

## **Decision**

### **Background:**

1. 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").
2. In her Blood Transfusion History Form the claimant stated that she was transfused with two units of blood in May, 1988, during the birth of her daughter at the North York Branson Hospital.
3. By letter dated February 25, 2005, the Administrator denied her claim on the basis that the claimant had not provide sufficient evidence to support her claim that she 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.

### **Evidence:**

4. The medical records accompanying the birth of the claimant's daughter in 1988 indicate the claimant's blood was cross-matched. This is a procedure by which blood is requested and saved in a hospital blood bank.
5. On January 18, 2005, Canadian Blood Services wrote to the Administrator's Traceback Coordinator, advising that the North York Branson Hospital records regarding the claimant's hospitalization were available, and there was no record of a blood transfusion within the timeframe of 1987 and 1989 (claim file – pages 83 & 84).

6. Dr. John Trapman completed a Treating Physician Form ("TRAN 2") on October 13, 2004. In that form, he stated that having regard to the definition of Blood, the claimant did receive a blood transfusion during the class period (claim file, pages 22 to 27).
7. Ms. Carol Miller, the Appeal Co-Ordinator of the Hepatitis C Claims Centre, wrote to Dr. Trapman to determine the basis of his view that the claimant had received a blood transfusion during the class period. On June 6, 2005, Dr. Trapman contacted the Administrator by telephone, and indicated that he had not seen any medical records relating to the claimant during the Class Period, and that his comments in the TRAN 2 regarding the receipt of blood during the Class Period were based solely on what the claimant had told him (claim file, page 12). Dr. Trapman subsequently confirmed this by correspondence dated July 14, 2005.
8. The claimant was unable to produce any documentation or other evidence demonstrating she received a blood transfusion during the class period. Further, at the hearing, the claimant indicated she did not know whether she had received a blood transfusion during the birth of her daughter.

**Analysis:**

9. 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.
10. Article 3.01 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." As indicated above, the Settlement Agreement establishes the "Class Period" to be the period from and including, January 1, 1986 to and including July 1, 1990.
11. No records demonstrating that the claimant received a blood transfusion in Canada during the Class Period were produced. While the claimant's blood had been crossmatched, this does not constitute proof of a transfusion, as it is not uncommon for blood which has been cross-

matched to not be transfused.

12. 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 time lines of the Class Period.
13. 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 she has not demonstrated that she received a blood transfusion during the Class Period.

**Determination:**

14. 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 5TH DAY OF AUGUST, 2005.

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Tanja Wacyk, Referee