

DECISION

BACKGROUND

1. On April 27, 2009, the Administrator denied the Claimant's request for compensation as a Primarily-Infected Person under the Transfused HCV Plan (the "Plan"). The claim was denied on the basis that the donors of units of blood that were transfused to her during the Class Period tested negative for the HCV antibody.

2. On May 13, 2009, the Claimant requested that the Administrator's denial of her claim be reviewed by a referee. She and fund counsel agreed to have the hearing conducted by way of written submissions.

3. On September 4, 2009, fund counsel, on behalf of the Administrator, filed written submissions. The Claimant filed submissions in response on September 28, 2009. The hearing concluded when both parties confirmed they had no further submissions to file.

EVIDENCE

4. The Claimant is infected with Hepatitis C.

5. In the General Claimant Information Form dated October 10, 2007, the Claimant states that she received a blood transfusion during the Class Period.

6. The Claimant submitted a Blood Transfusion record dated October 10, 2001 from the Patient Records Department of Hotel Dieu Hospital in Kingston, Ontario. It identified that the Claimant was transfused with two units of blood with unit numbers 060487 and 060261 on March 5, 1987.

7. In the Treating Physician Form dated January 28, 2008, the Claimant's physician confirmed that she received a blood transfusion during the Class Period.
8. On March 19, 2008, The Administrator asked Canadian Blood Services (CBS) to conduct a Traceback Procedure with respect to the Claimant. On September 4, 2008, the CBS forwarded correspondence and a final report for the traceback.
9. The Traceback Procedure conducted by CBS confirms the following:
 - (a) The Hotel Dieu Blood Bank records were no longer available; but
 - (b) The CBS was able to investigate the two units of blood identified in the Blood Transfusion Record dated October 10, 2001. The donors of the blood transfused to the Claimant tested negative for the HCV antibody.
10. The Administrator denied the Claimant's claim as a result of the negative results of the Traceback Procedure.
11. The Claimant provided no additional evidence relating to her claim in order to refute the negative traceback results.

ANALYSIS

12. In order to receive compensation under the Plan, the Claimant must prove that she was infected for the first time with Hepatitis C during a blood transfusion that occurred in Canada during the Class Period.
13. Section 3.01 of the Plan sets out the documentary evidence that a Claimant who is claiming to be a Primarily Infected Person must provide to the Administrator.
14. The Traceback Protocol provides that, in deciding whether a claim should be approved, the Administrator shall obtain and assess the results of a Traceback Procedure. Section 3.04(1) of

the Plan provides that if the results of a Traceback Procedure demonstrate that none of the donors or units of blood received by the Primarily-Infected Person during the Class Period was HCV antibody positive, the Administrator must reject the claim.

15. However, Section 3.04(2) of the Plan provides that, notwithstanding traceback results, a Claimant may refute such results by submitting proof that she was infected by Hepatitis C for the first time with a blood transfusion received during the Class Period.

16. The Claimant did not provide any additional evidence relating to her claim in order to refute the negative traceback results.

17. The Administrator has properly denied that the Claimant is not entitled to compensation under the Plan. There is no evidence that the Claimant received any blood transfusions during the Class Period from a donor who has been determined to be HCV antibody positive.

18. The Administrator under the Settlement Agreement is required to administer the Plan in accordance with its terms. Compensation is limited to a defined class of individuals. Unfortunately, the Claimant does not qualify for compensation. 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

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



Judith Killoran
Referee

November 15, 2009