

**IN A MATTER OF A REFERENCE TO REVIEW A DECISION OF THE
ADMINISTRATOR UNDER THE HCV 1986-1990 SETTLEMENT AGREEMENT**

Claim No: 18989

Vincent R.K. Orchard, Q.C., Referee

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Decision

Claim ID: 18989

1. This is an appeal in British Columbia from a decision of the Administrator pursuant to the Transfused HCV Plan (the "Plan") under the 1986-1990 Hepatitis C Class Action Settlement. The decision of the Administrator was communicated to the Claimant, a resident of Victoria, British Columbia, by letter dated October 21, 2010. The Administrator denied the Claim on the basis that the required proof for compensation under Article 3.01 of the Plan had not been provided. The Claimant was unable to provide the necessary records demonstrating that he received a blood transfusion in Canada during the Class Period. Article 3.01(2) allows a Claimant, unable to meet the documentary requirements under Article 3.01(1)(a), to prove a claim through "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". The Claimant was unable to provide any corroborating evidence under Article 3.01(2). Therefore the Administrator was obliged to deny the claim.

2. On this appeal, the Claimant was afforded the opportunity to provide necessary corroborating evidence under Article 3.01(2) as he could not provide the primary evidence required under Article 3.01(1).

3. As requested by the parties, prior to an in-person hearing in Victoria on July 5, 2011, as Referee, I issued a Summons intended to capture any existing medical records during the Class Period for the Claimant for all hospital records including Blood Bank records where the Claimant believed he had a transfusion. A response from the Vancouver Island Health Authority complied with the Summons and indicated searches were completed by the hospitals for health records of the Claimant from January 1985 to August 6, 2010 and for Blood Bank records dating back to 1970. The Vancouver Island Health Authority indicated that there were "no records in Blood Bank for this patient ever receiving blood or blood products at Victoria General or Royal Jubilee Hospital". This confirmed information already received in the context of the Claim on a Traceback which indicated that health records at the Royal Jubilee Hospital were only available after December 1991 and that Blood Bank records were searched for certain specific dates in

1978, 1979 and 1980 and no Blood Bank records were found. The Royal Jubilee Hospital also confirmed in response to the Traceback that no Blood Bank records were found on "this patient". Victoria General Hospital responded to the Traceback and the investigation with the same information provided to the Referee as part of this appeal.

4. The Claimant testified that he received transfusions prior to 1986 in British Columbia, specifically during operations in 1977 or 1978 and in 1980. He claimed that in 1977 or 1978 he had severe facial lacerations and he was given blood at the Victoria General Hospital Emergency Department. He said that he had sinus surgery in 1980 and was transfused. He said that he had another sinus operation during the Class Period in 1987 or 1988 and was transfused. He also claimed that he had wisdom teeth extracted during the Class Period and during the procedure he was "topped up" with blood. He was sedated during extraction of his wisdom teeth and was informed following the operation that he received blood.

5. Despite assistance from Fund Counsel, the Claimant was unable to provide any records of transfusions during the Class Period or even before the Class Period. Undoubtedly records have been destroyed. Nor was the Claimant able to lead any evidence from doctors, dentists, or other medical personnel that he ever received a transfusion. Other than his own recollection of what he was told at the time of sinus operations and extraction of wisdom teeth, the Claimant could not provide any corroborating evidence as required under the Plan.

6. Fund Counsel submitted evidence provided by Canadian Blood Services ("CBS") obtained from the medical director at the B.C. and Yukon Centre of CBS, indicating that he was unaware of any transfusions being done in a private dental office and if there was such a transfusion, a record would be in the Blood Bank (Tab 18 of the Documents Brief for hearing submitted at the in-person hearing).

7. The history recorded by Dr. Wayne Ghesquiere, a specialist in infectious diseases, tropical diseases and internal medical consultant, in a letter dated March 29, 2007 by way of a consultation report, following the Claimant's diagnosis of Hepatitis C infection, does not record that the Claimant suspected a transfusion during the Class Period. In that history, the Claimant says he was suspicious he may have acquired Hep C in August 2006 when he shared a razor with another person. An additional risk was

associated with surgery in 1980 when he may have received a blood transfusion. The Claimant said that at that time those were his initial thoughts but since then he has recalled the other possible sources of infection as discussed above.

8. I accept what Fund Counsel had to say that the Claimant was not able to obtain any medical records demonstrating that he received a blood transfusion. The Claimant has sought information from the hospitals, doctors and dentists involved. Fund Counsel has assisted the Claimant to the extent set out in Tabs 8-22 of the Documents Brief. But to no avail.

9. The Claimant admitted that he had no new corroborating evidence under the Plan since the denial of his Claim by the Administrator. Unfortunately for the Claimant, although he seems to be a sincere and credible individual, the Plan requires more than his own evidence to prove entitlement to compensation.

10. I agree with Fund Counsel's submissions that neither the Administrator nor Referee or Arbitrator called upon to review the decision of the Administrator can alter or ignore the terms of the Plan. I am bound by the terms of the Plan and cannot decide an appeal contrary to its terms.

11. I conclude that the Administrator properly denied the Claim. The Claimant has been unable to prove the Claim as required under Article 3.01 of the Plan. The appeal is dismissed.

DATED at Vancouver, British Columbia, this 22nd day of July, 2011.



Vincent R.K. Orchard, Q.C., Referee