

DECISION

BACKGROUND

1. On May 20, 2003, the Administrator denied the Claimant's request for compensation as a Primarily-Infected Person under the Transfused HCV Plan. The claim was denied because the results of the traceback procedure confirmed that the donors of the blood transfused to the Claimant tested negative for the HCV antibody.
2. The Claimant requested that the Administrator's denial of his claim be reviewed by a referee.
3. Neither party requested an oral hearing.
4. The Claimant did not file further information as requested by Fund Counsel in his letter dated August 21, 2003. He also did not file a response or provide releases as requested by me in a letter dated October 14, 2003.
5. Fund counsel, on behalf of the Administrator, filed written submissions on December 5, 2003.
6. By December 19, 2003, the Claimant did not file any further evidence or written submissions, as requested by me. On January 9, 2004, the hearing concluded when the Claimant did not submit any reply submissions.

EVIDENCE

7. It is not disputed that the Claimant is infected with Hepatitis C.

8. The Claimant filed a letter dated September 17, 1996 from Sunnybrook Health Science Centre indicating that he received blood or blood products at Sunnybrook Health Science Centre between November 1, 1985 and June 1, 1990.

9. On March 2, 2002, the Claimant provided to the Administrator an Other Risk Factor Inquiry Form where he certified that his only other risk factors were seven "home-made" tattoos which he received from 1959-1960.

10. Canadian Blood Services conducted a traceback of the units of blood received by the Claimant. The blood transfusion summary dated August 8, 2002 indicated that the Claimant received transfusions in March and April 1990. The traceback determined that the donors of the blood were negative for the Hepatitis C antibody.

11. The Claimant filed further information as requested after the negative traceback procedure. In April 2003, the Claimant filed a report from Queensway General Hospital about a self-inflicted stab wound with a steak knife to the lower quadrant. The admission report of September 11, 1991 indicated that the Claimant had no history of "hepatitis in the past." The report states that the Claimant's history included "four or five overdoses in the past" and "he has a history of drug abuse including heroin, morphine and speed."

12. The Claimant also filed a "medical history" form from Correctional Services Canada dated November 27, 1991. The form notes that he used "heroin (15 years ago)" and that he had "no liver problems on November 28, 1991." A motor vehicle accident of May 1990 was mentioned.

ANALYSIS

13. The Claimant seeks compensation as a Primarily-Infected Person under the Transfused HCV Plan. The Transfused HCV Plan defines "Primarily-Infected Person", in part, as meaning "a person who received a Blood transfusion in Canada during the Class Period and who is or was infected with HCV."

14. The 1986-1990 Hepatitis C Settlement Agreement defines "Class Period" as meaning "the period from and including 1 January 1986 to and including 1 July 1990." "Class Period" is defined identically in the Transfused HCV Plan.

15. Section 3.01 (1) (a) of the Transfused HCV Plan requires that a person claiming to be a Primarily-Infected Person must deliver to the Administrator an application form together with, among other things, medical "records demonstrating that the Claimant received a Blood transfusion in Canada during the Class Period ..." The Claimant established that he was transfused during the Class Period. However, the traceback procedure concluded that donors of the units of blood provided to the Claimant tested negative for the HCV antibody.

16. Section 3.04(1) of the Plan states:

Notwithstanding any other provision of this Agreement, if the results of a Traceback Procedure demonstrate that none of the donors or units of Blood received by a Primarily-Infected Person during the Class Period is or was HCV antibody positive, subject to the provisions of Section 3.04(2), the Administrator must reject the Claim of such HCV Infected Person

17. In compliance with section 3.04(2), the Claimant filed additional evidence in an attempt to prove that he was first infected during the class period. However, the Queensway General Hospital Report of September 11, 1991, which the Claimant filed, states that the Claimant did not have a history of Hepatitis C. September 11, 1991 is after the date of the transfusion.

18. Section 3.03 of the Plan requires the Administrator to request additional information if there are indications of other risk factors. The Claimant had disclosed earlier that he received tattoos between 1959 and 1960. It was only when the Claimant filed additional information as requested that the Administrator learned that the Claimant had the following additional risk factors: (i) drug abuse, including heroin, morphine and speed; (ii) incarcerations; and (iii) other traumas (for example, the self-inflicted stab wounds, the motor vehicle accident and the drug overdoses).

19. I find that the Claimant did provide the evidence required by Article 3.01 to establish that he received a blood transfusion during the Class Period. However, the traceback procedure revealed that the donors of the blood transfused to the Claimant tested negative for the HCV antibody. The further evidence filed by the Claimant has not established on a balance of probabilities that he was first infected with HCV by a blood transfusion received during the Class Period. Therefore, the Claimant does not qualify as a Primarily-Infected Person and is not entitled to compensation under the terms of the Transfused HCV Plan.

20. The Administrator under the Settlement Agreement is required to administer the Transfused HCV Plan in accordance with its terms. The Administrator does not have authority to vary the terms of the Plan nor does an arbitrator or a referee when asked to review the Administrator's decision.

CONCLUSION

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


JUDITH KILLORAN

Referee

January 21, 2004

DATE