

**IN THE MATTER OF A REFERENCE PURSUANT TO THE HEPATITIS C
1986-1990 CLASS ACTION SETTLEMENT AGREEMENT
(Parsons v. The Canadian Red Cross et al.)
Court File No. 98-CV-141369)**

B E T W E E N :

Claimant File 11152

- and -

The Administrator

(On a motion to oppose confirmation of the decision of Tanja Wacyk, released September 25th, 2016)

Reasons for Decision

Perell J.:

Nature of the Motion

1. This is a motion to oppose confirmation of the decision of a Referee appointed pursuant to the terms of the Settlement Agreement in the Hepatitis C litigation for the Class Period January 1, 1986 to July 1, 1990. The Claimant made a claim for compensation pursuant to the agreement. The claim was denied by the Administrator charged with overseeing the distribution of the settlement monies. The Claimant appealed the denial to a Referee in accordance with the process set out in the agreement. The Referee upheld the decision of the Administrator and denied the appeal. The Claimant now opposes confirmation of the Referee's decision.

Background

2. The Settlement Agreement is pan-Canadian in scope and was approved by this Court and also approved by courts in British Columbia and Quebec. (See *Parsons v. The Canadian Red Cross Society*, (1999), 40 C.P.C. (4th) 151). Under the agreement, persons infected with Hepatitis C through a blood or specified blood product transfusion during the period from January 1, 1986 to July 1, 1990 are entitled to varying degrees of compensation depending principally on the progression of the Hepatitis C infection.

Background Evidence from Claimant

3. In June 2010, the Claimant, a resident of Ontario, applied as a primarily infected person to the HCV Transfused Plan ("the Plan").

4. In her initial application she indicated that she had been transfused once in her lifetime, however the Claimant failed to file evidence in relation to the transfusion or to specify when she believed the transfusion took place.

5. As the case file before the Court demonstrates, the Claimant took a number of

steps over the course of the next several years to try to cure the deficiencies in her original application.

6. On April 29, 2014, the Claimant delivered her Blood Transfusion History Form. She indicated that she believed she was transfused for "Severe P.I.D." sometime between May 1985 and December 1986 at the Ottawa General Hospital.

7. On February 10, 2015, the Claimant's treating physician provided the Treating Physician Form. In it, he reported that based on the information he received from the Claimant, she had been transfused sometime between May and October 1986. The physician also noted that he had only been treating the Claimant for six months, prior to completing the form.

8. On March 6, 2015, the Claimant delivered an "Other Risk Factor Inquiry Form". In it, she again stated that she had been transfused at the Ottawa General Hospital. However, she indicated that the time period for that transfusion was somewhere between April 1986 and November 1986. She also indicated, among other risk factors, that she had a hysterectomy in Kitchener in December 1990 and was treated for a head injury in a Toronto Hospital in July 2003.

9. Unfortunately, the Claimant was unable to deliver any documentary proof of a transfusion during any of the time periods alleged or at any of the locations listed in the Claimant's various forms. She did not provide any evidence corroborating her personal recollection that could establish a transfusion.

Results of Traceback Search and Decision of Administrator

10. On October 23, 2015, Canadian Blood Services provided the Administrator with the results of the Traceback conducted in connection with the Claimant. The Canadian Blood Services confirmed that blood bank records from June 1986 onward were available for the Ottawa Hospital, as well as the hospitals in Kitchener. Those records revealed the following:

- Grand River Hospital, Kitchener – The Claimant's records were available and the claimant was not transfused.
- St. Mary's General Hospital, Kitchener – The hospital records were available. There was no record of the Claimant's admission to this hospital.
- The Ottawa Hospital, Ottawa – The Blood Bank records were available. No record found on the Claimant's admission to hospital or having received a blood transfusion.

11. By letter dated October 26, 2015, the Administrator advised the Claimant that her claim was denied on the basis that there was not sufficient evidence to support the assertion that she had received blood during the Class Period.

Decision of the Referee

12. The Referee convened a hearing of this matter. In addition to receiving the claim file, the hospital records and the submissions of Fund Counsel, the Referee heard evidence from the Claimant herself.

13. In her evidence before the Referee, the Claimant indicated that the transfusion

occurred in Ottawa during the summer of 1986. The Claimant explained that she was in Ottawa to see her daughter, and went out to buy cigarettes. That was the last thing she remembers before waking up in hospital where she was told that she had collapsed on the street. She testified that she was also told that she had “low blood pressure and extreme PID”.

14. The Referee released her decision on September 25th, 2016. In it, the Referee concluded that the Claimant had failed to provide reliable documentation to show that she received a blood transfusion during the relevant time period of at all. Further, the Referee concluded that the Claimant failed to produce any corroborating evidence, independent of her own or her family’s recollection.

15. On October 1, 2016, the Claimant delivered to Fund Counsel a Notice of Motion. In it, the Claimant submitted that she has “no way to prove” that she received a blood transfusion for “obvious reasons of being systemically removed electronically from the system.”

Standard of Review

16. In a prior decision in this class proceeding, the standard of review set out in *Jordan v. Mackenzie*, (1987), 26 C.P.C. (2d) 193 (Ont. H.C.J.), aff’d (1999), 39 C.P.C. (2d) 217 (C.A.) was adopted as the appropriate standard to be applied on motions by a rejected Claimant to oppose confirmation of a Referee’s decision. In *Jordan*, Justice Anderson that the reviewing court “ought not to interfere with the results unless there has been some error in principle demonstrated by the [referee’s] reasons, some absence or excessive jurisdiction, or some patent misapprehension of the evidence.”

Analysis

17. In order to qualify for compensation as a primarily infected person under the Transfused HCV Plan, section 3.01 of the Plan requires the Claimant to provide evidence that she received a blood transfusion in Canada during the Class Period.

18. Section 3.01(1)(a) provides in part:

(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.

19. Where a Claimant is unable to provide proof of transfusion as required under section 3.01(1)(a), section 3.01(2) provides that, “...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.”

20. The Claimant has been unable to produce records that confirm she received Blood

during the Class Period. While I understand that records from the Ottawa General Hospital may no longer be available, the Claimant is required to provide alternative and corroborating evidence as set out in section 3.01(2).

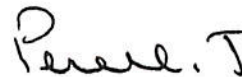
21. As the Referee concluded, the Claimant has been unable to offer any evidence to corroborate her own personal recollection that she received a transfusion in the summer of 1986 or at any other time during the Class Period.

22. Under the settlement, the Claimant's own recollections as told during the hearing before the Referee cannot be considered as independent evidence of a transfusion.

23. The Claimant has been unable to provide any corroborating evidence that is "independent of the personal recollection of the Claimant or any other person who is a Family Member". Accordingly, the Referee's decision must be upheld.

Result

24. In my view the Referee committed no errors in principle, with respect to the jurisdiction or by misapprehending the evidence before him. Accordingly the Referee's decision is confirmed.



Justice Perell

Released: November 9, 2016