

DECISION

BACKGROUND

1. On June 1, 2011, the Administrator denied the Claimant's request for compensation as a Primarily-Infected Person and as a Secondarily-Infected person under the Transfused HCV Plan because the Claimant had not provided sufficient evidence that either he or his father received a Blood transfusion during the Class Period (January 1, 1986 to July 1, 1990).
2. On July 12, 2011, the Claimant requested that the Administrator's denial of his claim be reviewed by an arbitrator. On September 13, 2011, the Claimant requested that his claim proceed by way of a reference.
3. The hearing proceeded in writing and concluded on May 25, 2012, which I set as the final day for submissions.
4. In addition, 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 on the Treating Physician Form dated June 23, 2010.
6. In his application for compensation, the Claimant indicated that he received blood transfusions at the Hotel Dieu Hospital in Kingston, Ontario in 1987 during a surgical procedure to remove his appendix.
7. The Administrator of the Fund requested that the Canadian Blood Services (CBS) conduct a traceback. On April 27, 2011, the Hotel Dieu Hospital confirmed that there was no record of any transfusion being administered to the Claimant.
8. Subsequently, I issued a summons on September 21, 2011 to the Hotel Dieu Hospital requesting medical records between 1986-1990. On November 25, 2012, the hospital confirmed that it had no record of a blood transfusion relating to the Claimant.

9. Further correspondence dated March 20, 2012 was forwarded to Hotel Dieu Hospital requesting a copy of all the medical records relating to the Claimant. On April 10, 2012, Kingston General Hospital, on behalf of Hotel Dieu Hospital, confirmed that it was unable to locate any records for the claimant during the period of January 1, 1986 to July 1, 1990.

ANALYSIS

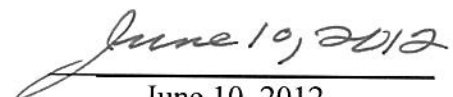
10. The Claimant seeks compensation as a Primarily-Infected Person and as a Secondarily-Infected Person under the Transfused HCV Plan of the Hepatitis C Class Action Settlement. The Transfused HCV Plan defines "Primarily-Infected Person", in part, as meaning "a person who received a Blood transfusion in Canada during the Class Period." A "Secondarily-Infected Person" is defined, in part, as meaning a child of a HCV Infected Person who was infected by the HCV Infected Person.
11. 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.
12. 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 3.02 specifies the evidence required to support a claim by a Secondarily Infected Person. Article 3.03 itemizes the additional proof that may be requested by the Administrator.
13. The Claimant has not submitted any medical evidence that supports his claim that either he or his father, who is now deceased, received a blood transfusion during the Class Period. In his submissions received on June 28, 2010, the Claimant states that his father had a serious car accident in 1985 and received blood transfusions during subsequent surgery which was presumably outside the Class Period.

14. I have received no documentary evidence that either the Claimant or his father received a blood transfusion during the Class Period. The Claimant has not met his burden of proof as required under the Settlement Agreement. Consequently, I find, on the balance of probabilities, that the Claimant does not qualify for compensation under the terms of the Settlement Agreement.
15. 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 defined classes of individuals. The Claimant does not qualify for compensation as he does not meet the definition of a Primarily-Infected Person or a Secondarily-Infected Person.

CONCLUSION

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


Judith Killoran
Referee


June 10, 2012