

**1986-1990 Hepatitis C Settlement Agreement
Request for Review - Reference -
Claim Nos. 4966**

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 13, 2003, the Claimant requested that the Administrator's denial of his claim be reviewed by an arbitrator.
3. A hearing was scheduled for August 30, 2004 in Sudbury. Due to the unavailability of the Claimant, the hearing did not proceed on that date. A new hearing date was set for October 29, 2004. As the Claimant did not respond to inquiries from my office about his availability, the hearing did not proceed. The file was held in abeyance until March 16, 2006 when I proposed that I would conduct a written hearing.
4. The Claimant did not file written submissions. However, 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 the 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 HCV Infected Person 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 of \$10,728.78 has been paid to the Approved HCV Personal Representative 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 Dependants and Approved Family Members. However, section 6.02 only 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 Sudbury Regional Hospital or by her family physician.

16. While I sympathize with the Claimant whose mother was infected with Hepatitis C at the time of her 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 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.

Judith Killoran
Arbitrator

May15, 2006
Date