

**CLAIM # 21748**

**Province of Infection:        Ontario**  
**Province of Residence:      Ontario**

**IN THE MATTER OF A REFERENCE  
TO REVIEW THE DECISION OF THE ADMINISTRATOR**

**Before:** Tatiana Wacyk

**Heard:** November 19, 2018

**Appearances:** The Claimant  
                    Belinda Bain and Carol Miller for the Administrator

**Decision Date:** November 25, 2018

## **Decision**

### **BACKGROUND:**

1. The Claimant submitted an application for compensation as a Primarily Infected Person under the Transfused HCV Plan ("the Plan"), as set out under the terms of the 1986-1990 Hepatitis C Settlement Agreement ("the Settlement Agreement").
2. The Settlement Agreement provides compensation for individuals infected with HCV from the Canadian blood supply during the period from and including January 1, 1986 to and including July 1, 1990 ("the Class Period").
3. There is no dispute the Claimant received one, and possibly more blood transfusions during the Class Period. Specifically, records obtained from the London Health Sciences Centre confirm the Claimant received a blood transfusion at Victoria Hospital in London, in July 1987. In addition, the Claimant maintained she also received transfusions at the Sault Area General Hospital, for which records were not available.
4. Nor was there any dispute the Claimant contracted the Hepatitis C Virus ("HCV"), or that she has significant liver damage.
5. However, by letter dated, July 24, 2017, the Administrator denied her claim on the basis the Claimant failed to provide evidence demonstrating she was infected with HCV as a result of a blood transfusion received during the Class Period.
6. The Claimant requested that a Referee review the decision of the Administrator in an in-person hearing.

### **EVIDENCE AT THE HEARING:**

#### **Carol Miller R.N.**

7. Carol Miller is a Registered Nurse with more than 20 years of nursing experience in various hospital settings in Newfoundland, Manitoba, and Ontario. Her experience includes the administration of many blood transfusions.
8. Ms. Miller has been responsible for processing and assessing the claims brought pursuant to the Settlement Agreement since 2001.
9. Ms. Miller testified that individuals infected with HCV normally develop antibodies to the virus within 60 days of contact. The laboratory documents setting out the Claimant's test results refer to a slightly longer period:

Anti-HCV may be detected within 2 to 6 months of viral infection.

10. Ms. Miller testified these antibodies remain in an individual's blood forever, even in instances where the HCV itself has cleared. The laboratory documents also state:

Acutely infected patients may be negative for Anti-HCV yet still transmit infection.

11. Ms. Miller testified she understands the above statement refers to the 2 to 6-month period during which antibodies have not yet developed in response to an individual's infection with HCV. In other words, the virus may be transmitted by someone infected with HCV during the period prior to the antibodies being detectable.

12. Ms. Miller reviewed the Claimant's medical records related to her testing for Anti-HCV. She noted the Claimant was tested for Anti-HCV in November 2000; March 2003; March 2012; as well as, January and May of 2015. No Anti-HCV antibodies were detected in any of these tests.

13. The Claimant was tested again in August 2015, and in that instance, her results were positive for Anti-HCV antibodies.

14. Ms. Miller indicated the Claimant's prior negative tests, leading up to and including May, 2015, demonstrate she was not infected with HCV as a result of any blood transfusion she received during the class period.

15. Rather, Ms. Miller opined that, given the 2 to 6-month period prior to the detection of Anti-HCV antibodies, these results suggest the Claimant was first infected with HCV sometime in late 2014 or early 2015.

16. When questioned as to the speed with which the Claimant's liver disease had progressed, Ms. Miller noted the Claimant also has a history of fatty infiltrated liver disease. Ms. Miller indicated that, in her experience, accelerated progression of liver disease was not unusual in individuals with a pre-existing liver condition, such as the Claimant's.

17. Ms. Miller could not speculate regarding the source of the Claimant's infection, but noted that approximately 20% of Canadians infected with HCV have no idea about the source of their infections.

### **The Claimant**

18. The Claimant testified she had experienced years of medical difficulty, which was why she was repeatedly tested for HCV. She believes these difficulties arose as a result of her having been infected with HCV through a blood transfusion received during the class period.

19. The Claimant testified she had been extremely careful, and could not imagine how else she had been infected, as she did not engage in any of the conduct considered a risk factor for contracting HCV.

**ANALYSIS:**

20. 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".

21. The Settlement Agreement does not provide compensation for those infected with HCV outside the Class Period. Neither the Administrator, nor I as a Referee, have discretion to grant compensation to individuals infected with HCV who cannot show they were infected as a result of a blood transfusion received within the Class Period.

22. Accordingly, in order to qualify for compensation under the terms of the Plan, the Claimant must satisfy the criteria set out in the Plan.

23. The Claimant bears the onus of demonstrating the Administrator erred in denying her application.

24. In light of the evidence set out above, I am not persuaded the Claimant has demonstrated she was first infected with HCV through a blood transfusion received during the Class Period.

25. Rather, I find the negative Anti-HCV test results in 2000, 2003 and early 2015 indicate that more likely than not, the Claimant was infected with HCV in early 2015. This is well outside the Class period.

**DISPOSITION:**

26. For the reasons set out above, I find the Administrator correctly determined the Claimant is not entitled to compensation pursuant to the Hepatitis C 1986-1990 Class Action Settlement, as she has not demonstrated she was infected with HCV as the result of a blood transfusion received during the Class Period.

27. The decision of the Administrator to deny the Claimant compensation pursuant to the Hepatitis C 1986-1990 Class Action Settlement is upheld.

DATED AT TORONTO, THIS 25TH DAY OF NOVEMBER 2018.

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Tatiana Wacyk, Referee