

**IN A MATTER OF A REFERENCE TO REVIEW A DECISION OF THE
ADMINISTRATOR UNDER THE HCV 1986-1990 SETTLEMENT AGREEMENT**

Claim No: 19564

Vincent R. K. Orchard, Q.C., Referee

Decision

Claim ID: 19564

1. This is an appeal by way of a reference of the Administrator's decision by letter dated November 5, 2012 denying the claim for failure to provide evidence of a blood transfusion during the Class Period between January 1, 1986 and July 1, 1990. The Administrator's decision is based on Article 3.01(1)(a) of the Transfused HCV Plan (the "Plan") pursuant to the HCV 1986-1990 Transfused Settlement Agreement (the "Settlement Agreement") requiring the Claimant to submit evidence by way of medical records of a blood transfusion during the Class Period. The Claimant did not provide the necessary evidence.

2. The Claimant filed a claim for compensation under the Plan as a Primarily-Infected Person. The Claimant passed away on December 4, 2012 and her claim has been continued on behalf of her estate by her husband.

3. The Claimant claimed that Ontario was the province of infection of HCV, which she had. At the time of the claim and the commencement of the appeal, the Claimant resided in British Columbia. Given the Claimant's province of residence at the material time, this appeal comes before me as a Referee appointed under order of the Supreme Court of British Columbia.

4. The basis of the claim is the Claimant's belief that she received a blood transfusion during an operation to remove her gallbladder at the Sydenham District Hospital (the "Hospital") in Wallaceburg, Ontario, in June, 1986. As noted by the Administrator in denying the claim, there were no medical records submitted to support that a blood transfusion took place. The Administrator also noted that Canadian Blood Services ("CBS") carried out a Traceback investigation which disclosed that the Hospital searched the Hospital's Blood Bank records for visit dates in 1986 and 1987 and advised that there were no records of a transfusion.

5. I facilitated a number of telephone conference calls between February, 2013 and February, 2015 in the course of this appeal involving the Claimant's

representative, Fund Counsel, and Ms. Carol Miller, an appeal coordinator, representing the Administrator. In the course of the appeal, I also caused to be issued a Summons directed to the Hospital for all medical records relating to the Claimant under all known names, including Blood Bank records, during the Class Period. Unfortunately, all records prior to 2004 had been purged.

6. An in-person hearing had been set at the request of the Claimant's representative for August 17, 2015 at Terrace, British Columbia, but was cancelled with the consent of the Claimant's representative who advised that he had no further evidence to submit and requested that I make a written decision on the basis of the file and the record.

7. Subsequently, I received submissions from Fund Counsel and nothing further from the Claimant's representative.

8. It is noted that Fund Counsel, during the course of the appeal, also wrote to the Claimant's previous physicians requesting any information or documentation the physicians may have concerning the Claimant having been transfused during the Class Period. No further evidence was forthcoming.

9. Section 3.01 of the Settlement Agreement provides 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-Quebec records demonstrating that the Claimant received a Blood transfusion in Canada during the Class Period;
 - b. an HCV Antibody Test report, PCR Test report or similar test report pertaining to the Claimant;
 - c. a statutory declaration of the Claimant including a declaration
 - (i) that he or she has never used non-prescription intravenous drugs,
 - (ii) to the best of his or her knowledge, information and belief, that he or she was not infected with Hepatitis Non-A, Non-B or HCV prior to 1 January 1986,
 - (iii) as to where the Claimant first received a Blood transfusion in Canada during the Class Period, and

(iv) as to the place of residence of the Claimant, both when he or she first received a Blood transfusion in Canada during the Class Period and at the time of delivery of the application hereunder.

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.

10. The Settlement Agreement was approved by Mr. Justice Winkler of the Ontario Superior Court of Justice on October 22, 1999, as being "fair, reasonable, adequate, and in the best interests of the Ontario Class Members in the Ontario Actions".

11. The Claimant's representative candidly admits that he has no further corroborating evidence constituting proof under section 3.01(2) that the Claimant was transfused with blood during the Class Period.

12. Under the Settlement Agreement, the Administrator is bound to administer the Plan in accordance with its terms. Neither the Administrator nor a Referee or Arbitrator has any authority to alter, amend or vary the terms of the Plan.

13. The onus of proof, on a balance of probabilities, has not been met under Article 3.01. The appeal must be dismissed and the decision of the Administrator is upheld.

DATED at Vancouver, British Columbia, this 31st day of December, 2015.



Vincent R.K. Orchard, Q.C., Referee