

# DECISION

## BACKGROUND

1. On February 16, 2011, the Administrator denied the Claimant's request for compensation as a Primarily-Infected Person under the Transfused HCV Plan because the Claimant had not provided sufficient evidence that he received a Blood transfusion during the Class Period (January 1, 1986 to July 1, 1990).
2. On March 23, 2011, the Claimant requested that the Administrator's denial of his claim be reviewed by an arbitrator.
3. As of April 5, 2011, both parties agreed to have this review conducted by a referee as a written hearing.
4. Fund Counsel filed written submissions on April 14, 2011. The Claimant filed written submissions on May 18, 2011. The written hearing concluded on June 17, 2011, which was the date I set for final submissions. In addition to the parties' submissions, I have reviewed all the material in the Claimant's file from the 1986-1990 Hepatitis C Claims Centre.

## Facts

5. The Claimant is infected with Hepatitis C, which was confirmed by the Treating Physician's Form dated September 29, 2010.
6. In his application for compensation, the Claimant indicated that he believed he had received a Blood transfusion in 1988 at the Metropolitan General Hospital (now the Windsor Regional Hospital) in Windsor. As he had no medical records, the Administrator requested that Canadian Blood Services ("CBS") conduct a traceback.
7. The CBS requested that searches be carried out by the Windsor Regional Hospital and Hotel Dieu Grace Hospital. In a letter dated January 21, 2011, the CBS confirmed that no medical records of a blood transfusion for the Claimant were found at either hospital.

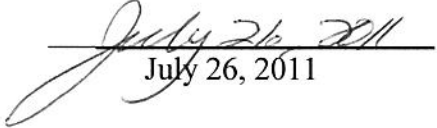
**ANALYSIS**

8. 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.”
9. 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.
10. Article 3.01 of the Transfused HCV Plan requires that 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.” Article 3.03 itemizes the additional proof that may be requested by the Administrator.
11. The Claimant has not submitted any medical evidence that supports his claim that he received a blood transfusion during the Class Period.
12. I am bound by the terms of the 1986-1990 Hepatitis C Settlement Agreement. The terms of the Settlement Agreement are restricted to those claimants who were infected with Hepatitis C as a result of a blood transfusion between January 1, 1986 and July 1, 1990. I have received no evidence that the Claimant received a blood transfusion during the Class Period. Therefore, he does not qualify for compensation under the terms of the Settlement Agreement.
13. The Administrator under the Settlement Agreement is required to administer the Transfused HCV Plan in accordance with its terms. The Plan sets out the requirements for compensation which is limited to a defined class of individuals. The Claimant does not qualify for compensation as he did not provide any evidence that he received a blood transfusion during the Class Period. The Administrator does not have authority to vary the terms of the Plan. Also, an arbitrator or a referee cannot vary the terms of the Plan when asked to review the Administrator’s decision.

**CONCLUSION**

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

  
Judith Killoran  
Referee

  
July 26, 2011