

## **COURT APPROVED PROTOCOL**

### **ELIGIBILITY AND TRACEBACK REQUIREMENTS FOR SECONDARILY-INFECTED PERSONS**

REVISED DECEMBER, 2017

This protocol applies to sections 3.02 and section 3.05 (insofar as it applies to a Secondly-Infected Person) of the Transfused HCV Plan, the Hemophiliac HCV Plan and the HCV Late Claims Benefit Plan.

#### **THE CLAIM/LATE CLAIM FOR A SPOUSE AS A SECONDARILY-INFECTED PERSON**

1. Section 3.02 of the applicable Plan permits a Claim or Late Claim for a Secondly-Infected Person who is the Spouse of a Primarily-Infected Person/Primarily-Infected Hemophiliac. That is, a Spouse may claim to have been secondarily-infected with HCV by his or her Spouse who is a Primarily-Infected Person or Primarily-Infected Hemophiliac. Section 3.05 of each Plan also permits a claim by an HCV Personal Representative of a Secondly-Infected Person.

#### **THE CLAIM FOR A CHILD AS A SECONDARILY-INFECTED PERSON**

2. Section 3.02 of each Plan permits a Claim or Late Claim for a Secondly-Infected Person who is the Child of an HCV Infected Person. That is, a Child may claim to have been secondarily infected with HCV by his or her Parent who is a Primarily-Infected Person, Primarily-Infected Hemophiliac or a Secondly-Infected Person. Section 3.05 of each Plan also permits a claim by an HCV Personal Representative of a Secondly-Infected Person.

#### **ELIGIBILITY CRITERIA**

3. The Administrator must be satisfied on the balance of probabilities that the Secondly-Infected Person was infected with HCV for the first time by a Spouse who is a Primarily-Infected Person, or a Primarily-Infected Hemophiliac or by a Parent who is an HCV Infected Person, as the case may be.
4. In order to assess the Claim or Late Claim of a Secondly-Infected Person under section 3.02 of the applicable Plan, the Spouse who is the Primarily-Infected Person or Primarily-Infected Hemophiliac or the Parent who is the HCV Infected Person must first be determined to meet the eligibility requirements under the appropriate Plan. If the Spouse who is the Primarily-Infected Person or Primarily-Infected Hemophiliac or the Parent who is the HCV Infected Person has not applied, then the Secondly-Infected Person must provide the Administrator with the information required in order to determine whether the Spouse or Parent, as the case may be, would qualify as an Approved HCV Infected Person or Approved Late Claim HCV Infected Person if he/she did apply.

## **ASSESSING THE CLAIM OR LATE CLAIM OF THE SECONDARILY-INFECTED PERSON**

5. On receipt of a Claim or Late Claim for a Secondly-Infected Person including the following forms under the applicable Plan:

- (a) General Claimant Information Form;
- (b) Treating Physician Form;
- (c) Declaration by HCV Infected Person, HCV Personal Representative or Other Knowledgeable Person,

the Administrator shall:

- (d) obtain all relevant medical, hospital and clinical records which are in existence up to the date of application pertaining to the Secondly-Infected Person and review them to determine if the Secondly-Infected Person has any risk factors for infection with HCV other than through their Spouse or Parent, as the case may be, including any indications for additional investigation as provided in paragraph 6 below; and
- (e) request a traceback of any units of blood received by the Secondly-Infected Person to determine whether any donors of the blood received by the Secondly-Infected Person tests positive for the antibody to HCV.

6. Indications for additional investigation include:

- (a) any evidence of non-prescription intravenous drug use by the Secondly-Infected Person, irrespective of whether the claimant provided the required declaration;
- (b) a failure to provide a declaration of knowledge, information and belief that the Secondly-Infected Person was not infected with Hepatitis Non-A Non-B or the Hepatitis C virus prior to January 1, 1986;
- (c) a prior application to another government HCV compensation program and/or a declaration of knowledge, information and belief that the Secondly-Infected Person was infected with blood received before January 1, 1986;
- (d) any indication of the existence of Hepatitis B, a previous unspecified Hepatitis or a liver irregularity for the Secondly-Infected Person;
- (e) any indication of the existence of a major surgical procedure, disease, treatment or trauma that was likely to have required a blood transfusion at any time prior to the earlier of July 1, 1990 or the date of the Secondly-Infected Person's diagnosis with HCV;

- (f) any indication of one or more of the risk factor(s) outlined in the Treating Physician Form or in the other documentation received; and
  - (g) receipt of any blood transfusions or blood in or outside Canada at any time prior to the Secondarily-Infected Person's diagnosis with HCV.
7. Where there is one or more indication for additional investigation, the Administrator shall require such additional information and records pursuant to section 3.03 of the applicable Plan as, in its complete discretion, it considers necessary to inform its decision.
  8. The Administrator shall weigh the totality of the evidence obtained including the evidence obtained from the investigations required by the provisions of this protocol and determine whether, on a balance of probabilities, the Secondarily-Infected Person meets the eligibility criteria.
  9. In weighing the evidence in accordance with the provisions of this protocol, the Administrator must be satisfied that the body of evidence is sufficiently complete in all of the circumstances of the particular case to permit it to make a decision. If the Administrator is not satisfied that the body of evidence is sufficiently complete in all of the circumstances of the particular case to permit it to make a decision, the Administrator shall reject the Claim or Late Claim.
  10. Reference to a Primarily-Infected Person, Primarily-Infected Hemophiliac or HCV Infected Person throughout this protocol also includes an Opted-Out Primarily-Infected Person, Opted-Out Primarily-Infected Hemophiliac or Opted-Out HCV Infected Person.