

Claim No. XXXX

Province of Claim: Quebec

Province of Residence: Quebec

In the Matter of a Reference to Review the Decision of the Administrator

Present: Christian Leblanc

Appearance: *(Claimant)*

For the administrator: McCarthy Tétrault, Me Kim Nguyen

DECISION

Background:

This decision relates to a reference to review filed under the Hepatitis C Settlement Agreement for the period 1986 to 1990 (“Settlement Agreement”).

The Settlement Agreement covers compensation for persons who were infected with the Hepatitis C virus as a result of blood transfusion or the use of blood products received by the same person in Canada between January 1, 1986, and July 1, 1990.

The facts:

On June 20, 2010, (*Claimant*) (the “Claimant”) filed a claim with the Plan Administrator (“Administrator”) as an Approved HCV Personal Representative of the HCV Infected Person under the *Transfused HCV Plan* (Appendix “A”) (“The Plan”). In fact, (*Claimant*) as the representative of her spouse, deceased (*primarily-infected person*).

It appears from the Administrator’s file that:

1. On July 20, 2010, the Administrator’s notes show that the Claimant was notified by telephone that the documents and evidence demonstrating the blood transfusions that occurred during the period covered by the Settlement Agreement, as well as the death certificate and cause of death evidence, and documents related to the evidence that the deceased suffered from Hepatitis C were missing. The notes show that the Claimant was notified by telephone by the Administrator to provide these missing documents to complete the claim.
2. On July 23, 2010, the Administrator wrote to the Claimant to share these same facts.
3. On June 30, 2011, the Administrator again wrote to the Claimant to inform her that the documents described above were still missing and to remind her that at that time, the evidence that Hepatitis C caused the death of the (*primarily infected person*) was still missing.
4. On February 9, 2012, the Administrator again wrote to the Claimant stating that her claim could not be processed because the above-mentioned documents and facts were still missing. However, the Administrator added at that time that unless these documents were received within 60 business days, the file would be closed.
5. In November 2014, as the file had not yet been completed, the Administrator informed the Claimant’s counsel, who had come forward in October 2013, that a letter granting

an additional 90 days would be sent to the Claimant to provide the Administrator with the above documents necessary to complete the claim.

6. On November 24, 2014, the Administrator indeed sent a letter to the Claimant providing her with an additional 90 days as prescribed by the rules of the Settlement Agreement, including the Court Approved Protocol (December 2012) to complete the claim or else the claim would be denied.

7. In December 2014, the TRAN 1, 4, and 5 forms were completed and forwarded to the Administrator. However, the claim was still not complete.

8. Furthermore, on June 6, 2016, the Administrator again notified the Claimant of the need to obtain the TRAN 2 form from a physician and gave her an additional 90 days to obtain the said TRAN 2 form or the claim would be denied.

9. On October 14, 2016, following telephone calls by the Administrator to the Claimant in June 2016 and October 2016 to obtain the TRAN 2 form, and having still not received it by October 14, 2016, the Administrator sent the Claimant a claim denial letter.

10. The Applicant is now requesting a review of this decision before the Referee.

Claimant's evidence:

11. The Claimant, (*Claimant*), herself testified at the hearing on this matter. Other family members of (*primarily-infected person*) also testified, namely, (*family member 1*), (*family member 2*), (*family member 3*), (*family member 4*) and (*family member 5*) (granddaughter of the deceased *primarily-infected person*).

12. The unanimous testimonies presented mainly concern and undeniably show that (*primarily-infected person*) was loved by his family and that he always lived [translation] "a good life."

13. The Referee does not doubt these facts, and while he has a lot of empathy for (*Claimant*) and the family (*last name*), we must nevertheless conclude that the necessary evidence that was required to be provided by (*Claimant*) in order to obtain compensation under the Settlement Agreement has not been met.

Analysis:

14. Note that to be eligible for compensation, a person who is directly infected, or as is the case here, a person who makes a claim on behalf of a person who is directly infected, must demonstrate that the person was infected with HCV as a result of a blood transfusion received in Canada during the period covered by the Settlement Agreement (January 1, 1986 to July 1, 1990).

15. The evidence needed and required to make such a demonstration is found in sections 3.01 and 3.03 of the Plan.

16. Section 3.01(2) of the Plan also provides that if a claimant cannot comply with the provisions of section 3.01(1)(a), they may still provide the Administrator with corroborating and independent evidence of the personal recollections of the claimant, or of any person who is a member of the claimant's family, in order to establish on a balance of probabilities that the claimant received a blood transfusion in Canada during the period described above.

17. In this case, the evidence is that the Administrator's file shows that the Claimant did not comply with the provisions of section 3.01(1)(a) and was unable to provide evidence under section 3.01(2) of the Plan.

18. Despite the extensions granted to the Claimant to complete her file, she failed to provide such evidence.

19. Furthermore, before the Referee, neither the Claimant's testimony nor that of the family members met such evidence or the necessary criteria in the application of section 3.01(2) of the Plan.

20. The Administrator does not have the discretion to approve a claim when the necessary evidence is not provided. It must apply the terms of the Settlement Agreement and the Plan. The Honourable Chief Justice François Rolland of the Superior Court stated the following in this regard:¹

... 22. Again no one questions that the Claimant has Hepatitis C, but to be entitled to compensation under the Agreement the Claimant must comply with the Agreement's requirements.

... 26. The Agreement sets out the requirements that must be met by a Claimant. The Referee correctly interpreted those requirements and applied them to the finding of fact that he made with respect to the Claimant's situation that there was an insufficiency of evidence to prove that the Claimant received blood during the class period.

Emphasis added

21. Regarding the role of the Referee, the same decision states:

... 17. In prior decisions in these class proceedings, the Court adopted standards to be applied to motions presented by infected claimants opposing confirmation of a Referee's decision. Under these standards a Court will not interfere with the result unless there has been some error in principle demonstrated by the Referee's reasons, some absence or excess of jurisdiction or some patent misapprehension of the evidence.

22. These principles were also confirmed in the decision *Claim No. 1850042* by Referee Tatiana Wacyk and in the decision *Claim 11152* by the same Referee.

¹ Claimant number 2629 v. Canada (Attorney General) 2012, QCCS 4449


23. The conclusion in this case is that the Administrator has complied with the Settlement Agreement and the Plan. The necessary evidence required by the Settlement Agreement was not met at the time of the claim and at the hearing before the Referee. The burden of proof was on the Claimant on the balance of probabilities. This burden was not met.

24. Since the Administrator did not receive the necessary evidence, including the TRAN 2 form duly completed by a physician, or satisfactory evidence under section 3.01(2), the Administrator rightly denied the claim.

25. Thus, in the absence of evidence that showed that (*primarily-infected person*) was infected with HCV as a result of a blood transfusion received within the Settlement Agreement period, the Claimant's claim must be dismissed, and the Administrator was right to deal with it this way.

Conclusion:

26. Therefore, the request for review of the Administrator's decision submitted by (*Claimant*) for the benefit of (*primarily-infected person*) must be denied.

A handwritten signature in black ink, consisting of several loops and a final flourish, representing the signature of Christian Leblanc.

Christian Leblanc, Referee