

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *HCV Settlement Agreement Claim No. 9817*,
2004 BCSC 247

Date: 20040223
Docket: C965349
Registry: Vancouver

IN THE MATTER OF THE HCV 1986-1990 TRANSFUSED SETTLEMENT AGREEMENT RE: CLAIM NO. 9817

Before: The Honourable Mr. Justice Pitfield

Reasons for Judgment

Counsel for the Claimant:	Self-Represented
Counsel for the British Columbia Fund	William A. Ferguson
Submissions Received from Fund Counsel:	November 28, 2003
Submissions Received from Claimant:	None Vancouver, B.C.

[1] The Claimant opposes confirmation of a Referee's decision upholding the Administrator's ruling that the Claimant does not qualify for compensation under the 1986-1990 Hepatitis C Settlement Agreement.

[2] The Claimant is the personal representative of his deceased father who was infected with the HCV antibody by a transfusion of blood products received in the Class period. The Administrator denied the Claimant's application for benefits payable to the deceased's beneficiaries on the basis that medical evidence submitted with the claim did not support the conclusion that the HCV infection caused or materially contributed to the deceased's death.

[3] The Claimant appealed the Administrator's decision to a Referee. The decision was upheld. The Claimant opposes confirmation of the Referee's decision for the following reason:

Because my father was infected with Hepatitis C which made his remaining years miserable. He was infected through a blood transfusion in a B.C. hospital.

[4] In his Reasons, the Referee said the following:

The Deceased, according to a document called Registration of Death (claim file p. 79) was born on April 9, 1917. He died at 81 years of age on June 16, 1998. The Physician's Medical Certificate of Death completed by the same general physician who completed the above-noted TRAN2 form indicated that the cause of death was stroke and other significant contributing factors were atrial fibrillation and aortic valve replacement (claim file p.97).

In the TRAN2 form, the Deceased's doctor was asked specifically in question 31: "If the HCV Infected Person has died, did his or her infection with HCV materially contribute to his or her death?" In reply, the doctor, faced with a choice of ticking the yes box or the no box, checked the no box. In other words, the doctor who treated the deceased for nine years before his death and completed the Medical Certificate of Death stated that HCV did not materially cause or contribute to the death. However, the doctor responded to the

secondary question on the form: "If yes, how did the HCV Infected Person's infection with HCV materially contribute to his or her death?" The doctor has written "Not available. Died of congestive heart failure/secondary to heart valve disease & COPD [chronic obstructive pulmonary disease] (claim file p. 48)."

[5] I have carefully considered the Referee's reasons and I have reviewed the Claimant's file in its entirety. In the absence of any medical evidence that HCV caused or materially contributed to death, the Administrator had no alternative but to conclude that the Claimant was not entitled to the benefits claimed under the Settlement Agreement. In the circumstances, the application to oppose confirmation of the Referee's decision must be dismissed.

"Mr. Justice Pitfield"