

**Claim No. 15299**  
**Province of Infection and Residence: Nova Scotia**

**IN THE MATTER OF A REQUEST FOR REVIEW  
PURSUANT TO THE  
1986 – 1990 HEPATITIS C SETTLEMENT AGREEMENT**

**BETWEEN:**

**Claimant**

**- and -**

**THE ADMINISTRATOR**

**DATE OF DECISION: February 9, 2015.**

## **DECISION**

**Claim No. 15299**

### **Province of Infection – Nova Scotia**

1. The Claimant applied for compensation as a Primarily-Infected Person pursuant to the Transfused HCV Plan.

2. By letter dated December 27, 2006, the Administrator denied the claim on the basis that the Claimant had not provided sufficient evidence to establish that she had received blood during the Class Period.

3. The Claimant requested that the Administrator's denial of her claim be reviewed by a Referee.

4. The Administrator's letter of December 27, 2006 gave the following reasons for denying the claim:

“The Settlement Agreement requires the Administrator to determine a person's eligibility for class membership.

All the material that you provided to support your claim was carefully reviewed by the Administrator. You have not provided sufficient evidence to support your claim

that you or the HCV Infected Person received blood during the Class Period.

In your claim file you indicated that you thought [sic] were transfused at St. Martha's Hospital or Victoria General Hospital between January 1, 1986 and July 1, 1990. However there were no medical records submitted to support this statement. In cases where the claimant is having difficulty obtaining documents to support they received a transfusion; the trackback department contacts Canadian Blood Services (CBS) to request their assistance in obtaining transfusion information directly from the hospital. The final response to this request was received from CBS in a letter received December 18, 2006. CBS confirmed that the Victoria General Hospital has searched their records and there is no evidence that you were transfused. They also confirmed that St. Martha's Hospital checked their records and you were typed Screened and crossmatched only; you did not receive a transfusion. Therefore, you do not qualify for compensation and your claim is denied, based on Article 3.01 (1a) of the 1986-1990 Hepatitis C Settlement Agreement, Transfused Plan; because there is no evidence to support you received a blood transfusion between January 1, 1986 and July 1, 1990."

5. Following my appointment as Referee, I advised the Claimant of her right to an oral hearing. The Claimant initially did not respond but subsequently obtained counsel to represent her. Claimant's counsel took considerable time exploring the possibility of having the Claimant apply for the pre-1986 Settlement Program and attempting to obtain more complete medical records. He was eventually successful in obtaining some additional medical records which confirmed that the Claimant had been crossmatched for a potential transfusion when she underwent a hysterectomy at St. Martha's Regional Hospital in May of

1988. However, the records did not indicate that the Claimant actually received a blood transfusion.

6. Following the production of the additional medical records, there followed a long period of sporadic correspondence among Fund counsel, Claimant's counsel and the undersigned. On May 17, 2013, I sent the following letter to both counsel:

"May 17, 2013

...

**Re: 1986-1990 Hepatitis C Class Action Settlement –  
Claim No. 15299 (*Claimant*)**

This matter has been dragging on for a number of years without resolution. I note that my most recent correspondence to Mr. M. of January 9, 2013 has gone unanswered.

Under the circumstances, I request that Fund Counsel provide me with a written submission by not later than June 14, 2013. Mr. M. will have until July 5, 2013 to file a reply on behalf of (*Claimant*). Following receipt of the submissions, I will render a decision. ..."

7. Fund counsel provided a written submission as requested; however, no submission has been filed on behalf of the Claimant, despite the fact that ample opportunity has been given for doing so.

8. The issue in this case is whether there is any evidence that the Claimant received a blood transfusion in the Class Period. Without evidence of a transfusion, there is no basis for interfering with the Administrator's decision to deny the claim.

9. Based on the medical records produced, it is clear that the Claimant had a hysterectomy at St. Martha's Regional Hospital in May of 1988. Prior to that surgery, a Routine Orders form was prepared requesting "group and cross-match: have 1,000 mls of blood available for OR". There is no record of any blood transfusion and the operative record indicates that the Claimant only lost 400 cc's of blood during surgery. Moreover, a traceback search by the Canadian Blood Services did not indicate that the Claimant had been transfused with blood during the Class Period.

10. This case is governed by s. 3.01 of the HCV Transfused Plan which provides, in part, as follows:

**"3.01 Claim by Primarily-Infected Person**

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

(a) medical, clinical, laboratory, hospital, The Canadian Red Cross Society, Canadian Blood Services or Hema-Québec records demonstrating that the claimant received a Blood transfusion in Canada during the Class Period;

....

(2) Notwithstanding the provisions of Section 3.01(1)(a), if a claimant cannot comply with the provisions of Section 3.01(1)(a), the claimant 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. Clearly, the Claimant has not been able to prove her claim pursuant to s. 3.01(1)(a). There is no medical record of any kind which demonstrates that she received a blood transfusion during the Class Period. Consequently, the only question is whether the Claimant has satisfied the requirements of s. 3.01(2) by providing “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...she received a Blood transfusion during the Class Period”.

12. It has been decided in earlier cases that, under s. 3.01(2), a claimant bears the burden of proof on the balance of probabilities. It has also been authoritatively determined that the burden of proof must be satisfied by the

independent evidence without regard to the recollections of a claimant or family members. In Court File No. 98-CV-141369, Winkler R.S.J., as he then was, stated:

“Given the express wording of s. 3.01(2), the only interpretation it will be [sic] bear is that the evidence independent of the personal recollection of the Claimant or a Family Member is the determining factor. If that independent evidence establishes on a balance of probabilities that the Claimant received blood during the Class Period then the claimant has met the burden. If not, then the Claim must be rejected. The personal recollections of either the Claimant or Family Members are not to be considered.”

13. In the present case, no independent evidence was proffered by the Claimant to establish that she had received a blood transfusion in Canada during the Class Period.

14. Under these circumstances, I have no alternative but to uphold the Administrator’s denial of the Claimant’s request for compensation.

DATED at Halifax, Nova Scotia, this 9<sup>th</sup> day of February, 2015.



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**S. BRUCE OUTHOUSE, Q.C.**  
Referee