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

Claimant:	**Claim 3564**
File No.:	416611-19
Province of Infection:	Alberta
Province of Residence:	Alberta

D E C I S I O N

1. On September 24, 2004, the Administrator denied the claim for compensation as a Primarily-Infected Person pursuant to the Transfused HCV Plan on the basis that the Claimant had not provided sufficient evidence that she was infected for the first time with HCV by a blood transfusion received in Canada within the Class Period. In particular, the evidence she submitted indicated she had a lengthy history of intravenous drug use before the Class Period.

2. The Claimant requested an oral hearing by a Referee to review the decision of the Administrator.

3. The hearing was held in Edmonton on May 24, 2005 and continued as a telephone conference on July 22, 2005.

4. Neither party disputed the following facts:

(a) The Claimant resides in Edmonton, Alberta, and received four units of transfused blood at the Charles Camsell Hospital in Edmonton, Alberta, on January 31, 1987 and February 9, 1987.

(b) The Treating Physician, one Dr. Mang Ma indicated on the TRAN 2 that the Claimant had a history of non-prescription intravenous drug use.

(c) The Claimant indicated on the TRAN 3 that she has used non-prescription intravenous drugs

(d) A traceback was conducted by Canadian Blood Services and on August 28, 2001 reported that the donors of two of the units were found to be non-reactive and there was no result for the two remaining units.

(e) On April 4, 2002, the Claimant indicated on an "Other Risk Factor Inquiry Form" that she had used heroin from "1975 on and off till 1980".

(f) On March 4, 2004, the Administrator advised the Claimant that as a result of the information relating to non-prescription intravenous drug use, she was required within six months to provide evidence on a balance of probabilities that she was infected for the first time with HCV by a blood transfusion received in Canada during the Class Period.

(g) The Claimant did not provide further evidence within the six month period.

5. Fund Counsel submitted, *inter alia,* that

(a) the Claimant has not provided any further evidence to show that she was first infected by a blood transfusion during the Class Period.

(b) As a result the body of evidence was insufficient to permit the Administrator to make a decision and in accordance with section 10 of the Cap, it was mandated to reject the claim.

6. At the hearing, I reviewed Charles Camsell Hospital records, the Tran 2 form, the Other Risk Factor Inquiry Form and the CBS report of the negative traceback in the presence of the Claimant, Fund Counsel and Carol Miller, the Appeals Coordinator of the Hepatitis C January 1, 1986 – July 1990 Claims Centre.

7. I asked the Claimant to relate her prior medical history, and noted:

- She was born on February 1, 1954;
- She was the youngest of 13 children;
- She was abused as a child;
- She married at age 16;
- She gave birth on February 19, 1970;
- Her husband left her;
- She began using drugs at age 18;
- She used heroin, "pot" and "acid" in the 1970s ;
- She did not inject heroin but inhaled it;
- Alcohol was often a factor along with drug use;
- She admitted she was a "binge drinker" on weekends;
- A second husband died of cancer;
- A third husband was extremely abusive;
- That abuse may have started in 1982
- Social Services apprehended her children in 1990;
- She admitted intravenous use of Talwin and Ritalin but said this did not occur until a period between 1990 and 1993
- She also "snorted" cocaine
- She may have began intravenous drug use in 1989;
- Her husband went to jail in 1990;
- She agreed that use of alcohol and drugs may have affected her memory;
- She knows that after her lung transplant in December 11, 2001, her memory was affected;

8. She denied that she had used non-prescription intravenous drugs.

9. The Claimant's contention is that the documents of her physicians are in error and her recollection is that she was a non-prescription intravenous drug user beginning only in 1989.

10. In particular, she disputed the accuracy of a medical chart note of a Dr. Dale Lien and the suggestion that she had also told Dr. Lien that she had used intravenous drugs for many years. She indicated she was to attend on Dr. Lien shortly after the hearing and would advise us if he would verify her version of events at a continuation of the hearing.

11. I adjourned the hearing to await her further advice about her discussion with Dr. Lien.

12. I then reconvened the hearing by telephone conference on July 22, 2005 at which date testimony was heard from Dr. Lien.

13. Dr. Lien is currently an Associate Professor in the Pulmonary Division of the Department of Medicine, the Co-Director of the Pulmonary Hypertension Program and Acting Director of the Lung Transplant Program at the University of Alberta.

14. hDr. Lien testified that his notes of his visit with her of February 11, 2000 indicated "IV drug user since teens" and he was satisfied that she was the source of the information noted on this chart at that date.

15. The provisions of the Plan as cited in the written submission of Fund Counsel in Section 3.04 are set out below for ease of reference as follows:

3.04 Traceback Procedure

> 1. Notwithstanding any other provision of this Agreement, if the results of the Traceback Procedure demonstrate that one of the donors or units of Blood received by a HCV-Infected Person or Opted-Out Primarily Infected Person before 1 January 1986 is or was HCV antibody positive, or that none of the donors or units of Blood received by a Primarily-Infected Person or Opted-Out Primarily Infected Person during the Class Period is or was HCV antibody positive, subject to the provisions of Section 3.04(2), the Administrator must reject the Claim of such HCV Infected Person and all Claims pertaining to such HCV Infected Person or Opted-Out HCV Infected Person including Claims of Secondarily-Infected Persons, HCV Personal Representatives, Dependants and Family Members.
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> 2. A claimant may prove that the relevant Primarily-Infected Person or Opted-Out Primarily Infected Person was infected, for the first time, with HCV by a Blood transfusion received in Canada during the Class Period or that the relevant Secondarily-Infected Person who opted out of the Class Action in which he or she would otherwise be a Class Member was infected for the first time with HCV by his or her Spouse who is a Primarily-Infected Person or Opted-Out HCV Person, notwithstanding the results of the Traceback Procedure. For greater certainty, the costs of obtaining evidence to refute the results of a Traceback Procedure must be paid by the claimant unless otherwise ordered by a Referee, Arbitrator or Court.

16. Upon a review of all the documentation mentioned above, together with the Claimant's oral evidence at the hearing, I conclude that the claimant has not produced any reliable evidence to show on a balance of probabilities or otherwise that she was infected for the first time with the HCV virus by a blood transfusion received in Canada during the Class Period. Her inability to remember details of her health history for many years, her admission that she used alcohol and drugs together, the fact that one of her husbands had served time in jail and her admission that use of intravenous drug use did occur at stages of her life but which she could not specifically fix in time, made me suspect that she could have contracted the disease through other high-risk activities without her recollection.

17. Accordingly, I uphold the Administrator's denial of the Claimant's request for compensation.

Dated at Edmonton, Alberta, this 31st day of August 2005

Shelley L. Miller, Q.C.
Referee