

REFEREE'S DECISION  
HEPATITIS C CLASS ACTION  
JANUARY 1, 1986 – JULY 1, 1990

Claimant:	Claimant #19627
File No.:	54
Province of Infection:	Alberta
Province of Residence:	Alberta
Date:	July 19, 2016

## Decision

1. On November 4, 2015 the Administrator denied the claim for compensation as a Primarily-Infected Person pursuant to the Transfused HVC Plan, on the basis that the Claimant had not provided sufficient evidence that she had received a transfusion of blood within the Class Period.
2. In the Claimant's original application, she contended that she received a blood transfusion at the Royal Alexandra Hospital (RAH) in 1988 where she was treated with surgery. She subsequently stated that the transfusion might have occurred at the Charles Camsell Hospital (CCH) some weeks later.
3. The Administrator advised the Claimant that the Traceback Department had contacted Canadian Blood Services (CBS) for assistance in attaining the records of the transfusion from the hospitals in question and CBS advised that both hospitals confirmed the Claimant's patient records and the Blood Bank records were available.
4. The Administrator advised the Claimant that those records showed no evidence of a transfusion of blood administered to her at either hospital.
5. The Claimant requested an in-person hearing by a Referee to review the decision of the Administrator.
6. Prior to the in-person hearing, a request was made from Alberta Health Services for all available records from both the RAH and the CCH. Unfortunately, the response to this request produced no records from CCH.
7. The hearing was convened in Edmonton, Alberta on June 28, 2016.
8. The Claimant gave evidence of her background which included the following:
  - (a) She was the youngest of nine children and was not close with her family
  - (b) She was diagnosed with depression at about age 8 or 9
  - (c) She had self-applied tattoos to her body between ages 12 and 13 by use of a pin and India ink
  - (d) She had a history of homelessness
  - (e) She had a history of abusive relationships
  - (f) She lived in various places including Ontario, British Columbia and Alberta

- (g) She gave birth to two children
  - (h) She admitted that she had injected Demerol and Morphine purchased "on the street" with needles acquired from a needles exchange program
  - (i) She admitted being addicted to painkillers at the time of her hospitalization.
9. The Claimant gave evidence to support her belief that she was infected with Hepatitis C which included the following:
- (a) During the period she lived in Alberta, she attended hospital for treatment of gall bladder attacks on two occasions and recalled being offered emergency surgery and being asked if she wanted to donate blood
  - (b) She recalled being treated at hospital and being provided with a form to sign that would permit a transfusion
  - (c) She recalled being treated by a Dr. Hackett but seeing him only in the operating room
  - (d) She recalled being woken up twice after surgery in the recovery room
  - (e) On the second occasion, the nursing attendant advised that she was attaching blood to the IV pole (sic)
  - (f) No one was present with her during any stage of her hospitalization
  - (g) She recalled that Dr. Hackett prescribed painkillers upon her release from hospital
  - (h) Some weeks after her discharge, she was hospitalized at the CCH for jaundice
  - (i) At about this time, she was diagnosed with non A non B hepatitis
  - (j) She recalled that she was given the opinion by some personnel at the CCH that she had contracted the condition from "her junkie friends"
  - (k) Subsequent to both hospitalizations, she contacted hospital administrators by telephone about possible blood transfusion during her operation and received conflicting messages, first that she had indeed received a blood product which was not contaminated with Hepatitis C, and secondly, that she had received no blood products of any kind during her hospitalization.



- (l) As a result of the contradictory messages, the Claimant believes the staff at RAH tampered with her hospital records to cover up the fact that she was given a transfusion of blood tainted with Hepatitis C
  - (m) The Claimant presented a letter from her mother to support her application, however, mother had not been present with the Claimant during either hospitalizations
  - (n) The Claimant's daughter, also in attendance at the hearing, stated that she recalled as a young child seeing the Claimant use needles in the home.
10. The Claimant said she had been represented by legal counsel and had executed consent forms to allow her lawyer to obtain medical documentation to support her appeal, including from a Dr. Tyrell. She said that when her lawyer received a response from the physician that was unfavorable to her case, he so advised her and ceased to act on her behalf.
  11. Fund Counsel contended that the denial must be upheld because the Claimant had not produced any evidence to corroborate her contention that she was infected with transfused blood within the Class Period.
  12. During the hearing, the Claimant contended that there was an indication in the materials provided by Fund Counsel to show that blood was transfused.
  13. Fund Counsel then reviewed various of the records that supported a contrary conclusion, including operative and other chart notes indicating the operation was routine and did not require transfusion, and interpreting some of the terms in the documentation for the Claimant which gave rise to her suspicions. For example, the Claimant pointed to a screen shot of the Administrator's computer system containing the word "transfused". Fund Counsel took the position that that term on that page was referring to the compensation program generally, and not to document occurrence of a transfusion in her specific case.
  14. Notwithstanding those responses, the Claimant remained of the view that she had seen some reference in the records to blood plasma.
  15. As a result of the foregoing, the hearing was adjourned to allow the Claimant a further opportunity to review all the records to locate a reference to transfusion or plasma and thereby provide evidence that she had received a transfusion of blood within the Class Period.
  16. The hearing reconvened on July 14, 2016 by way of teleconference.
  17. At this date the Claimant presented no evidence that she had located any reference in the records to transfusion or plasma. However, she took the

opportunity to apply for an order to compel the records or notes of the Public Nurse.

18. Fund Counsel, on the ground that the records would provide no relevant information upon which to determine the appeal, opposed this application.
19. Upon questioning, the Claimant stated, *inter alia*, that the notes of the Public Nurse would document that the Claimant had received a blood transfusion and the source of that information would have been the Claimant herself.
20. As a result of the foregoing, the application was denied and the hearing concluded.
21. The written submission of Fund counsel noted that 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:*

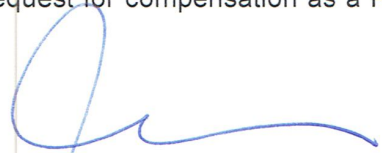
- a. medical, clinical, laboratory, hospital, The Canadian Red Cross Society, Canadian Blood Services or Hema-Quebec records demonstrating that the claimant received a Blood transfusion in Canada during the Class Period;*
- b. an HCV Antibody Test report, PCR Test report or similar test report pertaining 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.*

22. It was further noted that Section 3.01(2) of the Plan provides as follows:

*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.*

23. Having regard to all of the foregoing, I find that the Claimant has been unable to marshal any evidence independent of her personal recollection to establish on the balance of probabilities that she received a blood transfusion in Canada during the Class Period.
24. In addition, she presented with a number of risk factors including self-application of tattoos and self-injection of non-prescription drugs prior to the hospitalizations.
25. Accordingly, on her own evidence, I consider it more probable that she contracted Hepatitis C from some source other than a blood transfusion in the Class Period, or otherwise.
26. Because I could not accept her testimony that she received a blood transfusion in Canada in the Class Period and because the Claimant delivered no corroborating evidence to the Administrator as required by Section 3.01(2) of the Plan that she had received a blood transfusion in Canada during the Class Period, I must uphold the Administrator's decision to deny the Claimant's request for compensation as a Primarily-Infected Person under the Plan.

Dated July 20, 2016.



---

**Shelley L. Miller, Q.C. Referee**