

CLASS ACTION – Hepatitis C 1986-1990

Request for Review # 00005070

DECISION

The Claimant submitted a claim for compensation under the Transfused HCV Plan, which is an integral part of the 1986-1990 Hepatitis C Settlement Agreement. He submitted his claim as personal representative of his spouse who died in March 1995.

The Claimant completed the Claimant's General Information Form under the Transfused HCV Plan (TRAN 1) but left several boxes empty or answered questions 11, 12 and 13 with "see forthcoming medical file". In order to facilitate the reading of this decision, I take the liberty to reproduce questions 11, 12 and 13 of TRAN 1.

- #11 How many times did the HCV Infected Person receive Blood transfusions in Canada in his or her lifetime?
- #12 How many times did the HCV Infected Person receive Blood transfusions in Canada prior to 1986?
- #13 How many times did the HCV Infected Person receive Blood transfusions in Canada during the period between January 1, 1986 and July 1, 1990?

Further on in the same document, the Claimant refers to the chart of the Centre hospitalier St-Luc, which is one of the large hospital institutions of the Montreal area, indicating that this is where Dr. Pomier diagnosed his spouse's Hepatitis C.

In the Blood Transfusion History Form (TRAN 5), the Claimant stated that his spouse had received a Blood transfusion at the Montreal Royal-Victoria Hospital, in September 1961, during his daughter's delivery. Under the heading "Blood Transfusion(s) during the Class Period", the Claimant stated that his spouse had undergone a hysterectomy at the Hôpital Général de Montréal, but he said he could not remember the date or the number of transfused blood units.

The claim for compensation submitted by the Claimant was rejected by the Fund Administrator, and it is for this decision that the Claimant has presented a Request for Review, which I examined in my capacity as arbitrator.

The Claimant testified before me on May 24, 2006, and I recall a sympathetic and warm man who testified with a great deal of emotion as to his 39 years of shared life with his wife and as to the terrible disease which affected her during the last years of her life.

The Claimant mentioned that his wife had undergone a cosmetic surgery, at a place he could not specify, most likely at the end of the 70's or at the beginning of the 80's, but was incapable of saying with certainty if she had had a transfusion at that time. He stated however that she did receive a transfusion during the hysterectomy she underwent at the Montreal Royal-Victoria Hospital "somewhere" between 1986 and 1990. I suspended the Hearing of this case in order to allow the Claimant to obtain a copy of his spouse's chart at the Royal-Victoria Hospital, and the Claimant sent me a letter that had been transmitted to him on June 15, 2006 by the Registrar's Office of the University Health Center (Royal-Victoria Hospital) indicating that the Claimant's spouse had not received a Blood transfusion at the Royal-Victoria Hospital. The following remarks were also included in the letter: "Moreover, (your deceased wife) was not admitted at the hospital between January 1, 1986 and July 1, 1990".

The Claimant sent me a copy of the Registrar's letter of the Royal-Victoria Hospital without adding anything whatsoever, other than that he stated to me that he had read "somewhere that there are plans to extend the period where a patient would have received an infected Blood transfusion".

I reviewed the file which the Fund Administrator had prepared regarding this case and the notes which I took during the Hearing of this Request for Review, and I cannot conclude that the Claimant's spouse had received a Blood transfusion during the period covered by this Agreement, i.e., between January 1, 1986 and July 1, 1990.

I do not have any doubt whatsoever that the Claimant is of good faith, but the Settlement Agreement was not meant to cover all cases, without any need to know when the person had contracted the disease or when he has received a transfusion, if such is the cause of the disease, as the Agreement is an agreed to compromise to compensate those who meet the Agreement's even so very specific terms and conditions.

Unfortunately for the Claimant, I must conclude that he has not met the terms and conditions of the Agreement as he was not able to establish on the balance of evidence or otherwise that his wife had contracted the disease following a Blood transfusion received in Canada during the period covered under this Agreement, i.e., from January 1, 1986 to July 1, 1990.

Evidently, I am aware of the fact that the Federal Legislator has announced that it wishes to establish a new program which could compensate, under certain conditions that obviously remain to be defined, those individuals who contracted Hepatitis C

following blood transfusions received prior to January 1, 1986 or after July 1, 1990. Without in any way whatsoever presuming what decision could be rendered, were this Claimant to refer his case to this Funding mechanism to be established, I at least drew the Claimant's attention to the future existence of another such Fund so that he could, in this regard, make decisions which he would consider to be appropriate.

At this time therefore, regarding the specific 1986–1990 period, I conclude that the Administrator's decision to reject this claim was well founded and I confirm such a decision. I therefore reject this Request for Review.

Montreal, October 10, 2006

Jacques Nols
Arbitrator