

CLAIM #15686

Province of Infection: Ontario

Province of Residence: Ontario

IN THE MATTER OF AN APPEAL
TO REVIEW THE DECISION OF THE ADMINISTRATOR
UNDER THE HEPATITIS C (86-90) CLASS ACTION SETTLEMENT

REFEREE: Reva Devins

APPEARANCES: Claimant

Claimant's two daughters

John Callaghan, Fund Counsel

Carol Miller, (via teleconference)

Kevin O'Connell, (via teleconference)

HEARING DATE: June 14, 2014

DECISION

1. The Claimant's husband, an Ontario resident, was infected with Hepatitis C and was approved for compensation under the HCV Transfused Plan (the "Plan") of the 1986-1990 Hepatitis C Settlement Agreement (the "Settlement Agreement").
2. The Claimant's husband died in 2003. In accordance with the Administrator's calculation of his notional life expectancy, the Claimant continued to receive benefits under the Plan until July 25, 2012. The Administrator denied the Claimant's request to extend her benefits beyond this date.
3. The Claimant now appeals the decision of the Administrator.

Terms of the Settlement Agreement

4. The Court Approved Protocol for loss of services of an HCV Infected Person provides ongoing entitlement for dependants after the death of the primarily infected family member on the following basis:
 16. The Administrator will use the *most current* Canada Life Tables to calculate a *notional* life expectancy of the deceased HCV Infected Person without reduction for pre-existing ailments or illness (including HCV) to determine the maximum period loss of services may be payable.
 17. Loss of services will be paid to Dependants for the *calculated life expectancy* of the deceased HCV infected Person, so long as the Spouse who is Dependant remains alive or there is a Child who is Dependant who continues to qualify for payments. Loss of services payments will cease upon death of the Spouse who is a Dependant

unless there is a Child who continues to qualify for payments as a Dependant.

Facts

5. The Claimant's husband died on November 24, 2003 at the age of 77. Based on the then current Canada Life Tables, the Administrator calculated that a man of his age could be expected to live another 8.67 years and determined that his notional life expectancy was until July 25, 2012. The Administrator relied on the Canada Life Tables that were the most current when the Claimant's husband died.
6. The Claimant, with the assistance of her daughters, argued that her husband was in exceptionally good health before he was diagnosed with Hepatitis C and came from a family where his parents and grand parents lived well past the average, into their late 90's and early 100's. In the Claimant's view, her husband would very likely have lived much longer than his mid eighties if he had not contracted Hepatitis C. The Claimant also questioned which Canada Life Tables should be used: those that were published and available at the time of his death, which used mortality rates from a sample of men in 1995-1997, or Tables issued on a later date.
7. Fund Counsel took the position that the Administrator followed the Court Approved Protocol and determined the notional life expectancy of the Claimant's husband by following the industry standards in the actuarial field and in a manner that was consistent with the requirements of the Court Approved Protocol. There are roughly 650 claimants who are or have been in the same category and notional life expectancy has always been calculated in the same way that it was in this case.
8. In support of his submission, Fund Counsel also referred to a decision of Referee Mitchell in claim #8162, in which the identical issue was addressed and the calculations of the Administrator were upheld. In his decision, Referee Mitchell concluded "the Hepatitis C Settlement Agreement does not allow the Referee

discretion with respect to this matter. The Agreement calls for the use of the life expectancy tables and limit payments in accordance with their terms.”

Analysis

9. There is no dispute that the Claimant’s husband was infected with Hepatitis C as a result of a blood transfusion in the Class Period and that the Claimant was entitled to benefits after his death. The only question before me is the length of time that those benefits should continue.

10. After careful consideration, I have concluded that the Administrator’s decision is correct and that I can not extend the period for which the Claimant receives benefits.

11. I fully appreciate the Claimant’s frustration with the limited availability of compensation after her husband’s death. I also understand that from her individual perspective, she expected her husband to live much longer than the age calculated by the Administrator.

12. Nonetheless, in determining eligibility for compensation, I am limited by the conditions set out in the Settlement Agreement and the Court Approved Protocol. I must be guided by the terms of the agreement as it was negotiated by the parties and approved by the Court.

13. One of the objectives of any class action settlement is to ensure that there is a simple, efficient and consistent process by which an individual can obtain compensation. In order to meet that goal, certain compromises are made, focusing on the class as a whole and not the unique circumstances of each individual. Individuals are not required to prove that the Defendant was responsible for their illness and an administrative process is designed to allow claimants to easily establish their right to compensation.

14. The Agreement sets out the requirements that must be met to be eligible for compensation and include certain limits to eligibility. When a person who has been infected with Hepatitis C dies, the Court requires the Administrator to calculate a notional life expectancy based on the Canada Life Tables. The Protocol goes on to say that the calculation is made without regard to any other underlying medical conditions. Inevitably, this means that some claimants will be given credit for a longer life expectancy than their health might warrant, even as it might relate to medical conditions that are totally independent from their infection with Hepatitis C.

15. As is always the case with a notional or average life expectancy there are also some individuals who might have lived longer than the average set out in the Canada Life Tables. That is the trade-off that was made by the parties and it would be both unfair and inconsistent with the Court Protocol for me to consider individual factors, such as family history of longevity, to extend the benefits awarded to the Claimant. It would be unfair to all of the other Class Members who have already had their benefits determined in the same way as the Claimant. It would also require me to examine all of the factors that might have affected the life expectancy of the Claimant's husband, such as other underlying medical conditions. An individual assessment of life expectancy is contrary to the explicit directives that have been approved by the Court.

16. I also find that the Administrator used the appropriate Canada Life Tables to calculate the notional life expectancy of the Claimant's husband. The Tables used were published in August 2002, and although it refers to data gathered in 1995-1997, it represents the most current information available at the time that the Claimant's husband died. When an infected person dies, the Administrator must make the calculation of notional life expectancy at the time of death in order to determine whether their dependants are eligible for further compensation. That is what was done in this case. The Administrator was not required to revise that date based on subsequently published Tables. Indeed, I doubt that a second, later

calculation would be actuarially sound. The standard practice in the industry is to use the most current Table at the time of death to calculate life expectancy.

17. Based on the evidence and submissions provided by the Claimant, her daughters and Fund Counsel, I find that the Administrator correctly determined that the Claimant is not eligible to receive benefits for Loss of Service beyond the notional life expectancy calculated on the basis of the most current Canada Life Tables available at the time of her husband's death. The Claimant's appeal is dismissed.

Dated June 25, 2013:

A handwritten signature in black ink, appearing to read "R. Devins", with a long horizontal flourish extending to the right.

Reva Devins, Referee