

## **. THE 1986-1990 HEPATITIS C CLASS ACTION SETTLEMENT**

CLAIMANT REPRESENTATIVE: No. 368

REQUEST FOR REVIEW BY REFEREE: C. Michael Mitchell

1. The only issue in this case, is whether the claimant, PV, contracted Hepatitis C by way of a blood transfusion in the class period which is 1986-1990.
2. The Administrator denied the claim of PV. There is no issue that PV has Hepatitis C but the issue is the lack of evidence of a transfusion.
3. The claimant states she was transfused at the X General Hospital in February 1989. Extensive efforts were made to ensure all records which could have shown a transfusion occurred were obtained and searched.
4. The claimant was diagnosed with Hepatitis C in 2017 and applied for compensation from the Plan in 2018. At the time she said that to the “best of my knowledge, I was transfused in 1988 or 1989 at X General Hospital during surgery”. She said that she was so advised by a physician. The application indicated that a hysterectomy was performed in February 1989 during which a transfusion took place. The claimant requested additional time to obtain medical records because there was an issue at the Hospital with its records not been available due to the state of the microfilm which required repair. This was granted by the Administrator.
5. The Administrator as part of its normal procedures requested a traceback for any blood transfusion. The response was that records were checked for the period January 1, 1987, to December 31, 1991, the patient records were available but there was no indication in the records of a transfusion having taken place. The claim was denied in early 2019 but was then rescinded when PV requested more time. More time was also sought on several occasions after that, all of which were agreed to by the Administrator.

6. Ultimately, additional information was provided. The new information included a Discharge Summary from 1989 at the X General Hospital indicating a hysterectomy took place, but there was no evidence of any transfusion. The records indicate that the claimant was screened for a potential crossmatch but the records state there was not a crossmatch. The Administrator denied the claim on January 9, 2020.
7. As part of the appeal process, the claimant advised that she believed there were more documents at the Hospital and the Referee authorized the issuance of a summons seeking all records from the Hospital which is now a part of X Hospital. The Hospital did provide records which record a hospital stay from January 31st to February 7th, 1989, for an abdominal hysterectomy. The claimant was screened for blood, but the records indicate that the blood was to be held until there was a specific request . The records indicate there was no crossmatch and do not indicate there was a transfusion.
8. After this production of documents from the Hospital, the claimant continued to believe that records may still be missing. As a result, counsel for the Fund made further requests of the Hospital to ascertain that all available documents from both the health records and blood bank of the X Hospital site had been produced. This was confirmed to counsel by the Hospital orally and in writing. In particular, the blood bank records were further checked, and counsel was advised there was no record of a blood transfusion. Counsel produced the correspondence between him and the Hospital in this regard.
9. The claimant provided notes from 2017 wherein the doctor refers to a transfusion in 1990. These appear to be notes of a history given by the claimant to the physician and there is no indication that the maker of the notes had or has any first-hand knowledge of any transfusion.
10. Under the Plan governing the awarding of compensation to claimants, the claimant must establish she was first infected with Hepatitis C by a blood transfusion during

the Class Period of 1986-1990. This is normally done through medical and/or blood records which show that a transfusion occurred.

11. In this case the medical records show that the claimant had a hysterectomy in 1989. Before surgery she was screened for blood but there is no record of a transfusion. Accordingly, the requirements of the Plan and in particular section 3.01(1) were not met.
12. It is possible to prove a transfusion in another way. The Plan provides that there be some evidence of a transfusion and corroborating evidence that does not come from the claimant or a family member, which is independent, and that proves on a balance of probabilities that the claimant received a blood transfusion during the Class Period. There is no evidence to that effect in this case. In fact, the claimant was in surgery when she believes she had a transfusion, but she was unaware of a transfusion occurring in that time for obvious reasons. There is certainly no independent corroborating evidence that was provided.
13. Given that there is no evidence of a transfusion during the class period, the claim must necessarily be dismissed.



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C. Michael Mitchell

April 3, 2024