

DECISION

BACKGROUND

1. On April 12, 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 May 10, 2010, the Claimant requested that the Administrator's denial of his claim be reviewed by a referee.
3. As of September 12, 2010, both parties agreed to have this review conducted by way of a written hearing. The Claimant filed submissions on September 27, 2010. On February 24, 2011, I executed a summons, served on York Central Hospital, for all medical records of the Claimant during the Class Period.
4. On April 13, 2011, I received confirmation that the hospital had no records for the Claimant during the Class period, although there was a record of his attendance at the hospital in 1980.
5. Fund Counsel filed written submissions on May 30, 2011. The written hearing concluded on July 8, 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

6. The Claimant is infected with Hepatitis C, which was confirmed by the Treating Physician's Form received by the Administrator on January 13, 2010.
7. In his application for compensation, the Claimant indicated that he believed he had received a Blood transfusion at York Central Hospital in 1986 as a result of a laceration to his right arm. As he had no medical records, the Administrator requested that Canadian Blood Services ("CBS") conduct a traceback.

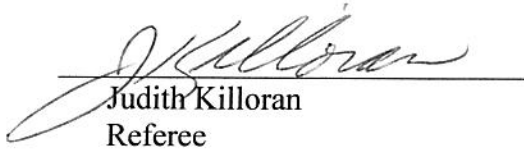
8. The CBS found confirmation of one visit by the Claimant to York Central Hospital on March 22, 1980. However, no records of any blood transfusion were found for the Claimant. Subsequently, a summons was issued to York Central Hospital requesting any hospital records for the Claimant during the Class Period. The hospital reported, consistent with the CBS report, that there was no record of any attendance by the Claimant during the Class Period, although there was a record of attendance in 1980.

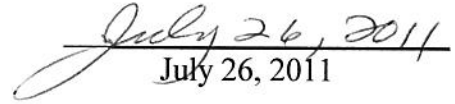
ANALYSIS

9. 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.”
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. 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.
12. 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

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


Judith Killoran
Referee


July 26, 2011