

**IN THE MATTER OF A REFERENCE  
UNDER THE HEPATITIS C, 1986-1990 SETTLEMENT FUND**

**Claim Number**

1401473

**Province of Residence**

Ontario

**Appearances**

Fund Counsel: Belinda Bain

Nurse Evaluator and Appeal Coordinator: Jennifer Langlotz

Claimant: On her own behalf

Aiding Claimant: JDG, daughter

**Referee**

Reva Devins

Chair, Ontario Roster of Arbitrators/ Referees

**Date of Hearing**

January 24, 2025

Hearing convened virtually

## **DECISION**

1. The claimant was approved for compensation at Disease Level 3 as a Secondly-Infected-Person under the 1986-1990 Hepatitis C Benefit Plan. Unfortunately, she has had long-term side effects from treatment, with several additional medical conditions and limitations. For years, she has received benefits when family accompany her to appointments for related conditions.
2. Recently, a Special Distribution Benefits Where Family Members Attend HCV Medical Appointments Court Approved Protocol (the “CAP”) was recommended by the Joint Committee and approved by the Court. The provisions applicable to Disease Levels 1 – 4 restrict compensation to Family Members accompanying an Approved HCV Infected Person to an HCV Medical Appointment. This has resulted in a significant change for the Claimant, and she has filed a Request for Review by Referee to challenge the protocol.
3. The new CAP limits compensation for family members accompanying an HCV Infected Person to attendance for the initial assessment of the HCV infection or follow up HCV Medical appointments, defined as appointments for ‘advice or treatment in respect of his or her HCV infection’. Benefits for attendance at medical appointments for related conditions caused by the HCV infection are only available for Infected Persons at Disease Levels 5 and 6.
4. The Claimant has not yet submitted a request for compensation and has therefore not been denied benefits. However, her family anticipates that benefits will be denied based on the new protocol. They candidly acknowledged that they saw no point in submitting claim forms for visits that would likely be denied. Fundamentally, the Claimant believes that the CAP and accompanying claim form are unfair and that her medical needs should be accommodated.

5. Fund Counsel took the position that there was no basis for me to consider this issue. Since the Claimant has not applied for compensation, there is no decision by the Administrator to appeal. Moreover, Counsel suggested that I had no jurisdiction to make any amendments to the CAP.

6. The Claimant did not challenge the basic position put forward by Fund Counsel, but expressed frustration at the way the CAP was drafted. She does not feel that adequate consideration was given to people in her circumstances, who are ill through no fault of their own and need help attending all medical appointments, not just those for direct treatment of their HCV infection.

### **Settlement Agreement**

7. The relevant provisions of the Settlement Agreement are:

- Article 10.01 of the HCV Transfused Plan provides that “A person making a Claim, may within 30 days after he or she receives notice of the Administrator’s decision respecting his or her Claim, refer that decision to, at his or her option, a Referee or an Arbitrator ...”
- The Settlement Agreement describes the duties of the Joint Committee, at 9.02 (b) to include “establishing protocols, which must be approved by the Courts, for the Administrator, Trustee, Referees and Arbitrators for the administration of this Agreement” and “rescinding or amending any of such protocols with the approval of the Courts.”

8. While I am aware that the changes implemented by the CAP have had a negative impact on the Claimant, I agree with Fund Counsel that I do not have the authority to review the provisions of the CAP.

9. My role is restricted to reviewing decisions made by the Administrator. I understand why the Claimant has chosen not to submit a request for benefits, however, my authority is limited. In this case, there is no decision to review and nothing properly before me to consider. I would have to dismiss the Claimant's request for review on this basis alone.

10. However, there is a more central reason why I cannot allow the Claimant's request. The Claimant is asking me to revise the recently approved CAP or exempt her from its application. The terms of the Settlement Agreement make it clear that I cannot do that.

11. Under the terms of the Settlement Agreement, the Joint Committee can establish protocols for the fair and efficient administration of the settlement agreement, with a continuing supervisory role for the Court. Neither the Administrator nor an Arbitrator/Referee are permitted to review or revise a CAP. Rescinding or amending the CAP is the sole responsibility of the Joint Committee and the Court. My role is confined to ensuring that the CAP is applied correctly.

12. I appreciate that the Claimant feels that it is unfair to change the rules regarding payment of benefits. However, I cannot waive provisions of the CAP, amend it or alter the rules. I know that this is extremely frustrating for the Claimant, however, I have no ability to grant the relief she requested.

13. For both these reasons, I must dismiss the Claimant's request for review.



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Reva Devins

February 3, 2025

Referee, Chair of the Ontario Roster of Referees/Arbitrators