

DECISION

BACKGROUND

1. On February 3, 2003 , the Administrator denied the Claimant's request for compensation as a Primarily-Infected Person under the Transfused HCV Plan on the basis that the Claimant had not provided sufficient evidence that he had received a blood transfusion within the Class Period.
2. On July 10, 2004, the Claimant requested that the Administrator's denial of his claim be reviewed by a referee.
3. On October 27, 2004, fund counsel, on behalf of the Administrator, filed written submissions.

EVIDENCE

4. On February 17, 2005, a hearing was conducted before me in Toronto. Two witnesses testified at the hearing: the Claimant and Carol Miller, the Appeal Coordinator for the Hepatitis C Claims Centre. The parties agreed that the Claimant is infected with Hepatitis C.
5. During her testimony, Ms. Miller reviewed the documents in the Claimant's file from the 1986-1990 Hepatitis C Claims Centre.
6. The Claimant's Blood Transfusion History Form dated April 1, 2002 states that in October 1989, the Claimant was transfused with four units of blood at the Toronto East General Hospital during a "tib-fib - fracture repair."

7. The Treating Physician Form, which was signed on March 18, 2002, states that the Claimant did receive a blood transfusion during the Class Period. Ms. Miller wrote to the treating physician and asked him to confirm whether his response was based on a verbal response from the Claimant or medical documentation confirming the transfusion during the Class Period. The physician responded by forwarding a copy of a crossmatch requisition form.

8. Ms. Miller testified that a crossmatch is a procedure in which Blood is requested and saved in the blood bank in case it may be needed for a transfusion. It is not unusual for blood which is crossmatched not to be transfused. I find that although a crossmatch has occurred in this case, it is not proof that a blood transfusion took place.

9. Ms. Miller testified about the Toronto East General Hospital records relating to the Claimant's October 1989 admission. None of these documents confirm that the Claimant received a blood transfusion.

10. On October 10, 2002, Canadian Blood Services wrote to the Traceback Coordinator for the Administrator advising that Toronto East General Hospital had searched its records relating to the Claimant from 1987 to 1991 and there was no record of a blood transfusion.

11. The Claimant testified in a candid and credible manner. He recounted the events surrounding his admission to hospital in 1989. He testified that he was bleeding heavily and lost a great deal of blood. He recalled that a hospital attendant assured him that he had been given blood to make up for all the blood that he had lost. The Claimant did not know this person's name and has been unable to locate him. The Claimant testified that he never actually saw blood being transfused. However, he questioned how he could have contracted Hepatitis C other than through a blood transfusion as he does not have any of the known risk factors.

12. Counsel for the fund filed two articles for my review. The Canadian Liver Foundation medical information update states that in 10% of the cases of Hepatitis C, according to U.S. data, the source of infection cannot be identified. In the second article titled "Enhanced Surveillance of Acute Hepatitis B and C in Four Health Regions in Canada, 1998 to 1999," 20.8% of the cases of Hepatitis C are identified as having no known source of infection.

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 ...".

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. Article 3.01 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."

16. I find that the Claimant did not provide the evidence required by Article 3.01 to establish that he was infected with Hepatitis C as a result of a blood transfusion during the Class Period. Based on the evidence before me, the Claimant has failed to provide proof that he received a blood transfusion during the Class Period.

17. 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

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


JUDITH KILLORAN

Referee

February 22, 2005
DATE