, 1990. She relies on the medical records of her hospitalization on November 20, 1988 to establish that she received a blood transfusion.
6. The Claimant first attended at the hospital on November 14, 1988 and was treated for a partial spontaneous abortion. She had a cervical Dilation and Curettage and was discharged from hospital.
7. An ectopic pregnancy was not detected during her initial hospital admission and she returned to hospital on November 20, 1988 complaining of cramping and bleeding. The Claimant was admitted and underwent emergency surgery to treat a ruptured ectopic pregnancy. The hospital records document that before her surgery she was typed and crossmatched for 2 units of blood.

8. The Operative Record reports that the Claimant underwent a diagnostic laparoscopy that revealed a distal ectopic pregnancy with obvious bleeding. The report also states that “Bleeding was excessive and uncontrollable, especially at the base and a decision was made to proceed with a partial salpingectomy. This was performed with sparing of the fimbriated end. Hemostasis was maintained.” The hospital records do not include a record of transfusion.

9. The Blood Bank records were also searched and confirm that 2 units of blood were ordered and crossmatched for the Claimant on November 14 and again on November 20, 1988, but that the blood products were not transfused to her. The Claimant was typed, screened and crossmatched only. The Blood Bank records from November 20, 1988 further indicate that the packed cells that were reserved for her were no longer available.

Submissions

10. The Claimant submits that she has demonstrated on a balance of probabilities that she received a blood transfusion during her hospital admission of November 20, 1988, which is within the Class Period. She relies on the following:
 - a. The doctor’s orders to crossmatch 2 units, coupled with the initials of the attending nurse attesting that all orders and treatment had been completed. The Claimant says this indicates that blood was ordered and transfused;
 - b. There was no record that the crossmatched blood was returned or discarded, which further supports the inference it was transfused. As does

the evidence from the surgeon that during her surgery the “bleeding was excessive and uncontrollable”;

- c. There were several errors in her discharge report, which undermines the accuracy of the hospital records;
- d. The generally poor state of record keeping makes it difficult to determine whether she was transfused and what happened to the blood that was ordered by her surgeon; and
- e. The absence of any other risk factor that could account for her illness.

11. The Claimant also suggests that section 3.01(2) of the Settlement Agreement allows the Administrator to exercise some discretion in determining whether a Claimant was transfused in the Class Period. In this case, the evidence referred to above is ‘corroborating evidence’ establishing on a balance of probabilities that she received a blood transfusion on November 20, 1988.

12. Plan Counsel submits that the hospital records establish that the Claimant was typed and crossmatched in advance of her surgery, but do not indicate that there was a transfusion. The Blood Bank records indicate the packed cells were no longer available. In his submission, the Claimant has not proved that she was transfused, as required by the Plan.

Analysis

13. In order to qualify as an eligible class member, the Claimant must satisfy the criteria set out in the Plan. She must demonstrate that she received a blood transfusion in Canada in the period January 1, 1986 to July 1, 1990. She can do this by producing one of the approved documents listed in the settlement, such as a medical or laboratory record. Or, if the designated records are not available, she can prove her entitlement by supplying other independent evidence to support her claim.

14. The Hospital records in this case do not establish that the Claimant received a transfusion. The records regarding her surgery for an ectopic pregnancy indicate that her doctor requested that she be crossmatched for packed red cells. Unfortunately, this only establishes that blood was requisitioned in case a transfusion was required. There is no further notation that a transfusion was actually performed. Moreover, the Blood Bank records were searched and indicate that she was typed, screened and cross-matched only, with no record that the Claimant received a transfusion during any of her hospitalizations.

15. The Claimant suggests that the circumstances of her surgery make it likely that a transfusion was required. She argues that she experienced prolonged and excessive bleeding, that blood was ordered and that the attending nurse checked off that all treatment and orders were performed. She also points to the Blood Bank record that indicates that the packed cells were no longer available.

16. While I appreciate the Claimant's position, I am not persuaded that there is medical evidence that she received a transfusion in the Class Period. None of the hospital records confirm a blood transfusion. They only document an order to reserve blood in the event that a transfusion was required. While the Operative Record refers to "excessive and uncontrollable bleeding", this is mentioned in reference to the medical decision to perform a partial salpingectomy, a surgical intervention to remove part of the Fallopian tube. The surgical report goes on to indicate that the procedure was successful and that hemostasis was maintained. This suggests that the bleeding was controlled and is consistent with the hospital records that a transfusion was not required.
17. Similarly, the nurse's confirmation that the 'orders and treatment' to group and crossmatch 2 units of blood were completed, does not establish that a transfusion was performed. It only demonstrates that the orders, which were to group and crossmatch, were completed. This is the preparatory step only and is not proof of a subsequent transfusion.
18. Nor does the note from the Blood Bank that the red packed cells were no longer available establish that they were transfused to the Claimant. There are undoubtedly many reasons why the packed cells were no longer available, including transfusion to another patient when the Claimant did not use them. In summary, I find that the

hospital records do not establish that the Claimant was transfused in the Class Period.

19. I appreciate why the existence of other errors in the Discharge Summary and the absence of other risk factors raise concern for the Claimant. Regrettably, they do not constitute “corroborating evidence of a blood transfusion” as is required where the medical records do not establish transfusion.

20. Nor do the records of her other admissions establish that the Claimant received a transfusion in the Class Period.

21. Based on the evidence and submissions provided on this Reference, I find that the Claimant has not demonstrated that she received a Blood transfusion during the Class Period and therefore she is not an eligible Class Member. The decision of the Administrator is upheld.

Dated June 9, 2011

A handwritten signature in black ink, appearing to read 'R. Devins', with a long horizontal flourish extending to the right.

Reva Devins, Referee