

DECISION

Claim No. 18587

Province of Infection – Newfoundland

1. The Claimant applied for compensation as a Primarily-Infected Person pursuant to the Transfused HCV Plan.
2. By letter dated May 10, 2010, the Administrator denied the claim on the basis that the Claimant had not provided sufficient evidence to establish that he had received blood during the Class Period.
3. The Claimant requested that the Administrator's denial of his claim be reviewed by a Referee.
4. The Administrator's letter of May 10, 2010 denying the claim stated in part:

“In your original application you indicated you were transfused at Grace General Hospital in 1989. There were no medical records submitted to confirm this information. In cases where the claimant is having difficulty obtaining documents to support they received a transfusion; the traceback department contacts Canadian Blood Services (CBS) to request their assistance in confirming transfusion information directly with the hospital. The final response to this request was received

from CBS in which they advised they contacted The Salvation Army Grace General Hospital who stated your patient records were available and you were typed, screened and crossmatched only. Please note a crossmatch is a procedure in which blood is requested and saved in the hospital blood bank however it is not proof of transfusion of that blood. Based on this information your claim must be denied based on Article 3.01 (1a) of the 1986-1990 Hepatitis C Settlement Agreement, Transfused Plan; because there is no evidence to support you received a Blood transfusion between January 1, 1986 and July 1, 1990.”

5. Following my appointment as Referee, additional records were obtained from Salvation Army Grace General Hospital.
6. After the additional hospital records were obtained and provided to the Claimant, the Claimant contacted the Referee and indicated that he did not wish to have an oral hearing or make any written submissions.
7. On April 11, 2011, I sent the following letter to Fund Counsel:

“April 11, 2011

VIA FAX (416-862-7661)
Mr. John E. Callaghan,
GOWLINGS,
1 First Canadian Place,
100 King Street West, Suite 1600,
Toronto, ON M5X 1G5

Dear Mr. Callaghan:

Re: Claim No. 18587 (*Claimant*)

The Claimant recently contacted me by telephone to advise that he was not requesting an oral hearing.

Under the circumstances, I suggest that you provide me with a written submission on behalf of the Fund and send a copy to *the Claimant*. Following that, *the Claimant* will be given a reasonable time, say two weeks, to file any written response he wishes to make. Naturally, if *the Claimant* requires more than two weeks to respond to the Fund's submission, then he should let me know he requires an extension.

Yours truly,

S. Bruce Outhouse
SBO:sw
cc: *Claimant*?"

8. On April 15, 2011, Fund Counsel filed a written submission and provided a copy to the Claimant.
9. The Claimant did not file any response to Fund Counsel's submission.
10. The issue in this case is whether there is any evidence that the Claimant received a blood transfusion in the Class Period. Without evidence of a transfusion, there is no basis for interfering with the Administrator's decision to deny the claim.

11. The medical records show that the Claimant attended The Salvation Army Grace General Hospital on July 7, 1989 for an elective vasectomy. Later the same day, he returned to the emergency department at the hospital for a scrotal hematoma, post-vasectomy.

12. The records from both the elective surgery on July 7, 1989 and the subsequent emergency visit later that day contain no indication that the Claimant received a blood transfusion.

13. This case is governed by s. 3.01 of the HCV Transfused Plan which provides, in part, as follows:

“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, Canadian Blood Services or Hema-Québec 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.”

14. Clearly, the Claimant has not been able to prove his claim pursuant to s. 3.01(1)(a). There is no medical record of any kind which demonstrates that he received a blood transfusion during the Class Period. Consequently, the only question is whether the Claimant has satisfied the requirements of s. 3.01(2) by providing “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 received a Blood transfusion during the Class Period”.

15. It has been decided in earlier cases that, under s. 3.01(2), a claimant bears the burden of proof on the balance of probabilities. It has also been authoritatively determined that the burden of proof must be satisfied by the independent evidence without regard to the recollections of a claimant or family members. In Court File No. 98-CV-141369, Winkler R.S.J., as he then was, stated:

“Given the express wording of s. 3.01(2), the only interpretation it will be [sic] bear is that the evidence independent of the personal recollection of the Claimant or a Family Member is the determining factor. If that independent evidence establishes on a balance of probabilities that the Claimant received blood during the Class Period then the claimant has met the burden. If not,

then the Claim must be rejected. The personal recollections of either the Claimant or Family Members are not to be considered.”

16. In the present case, no independent evidence was proffered by the Claimant to establish that he had received a blood transfusion in Canada during the Class Period.

17. Under these circumstances, I have no alternative but to uphold the Administrator’s denial of the Claimant’s request for compensation.

DATED at Halifax, Nova Scotia, this 18th day of August, 2011.



S. BRUCE OUTHOUSE, Q.C.
Referee