

DECISION

BACKGROUND:

1. The Claimant submitted an application for compensation as a Primarily Infected Person under the Transfused HCV Plan, as set out under the terms of the 1986-1990 Hepatitis C Settlement Agreement ("the Settlement Agreement").

2. By letter dated January 26, 2011, the Administrator denied her claim on the basis the Claimant failed to provide sufficient evidence to support her claim that she received blood during the period from January 1, 1986 - July 1, 1990 ("the Class Period").

The Claimant requested that an Arbitrator review the decision of the Administrator to deny her claim. The parties agreed to proceed via written submissions.

REVIEW:

3. In her application for benefits, the Claimant indicates she had caesarean sections in 1985 and 1988 at the Hôtel-Dieu Grace Hospital in Windsor, Ontario, but does not know whether she received blood transfusions on either occasion. The Claimant's application did not contain any proof that a transfusion occurred as required under the Transfused HCV Plan.

4. The applicant's medical records contain a Physician's letter, dated March 19, 1999, which refers to a transfusion in 1985, following the Claimant's first caesarean section. However, there is no confirmation in the Hospital records from either 1985 or 1988 of a blood transfusion, and the basis for the reference in the Physician's letter is not apparent.

5. On receipt of the Claimant's application, the Administrator requested that the Canadian Blood Services ("CBS") conduct a traceback. The CBS was advised by the Hôtel-Dieu Grace Hospital that the Claimant's medical records were searched but that there was no record of any transfusion being administered to the Claimant.

6. As part of my review, a Summons was issued to the Hôtel-Dieu Grace Hospital, requesting any records for the Claimant during the Class Period to determine if there existed any mention or record of a transfusion. The Hôtel-Dieu Grace Hospital advised that while records from 1986 – 1987 were not available, those from 1985 and 1988 were available. However, the records did not disclose any blood transfusion.

ANALYSIS:

7. In her Request for Review the Claimant indicates the reason she wishes to have the Administrator's decision reviewed is because she received Ribavirin and Interferon for one year. While these are therapies used to treat Hepatitis C infection, there is no dispute the Claimant had contracted Hepatitis C. The issue is whether she contracted Hepatitis C as a result of having received blood during the Class Period.

8. In order to qualify for compensation under the terms of the Transfused HCV Plan the Claimant must satisfy the criteria set out in that Plan.
9. Article 3.01(1)(a) of the Plan provides that a person claiming to be a Primarily-Infected Person must provide the Administrator with, amongst other things, "...records demonstrating that the Claimant received a blood transfusion in Canada during the Class Period." As noted above, the Settlement Agreement establishes the "Class Period" to be "the period from and including 1 January 1986 to and including 1 July 1990".
10. If a person claiming to be a Primarily-Infected Person cannot comply with Article 3.01(1)(a), Article 3.01(2) provides that that individual 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.
11. The Claimant bears the onus of demonstrating the Administrator erred in denying her application. No hospital records demonstrating the Claimant received a blood transfusion in Canada during the Class Period, as required by Article 3.01(1)(a) of the Transfused HCV Plan, were produced.
12. In the absence of records demonstrating the Claimant received a blood transfusion in Canada during the Class Period it is open to her to demonstrate, through some other form of corroborating evidence, that this is indeed the case. No other evidence of a blood transfusion was provided.
13. Neither the Administrator, nor I as an arbitrator, have discretion to grant compensation to individuals infected with Hepatitis C who cannot show they received a transfusion within the Class Period. While the March 19, 1999 physician's letter makes reference to a blood transfusion following the Claimant's first caesarean section, there is no other evidence to corroborate that reference. As the letter suggests the physician is seeing the Claimant for the first time, in order to conduct an assessment regarding her Hepatitis C infection, and in light of the absence of any documentary source, it appears likely the Claimant was the source of the information regarding the transfusion.
14. In this instance, the Claimant has provided no reliable documentation or other evidence indicating she received a Blood transfusion during the Class period.
15. Accordingly, I find the Administrator correctly determined the Claimant is not entitled to compensation pursuant to the Hepatitis C 1986-1990 Class Action Settlement, as she has not demonstrated that she received a Blood transfusion during the Class Period.
16. The decision of the Administrator to deny the Claimant compensation pursuant to the Hepatitis C 1986-1990 Class Action Settlement is upheld.

DATED AT TORONTO, THIS 26TH DAY OF JUNE 2012.

"Tanja Wacyk"
Arbitrator