

**1986-1990 Hepatitis C Settlement Agreement  
Request for Review - Reference -  
Claim Nos. 4954**

Province of Infection: Ontario

Province of Residence: Ontario

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**DECISION**

**BACKGROUND**

1. On September 18, 2003, the Administrator denied the Claimant's request for compensation as a Family Member under the Transfused HCV Plan on the basis that the Claimant provided no proof that the deceased's HCV infection caused her death.
2. On October 28, 2003, the Claimant requested that the Administrator's denial of her claim be reviewed by an arbitrator.
3. Several attempts were made to schedule a hearing. A hearing was finally scheduled for July 8, 2004. The hearing was adjourned at the Claimant's request.
4. On March 16, 2006, I proposed to conduct a written hearing in this matter. The Claimant confirmed that she was aware of the timelines for submissions but chose not to file any submissions. I reviewed all the material in the claim file from The 1986-1990 Hepatitis C Claims Centre.
5. Fund counsel, on behalf of the Administrator, relied on written submissions which had been filed on February 24, 2004. The written hearing concluded on April 21, 2006 when both parties filed no further submissions with me.

**Facts**

6. The deceased received 10 blood transfusions on September 8, 1989 while hospitalized at the Memorial Hospital in Sudbury, Ontario.

7. On April 19, 1997, the Canadian Red Cross Society confirmed that the donor of one unit of blood transfused to the HCV Infected Person had tested positive for Hepatitis C. As a result of this transfusion, the deceased was infected with HCV.

8. The deceased died on October 13, 2000. The final note from the Sudbury Regional Hospital identifies the “most responsible diagnosis” as “carcinoma of the esophagus with pulmonary and bony metastases (left hip, ribs, thoracic spine). Four comorbid conditions are identified as follows:

- Coronary artery disease
- Hepatitis C
- Pathological fracture of her left hip with intratrochanteric hip screws and side plates performed on September 8, 2000
- Radiation therapy to the left femoral area post operatively

9. On March 12, 2002, the HCV Infected Person’s physician stated in the Treating Physician Form that the deceased’s infection with HCV did not materially contribute to her death.

## **ANALYSIS**

10. The Claimant seeks compensation as a Family Member under the Transfused HCV Plan. As the deceased died after January 1, 1999, section 5.02 of the Plan determines the amount to be paid to the Approved HCV Personal Representative. It is not required that the Approved HCV Personal Representative establish that the HCV Infected Person’s death was caused by her infection with HCV.

11. In accordance with section 5.02 of the Plan, compensation has been paid to the Approved HCV Personal Representative in the amount of \$10,728.78 for a level 1 infection.

12. Section 3.07 of the Settlement Agreement provides that a person claiming to be a Family Member of a HCV Infected Person who has died, must deliver to the Administrator proof that HCV caused the death of the HCV Infected Person. Section 3.07 states:

A person claiming to be a Family Member, referred to in clause (a) of the definition of Family Member in Section 1.01 of a HCV Infected Person who has died must deliver to the Administrator, within two years after the death of such HCV Infected Person or within two years after the Approval Date or within one year of the claimant attaining his or her age of majority, whichever event is the last to occur, an application form prescribed by the Administrator together with:

(a) proof as required by Sections 2.05(1)(a) and (b) (or if applicable, Section 3.05(3) or (4) and 3.05(5) and (6), unless the proof has been previously delivered to the Administrator; and

(b) proof that the claimant was a Family Member referred to in clause (a) of the definition of Family Member in section 1.01 of the HCV Infected Person.

13. The relevant part of section 3.05(1)(a) states:

A person claiming to be the HCV Personal Representative of a HCV Infected Person who has died must deliver to the Administrator ...an application form prescribed by the Administrator together with:

(a) proof that the death of the HCV Infected Person was caused by his or her infection with HCV ...

14. Article 6 of the Plan sets out the terms for compensation for Approved Dependents and Approved Family Members. Section 6.02 provides compensation for Approved Family Members if the HCV Infected Person's death was caused by her infection with HCV.

15. In the case of the deceased, no evidence has been provided to demonstrate that her death was caused by her infection with HCV. Hepatitis C has not been identified as the cause of death by the Sudbury Regional Hospital or her treating physician.

16. While I sympathize with the Claimant whose sister was infected with Hepatitis C at the time of death, an Approved Family Member must meet the requirements of Section 6.02 of the Plan which requires proof that the HCV Infected Person's death was caused by her infection with HCV.

17. The Administrator under the Settlement Agreement is required to administer the Transfused HCV Plan in accordance with its terms. The Plan sets out the requirements for compensation which is limited to a defined class of individuals. Unfortunately, the Claimant does not qualify for compensation as a Family Member as there is no evidence to prove that the HCV infection caused the death of the HCV Infected Person.

## **CONCLUSION**

18. I uphold the Administrator's denial of the Claimant's request for compensation.

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Judith Killoran  
Arbitrator

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May15, 2006  
Date