

CLAIM # 6989

Province of Infection: Ontario
Province of Residence: Ontario

**IN THE MATTER OF A REFERENCE
TO REVIEW THE DECISION OF THE ADMINISTRATOR**

Before: Tanja Wacyk

Heard: April 18, 2006, at Toronto, Ontario

Appearances: The claimant represented himself
Maxime Faille and Carol Miller for the Administrator

Decision

Background:

1. The Claimant is infected with Hepatitis C.
2. The Claimant submitted an application for compensation as a Primarily Infected Person under the Transfused HCV Plan (“the Plan”), as set out under the terms of the 1986-1990 Hepatitis C Settlement Agreement (“the Settlement Agreement”).
3. By letter dated January 23, 2006, the Administrator denied his claim on the basis that the Claimant did not provide sufficient evidence to support his claim that he received blood during the period from January 1, 1986 - July 1, 1990 (“the Class Period”).
4. The Claimant requested that a Referee review the decision of the Administrator in an in-person hearing.

The Terms of the Settlement Agreement:

5. In order to qualify for compensation under the terms of the Transfused HCV Plan the Claimant must satisfy the criteria set out in that Plan.
6. Section 3.01 (1)(a) of the Transfused HCV Plan provides that a person claiming to be a Primarily-Infected Person must provide the Administrator with, amongst other things, “records demonstrating that the Claimant received a blood transfusion in Canada during the Class Period.” The Settlement Agreement establishes the “Class Period” to be “the period from and including 1 January 1986 to and including 1 July 1990”.
7. Section 3.01 (2) of the Plan provides that notwithstanding the provisions of section 3.01(1)(a), if a claimant cannot comply with the provisions of section 3.01(1)(a), the claimant must deliver to the Administrator corroborating evidence independent of the personal recollection of the claimant or any person who is a Family Member of the claimant establishing on a balance of probabilities that he or she received a Blood transfusion in Canada during the Class Period.

Evidence:

8. The Claimant was injured in a car accident on March 22, 1990. He indicated he lost a large quantity of blood and required re-constructive surgery to his arm. The surgery appears to have occurred shortly following his admission to East General Hospital.
9. The Claimant testified that he was advised prior to his surgery that a blood transfusion may be required. He also maintained that when he awoke in the recovery room following surgery he was receiving blood intravenously. He indicated he received 2-3 bags in total. According to the Claimant, he received no further transfusions in the days following his surgery.
10. Ms. B, a friend of the Claimant, testified on his behalf. Ms. B had earlier sworn an affidavit, dated March 1, 2006, stating she believed the Claimant had received a blood transfusion. However, she did not state that she observed the transfusion take place. At the hearing, however, Ms. B testified that she visited the Claimant in the hospital on March 28, 1990, six days after the accident, and observed him receiving liquids intravenously from two bags. One bag contained a red fluid, which Ms. B suggested was blood, and the other contained a transparent fluid.
11. Ms. B conceded that her evidence was inconsistent with the Claimant's evidence that he did not receive any transfusions other than the day of his surgery, but could not explain the inconsistency.
12. In the course of considering the Claimant's application, the Settlement Administrator requested assistance from the Canadian Blood Services ("CBS") in obtaining transfusion information directly from the hospital regarding the Claimant. The results of the investigation were received from CBS on December 1, 2005. CBS advised that the Claimant's hospital records were available, and indicated that the Claimant had not been transfused.
13. As the Claimant indicated he had been unsuccessful in acquiring a copy of his hospital records, counsel for the Administrator undertook to assist in that regard and the hearing was adjourned for that purpose. Copies of the documents were subsequently forwarded to the Claimant and myself. While the records indicated the Claimant had been cross-matched for blood in case a transfusion was required, no transfusion appears to have been carried out. This is consistent with the Canadian Blood Services information provided to the Administrator, which indicated the applicant had not been transfused.

Analysis:

14. No hospital records demonstrating that the Claimant received a blood transfusion in Canada during the Class Period, as required by the Plan, were produced. While Ms. B testified that she observed the Claimant receiving a transfusion, pursuant to the terms of the Settlement Agreement, her evidence could only be considered in the event the Claimant's records were not available.
15. The Claimant's records are available in this instance, and Ms. B's testimony cannot override the contents of those documents. Further, the inconsistency between her testimony and the assertions contained in her affidavit, as well as the inconsistency between her evidence and that of the Claimant, would have made it difficult to give Ms. B's testimony much weight in any event.
16. Neither the Administrator, nor I, as a Referee, have discretion to grant compensation to individuals infected with Hepatitis C who cannot show they received a transfusion within the Class Period.
17. Accordingly, I find the Administrator correctly determined that the Claimant is not entitled to compensation pursuant to the Hepatitis C 1986-1990 Class Action Settlement, as he has not demonstrated that he received a Blood transfusion during the Class Period.

Disposition:

18. The decision of the Administrator to deny the Claimant compensation pursuant to the Hepatitis C 1986-1990 Class Action Settlement is upheld.

DATED AT TORONTO, THIS 4TH DAY OF OCTOBER, 2006.

Tanja Wacyk, Referee