

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

Claim No: 1000659

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

Decision

Claim ID: 1000659

1. This is an appeal by way of a reference of the Administrator's decision on December 8, 2008 denying the Personal Representative's claim on behalf of the deceased's estate for compensation under the Transfused HCV Plan (the "Plan") as set out under the terms of the 1986-1990 Hepatitis C Settlement Agreement (the "Settlement Agreement"). A Traceback was conducted by Canadian Blood Services ("CBS") which determined that the donors of Blood transfused during the Class Period to the deceased, an HCV Infected Person, had tested negative for the HCV antibody. The Claimant provided no further evidence to prove that the deceased was infected for the first time with HCV by a Blood transfusion during the Class Period. Therefore, based on Article 3.04 of the Plan under the Settlement Agreement, the Administrator determined that the criteria for compensation had not been met and the claim was denied.

2. On January 7, 2009 the Claimant appealed the Administrator's decision and sought review by a Referee.

3. The deceased had blood transfusions at a Calgary Hospital in 1986 during the Class Period.

4. The Claimant and the deceased, his spouse, were married September 10, 1998.

5. The deceased died April 23, 2006. She had HCV.

6. An important criterion for a claim under the Plan has been met: Blood transfusions during the Class Period. However, the final results of CSB's Traceback, to the effect that the donors of the Blood given to the deceased tested negative for the HCV antibody, required the Administrator to dismiss the claim under 3.04 of the Plan unless under 3.04(2) the Claimant proves through other evidence that the deceased was infected for the first time by the Class Period blood transfusion(s) and thereby refutes the results of the Traceback. Under Article 3.04(2) the evidentiary onus is on the Claimant.

7. The parties waived the right to an oral hearing. However, telephone conferences involving the parties took place on March 9, 2009, September 3, 2009 and October 14, 2011.

8. On March 9, 2009, I issued, as Referee, a Summons to the Calgary hospital in question to produce the complete medical records of the deceased during the Class Period including but not limited to all Blood Bank records. It took a great deal of time for a meaningful response from the hospital. The Alberta Health Services and the Hospital Authority made a number of requests for documentation and consent forms. Ultimately no further records, beyond what was already in the appeal file, were found.

9. The Claimant candidly admits that he has no further evidence on this appeal to refute the Traceback results.

10. The Administrator is bound under the Settlement Agreement to administer the Plan in accordance with its terms. Neither the Administrator nor an Arbitrator or Referee has any authority to vary the terms of the Plan.

11. The Claimant has not met the onus of proof, on a balance of probabilities, upon him under Article 3.04. In reaching my decision, I have had regard to a number of previous decisions concerning Article 3.04 including the decision of the Honourable Mr. Justice Pitfield of the British Columbia Supreme Court, pronounced May 9, 2003, in Claim No. 1300593.

12. Since the Claimant did not submit any further evidence under Article 3.04(2), the appeal must be dismissed and the decision of the Administrator is upheld.

DATED at Vancouver, British Columbia, this 30th day of November, 2011.



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