

CLASS ACTION – Hepatitis C - 1986-1990
Request for review # 10566

DECISION

This request for review was submitted pursuant to the *1986-1990 Hepatitis C Settlement Agreement* [hereinafter referred to as the “*Settlement Agreement*”]. Under the *Settlement Agreement*, individuals who have been infected with the hepatitis C virus through the Canadian Blood System through a blood transfusion or the use of blood products between January 1, 1986 and July 1, 1990 are eligible for compensation.

Under the *Settlement Agreement*, individuals who submit an application for compensation must meet the eligibility criteria and submit the required evidentiary elements.

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On June 30 2010, the Claimant submitted an HCV application for compensation as an “HCV personal representative” on behalf of a deceased primary infected person, pursuant to the *Transfused HCV Plan* [hereinafter referred to as the “*HCV Plan*”].

The 1986-1990 HCV Claims Administrator [hereinafter referred to as the “Administrator”] informed the Claimant by letter dated June 20, 2012 that her claim had been rejected because she had failed to provide the required evidentiary elements proving that the deceased person had been infected by the hepatitis C virus, and that she had not met the eligibility criteria for compensation.

This is the Administrator’s decision for which the Claimant submitted a request for review on June 26, 2012 and that I must now examine in order to render a decision in my capacity as Referee.

By way of a letter dated July 11, 2012, I asked the Claimant to confirm her

intentions to testify before me. On June 16, 2012, the Claimant replied to my letter and provided additional information and indicated that her testimony would not add anything to what was already on file.

On October 25, 2012, I confirmed with the Claimant that she did not intend to testify before me, that she would rely on the information sent to me in lieu of testimony and that the decision to be made as to her request for review would be based on the content of her file as it stood. On October 24, 2012, I asked the Claimant to provide me with her written observations within thirty (30) days, following which her file would then stand as complete, and I reiterated the fact that my decision would then be rendered based on my analysis of the case. The Claimant sent observations to me on November 2, 2012, including comments regarding the Fund Counsel's observations sent to her on October 10, 2012.

I am rendering this decision on the basis of the documents and the information sent to me by the Claimant and on the observations submitted by the Fund Counsel, pursuant to the *Settlement Agreement*.

* * *

According to the Claimant, the person who was infected with HCV was her husband who died on December 29, 2001. According to the Claimant, her husband had received six (6) blood transfusions during his life, including four (4) during the period covered by the *Settlement Agreement*. The Claimant alleged that her husband had received blood transfusions at the Montreal Heart Institute in January 1986.

In an application form completed at the request of the Claimant, a physician certified that he has reviewed the complete file of the Claimant's husband and stated that "no hepatitis C diagnosis had ever been made".

My role as Referee is to verify whether the Administrator's decision is consistent with the *Settlement Agreement*, inasmuch as its results satisfy the eligibility criteria set out therein.

The burden of proof lies with the Claimant and she must demonstrate, on a balance of probabilities, that the Administrator's decision was non-compliant with the *Settlement Agreement*.

To be eligible for compensation as "an HCV personal representative" of a deceased HCV-infected person, the Claimant must prove that the death of the person resulted from the HCV infection.

Sections 3.01 and 3.05 of the HCV Plan require that the following documentary evidence be provided to support such a claim:

3.01 (1) A person claiming to be a Primarily-Infected Person must deliver to the Administrator an application form prescribed by the Administrator together with:

(...)

(...) an HCV Antibody Test report, PCR Test report or similar test report pertaining to the Claimant;

(...)

3.05 (3) Notwithstanding the provisions of Section 3.01(1)(b), if a deceased Primarily-infected Person was not tested for the HCV antibody or HCV the HCV Personal Representative of such deceased Primarily-Infected Person may deliver, instead of the evidence referred to in Section 3.01(1)(b), evidence of any one of the following:

- a. a liver biopsy consistent with HCV in the absence of any other cause of chronic hepatitis;
- b. an episode of jaundice within three months of a Blood transfusion in the absence of any other cause; or
- c. a diagnosis of cirrhosis in the absence of any other cause.

On the analysis of the case, as it stood before me, the Claimant did not discharge herself from her burden of proof in that none of the requirements of Articles 3.01 (1)(b) and 3.05 (3) were met.

On the contrary, the file, as it stood before me, shows that the person said to have been HCV infected had not been tested for HCV as confirmed by the Claimant herself in her letter dated July 27, 2006.

In addition, always according to the analysis of the case, a doctor has confirmed in a letter dated September 5, 2012 that he was certifying that the person said to have been HCV infected, according to the Claimant, had never been diagnosed as an HCV infected person.

Moreover, the file as it stands before me contains no document establishing any situation listed under section 3.05 (3) of the HCV Plan that would support the Claimant's position in the absence of an HCV diagnostic test.

After having examined the entire file, I find no evidence to the effect that the Claimant's husband and the person on behalf of whom she submitted this request for review, had been infected with HCV and, therefore, no evidence that HCV was the cause of her husband's death.

After having examined all the documentation forwarded to me, I come to the conclusion that the Administrator's decision to reject this Claimant's application for compensation was well founded.

This request for review is therefore rejected.

Montreal, April 23, 2013

Jean-François Lepage

Referee