

**Claim No. \_\_\_\_\_**  
**Province of Infection: Alberta**  
**Province of Residence: Newfoundland/Labrador**  
**Appeal 362**

**IN THE MATTER OF A REQUEST FOR REVIEW  
PURSUANT TO THE  
1986 – 1990 HEPATITIS C SETTLEMENT AGREEMENT**

**BETWEEN:**

**Claimant**

**- and -**

**THE ADMINISTRATOR**

**DATE OF DECISION: April 5, 2022.**

## DECISION

Claim No. \_\_\_\_\_

**Province of Infection – Alberta**

**Province of Residence – Newfoundland/Labrador**

1. The Claimant applied for compensation as a Primarily-Infected Person pursuant to the Transfused HCV Plan.
2. By letter dated April 23, 2019, the Administrator denied the claim on the basis that the Claimant had not provided sufficient evidence to establish that he had received a blood transfusion during the Class Period.
3. The Claimant requested that the Administrator's denial of his claim be reviewed by a Referee.
4. The Administrator's letter of April 23, 2019 gave the following reasons for denying the claim:

“The Settlement Agreement requires the Administrator to determine a person's eligibility for class membership.

All the material that you provided to support your claim was carefully reviewed by the Administrator. You have not provided sufficient evidence to support your claim that you or the HCV Infected Person received blood during the Class Period.

In your original application you indicated you received Blood in May 1989 at the Alexandra Hospital in Edmonton. There were no medical records submitted to support that statement. In cases where the claimant is having difficulty obtaining proof of transfusion the Traceback Department contacts Canadian Blood Services (CBS) to request their assistance in obtaining transfusion information directly from the hospital. The final response to this request was received from CBS on August 17, 2018. CBS advised they contact the Hospital who confirmed your Patient Health Records were available and

searched from 1980's to the present. The records confirmed you did not receive a transfusion. You then submitted records on April 1, 2019 showing you were treated at Vermillion Health Care in Vermillion Alberta in 1989. A Traceback was initiated and received by the Administrator on April 18, 2019. CBS advised they contact the Hospital who confirmed your Patient Health Records were available and searched from June 1982 to the present. The records confirmed you were not admitted to Vermillion Health Care. Blood Bank records were searched from June 1971 to present. The records confirmed you did not receive a transfusion. Therefore, after careful review it is determined the claim does not meet the Criteria for compensation, based on Article 3.01 (1a) of the 1986-1990 Hepatitis C Settlement Agreement; because there is no evidence to support that you received a transfusion of Blood between January 1, 1986 and July 1, 1990."

5. Following my appointment as Referee, I advised the Claimant of his right to an oral hearing. The Claimant responded by telephone. Numerous telephone calls followed, during all of which the Claimant emphasized his belief he had received a blood transfusion at the Royal Alexandra Hospital in Edmonton in May 1989 while being treated for an extremely serious hand injury.

6. As a result of my discussions with the Claimant and Fund Counsel, further efforts were made to obtain records and information from the Royal Alexandra Hospital and the doctor who performed surgery on the Claimant's hand. These efforts did not produce any support for the Claimant's belief that he received the blood transfusion. In fact, they were to the opposite effect – namely, that he did not receive a blood transfusion.

7. At various stages along the way, the Claimant was urged to seek the assistance of counsel. He was eventually able to find a lawyer who contacted me on February 12, 2021. On February 17, 2021 I sent the lawyer the following email along with the four attachments listed therein:

“Further to your email below and our telephone conversation on February 12, attached please find electronic copies of the following:

1. Schedule A – Transfused HCV Plan
2. Letter dated April 23, 2019 denying he claim
3. Submission of Fund Counsel, John Callaghan, dated November 5, 2020
4. Claimant’s medical records obtained under subpoena from the \_\_\_\_\_ Hospital in \_\_\_\_\_.

Claimant’s claim for compensation under the Transfused HCV Plan was denied by the Settlement Administrator on the ground that Claimant had not provided sufficient evidence to support his claim that he had received blood during the Class Period. In reaching this conclusion, the Administrator relied on section 3.01(1)(a) of the Transfused HCV Plan.

You will note that section 3.01(2) provides an alternate means of proving that a claimant was transfused during the Class Period – namely, delivery by the claimant to the Administrator of “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”. Unfortunately, to date the Claimant has been unable to provide any corroborating evidence apart from his own recollection and that of his sister, which are deemed not to be sufficient under section 3.01(2). I realize that the Claimant is convinced he received a blood transfusion at the time of his injury in 1989. Perhaps with your assistance he will be able to overcome this barrier to his claim.

In the course of your efforts on Claimant’s behalf, if you require the issuance of a subpoena, please do not hesitate to request same. Likewise, if you require any additional material from the Administrator’s file, I am sure Mr. Callaghan would provide his full co-operation in that regard.

As you are aware, this matter has been outstanding for a considerable period of time and I would appreciate it if you would provide me with a status report on or before April 30, 2021.”

8. On March 1, 2021 I received a request from the lawyer for copies of the Claimant’s WCB file. I advised the lawyer that I only had a portion of the Claimant’s WCB file and forwarded a copy to him later the same day.

9. On August 16, 2021 I sent the following email to the Claimant’s lawyer:

“I haven’t heard from you since my assistant sent the Appeal File on March 1, 2021.

Please let me know whether the Claimant is ready to proceed with a hearing to review the Administrator’s denial of his claim for compensation.”

10. The Claimant's lawyer responded the next day as follows:  
"I haven't heard from the Claimant for several months, and due to his life circumstances it is difficult to reach him. However when I do hear from him I will provide you an update."
11. I replied the same day with the following email:  
"As you are aware, this review has been pending for over 2 years. During that time considerable efforts have been made to obtain all relevant hospital records and information from the doctor who performed the surgery on the Claimant hand. It seems very unlikely at this stage that any further information will be found. I appreciate the difficult circumstances the Claimant faces. However, at some point I have to bring the review process to a conclusion. Unless the Claimant requests a hearing date before the end of this year, I will issue my decision early in 2022. Please communicate this to him as soon as possible."
12. No response was forthcoming.
13. The sole issue in this case is whether there is any evidence that the Claimant received a blood transfusion during the Class Period. Without evidence of a transfusion, there is no basis for interfering with the Administrator's decision to deny the claim.
14. I have reviewed all the information in the Claimant's file as well as the subsequent medical information obtained with the assistance of Fund Counsel from the \_\_\_\_\_ Hospital and the attending surgeon, Dr. G. Based on that review, I am satisfied that the following factual summary provided by Fund Counsel in his written submission of November 5, 2020 is accurate:

**Facts**

3. The Claimant was working on oil rigs in Alberta in 1989 when he suffered a severe crushing injury to the right hand. He was taken to the \_\_\_\_\_ Hospital in \_\_\_\_\_.
4. The medical records of the surgery were provided by the hospital and appeared to be complete. The records include a report of the operation by Dr. G. The report details how the surgery was done on the crushed hand. There is no reference to a blood transfusion. The records also include number of nurse's notes.

The notes appear complete and record the providing of morphine and ringers lactate by IV, but there is no record for any transfusion. There is mention of a crossmatch blood, but again, there was no mention of a blood transfusion and blood products are specifically recorded on some forms. For example, in the intake and output chart provides a cell for blood but there are no entries.

5. As there were no records of a blood transfusion, a specific request was made of Alberta Health Services. In particular, my office contacted Alberta Health Service expressly mentioning the crossmatch and whether there were any records of a blood transfusion. Alberta Health Services responded that there was no blood transfusion and no record of a blood transfusion of the Claimant in 1989. In particular, the records personnel at Alberta Health Services stated:

“My experience with medical records tells me it’s common practice for blood to be drawn for crossmatch before surgery so that the right type of blood can be made available should it be needed during the surgery. However, there was no indication of blood required during surgery, no mention of bleeding in the operative reports, no indication in the operating room records or IV therapy records, and only a crossmatch in the laboratory reports, no actual transfusion which would show the type and serial number and/or barcode of blood or blood products transfusions. Finally, the surgery performed is not a surgery or blood loss extent requiring transfusion would be expected”

6. We also followed up and located Dr. G. We wrote the doctor and advised him of the claim of the Claimant. We provided him with the medical records and asked if he could assist as to whether the Claimant was transfused during, before or after the surgery in 1989. Dr. G responded by letter dated August 27, 2020. He stated as follows:

“In response to your email regarding the Claimant to the best of my recollection the Claimant was not transfused, and undergoing a transfusion for the procedure performed would have been highly unusual.”

15. For the sake of completeness, I should add to the above narrative that the Claimant was initially taken to the \_\_\_\_\_ Health Centre following his injury and was there for a brief time before being transferred to the \_\_\_\_\_ Hospital where his surgery was performed. A summons was issued to the Health Centre requesting all medical records, including blood bank records, relating to the Claimant during the period January 1, 1986 to December 31, 1990. Alberta Health Services responded to the inquiry stating that there was no record of the Claimant having attended this facility at the relevant time.

16. This case is governed by s. 3.01 of the HCV Transfused Plan which provides, in part, 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-Québec records demonstrating that the claimant received a Blood transfusion in Canada during the Class Period;

....

(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.”

17. Clearly, the Claimant has not been able to prove his claim pursuant to s. 3.01(1)(a).

There is no medical record of any kind which demonstrates that he received a blood transfusion during the Class Period. Consequently, the only question is whether the Claimant has satisfied the requirements of s. 3.01(2) by providing “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 received a Blood transfusion in Canada during the Class Period”.

18. It has been decided in earlier cases that, under s. 3.01(2), a claimant bears the burden of proof on the balance of probabilities. It has also been authoritatively determined that the burden of proof must be satisfied by the independent evidence without regard to the recollections of a

claimant or family members. In Court File No. 98-CV-141369, Winkler R.S.J., as he then was, stated:

“Given the express wording of s. 3.01(2), the only interpretation it will be [sic] bear is that the evidence independent of the personal recollection of the Claimant or a Family Member is the determining factor. If that independent evidence establishes on a balance of probabilities that the Claimant received blood during the Class Period then the claimant has met the burden. If not, then the Claim must be rejected. The personal recollections of either the Claimant or Family Members are not to be considered.”

19. In the present case, no independent evidence was proffered by the Claimant to establish that he had received a blood transfusion in Canada during the Class Period. The Claimant’s genuine belief that he was transfused cannot be accepted as meeting the requirement established in s. 39.01(2)

20. Under these circumstances, I have no alternative but to uphold the Administrator’s denial of the Claimant’s request for compensation.

DATED at Halifax, Nova Scotia, this 5<sup>th</sup> day of April 2022.



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**S. BRUCE OUTHOUSE, Q.C.**  
Referee