

**IN THE MATTER OF A REFERENCE PURSUANT TO THE HEPATITIS C
1986-1990 CLASS ACTION SETTLEMENT AGREEMENT
(Parsons v. The Canadian Red Cross et al.
Court File No. 98-CV-141369)**

BETWEEN:

Claimant File 16862

- and -

The Administrator

**(On a motion to oppose confirmation of the decision of Shelley Miller, Q.C., released
on September 9, 2009)**

Reasons for Decision

WINKLER C.J.O.:

Nature of the Motion

1. This is a motion to oppose confirmation of the decision of a referee appointed pursuant to the terms of the Settlement Agreement in the Hepatitis C litigation for the class period January 1, 1986 to July 1, 1990. The Claimant made a claim for compensation pursuant to the Agreement which was denied by the Administrator charged with overseeing the distribution of the settlement monies. The Claimant appealed the denial to a referee in accordance with the process set out in the Agreement. The referee upheld the decision of the Administrator and denied the appeal. The Claimant now opposes confirmation of the referee's decision by this court.

Background

2. The Settlement Agreement is Pan-Canadian in scope and was approved by this court and also approved by courts in British Columbia and Quebec. (See *Parsons v. The Canadian Red Cross Society* (1999), 40 C.P.C. (4th) 151 (Ont. Sup. Ct.)). Under the Agreement, persons infected with Hepatitis C through a blood or specified blood product transfusion, within the period from January 1, 1986 to July 1, 1990, are entitled to varying degrees of compensation depending primarily on the progression of the Hepatitis C infection.

Facts

3. The Claimant is an Alberta resident who was diagnosed in 2005 with hepatitis C.
4. The Claimant's medical records disclose that the Claimant received one unit of

blood at the University of Alberta Hospital on December 19, 1986. Pursuant to a traceback investigation, Canadian Blood Services determined that the donor of this blood unit subsequently tested negative for hepatitis C.

5. At the hearing before the referee, the Claimant and one of her sisters asserted that the Claimant had received two units of blood, not one unit. The following is an excerpt from the referee's decision regarding this assertion:

5. The Claimant testified that:

...

(e) in late 1986 she had been feeling unwell and suspected she had low iron in her blood. One day she collapsed at home and was taken to her local hospital in Athabasca where she was discovered to have been pregnant but suffered a miscarriage and was thus transported by ambulance to the University of Alberta Hospital for treatment;

(f) after return from the operating room to the ward, she wanted to be released from hospital but was advised by hospital staff that her health would be endangered if she left hospital without undergoing transfusions of blood. Her evidence is that the doctor on call indicated 5 units of blood were required and he was quite insistent that she not be discharged unless the blood was received;

(g) she had a vivid memory of the circumstances, because she was strongly against having any transfusions and that her two sisters were witnesses to the discussion with the doctor on call;

6. One of the Claimant's sisters attended the hearing to give oral evidence that she herself negotiated a compromise agreement between the Claimant and the hospital personnel to have 2 units of blood transfused.

7. The Claimant testified that she did not think the doctor on call who insisted on these transfusions was the treating physician.

6. In a letter to the referee dated May 20, 2009, Dr. George Iwaniuk, a doctor who had apparently treated the Claimant, indicated that he had no record in his office of having attended to the Claimant, and that "In short, [he had] nothing to add to the chart".

7. According to the referee, the Claimant made efforts to meet with her family physician "but encountered difficulties and finally advised [the referee that the Claimant] was satisfied that [her family physician] would have no relevant recollection of the matters here in issue."

8. There is no evidence that the Claimant has engaged in activities that could put her at risk of hepatitis C, such as drug use or obtaining tattoos.

9. The Claimant's claim was denied by the Administrator in a letter dated March 26, 2008 on the basis that the Claimant had not provided sufficient evidence that she had received a transfusion within the Class Period.

10. The Administrator's decision was upheld by a referee on September 9, 2009.

11. In written submissions provided to the court in support of this motion, the Claimant indicated, among other things, that she was told by the University of Alberta Records Clerk that "the second unit would have been recorded on a separate piece of paper and could have been misplaced."

Standard of Review

12. In a prior decision in this class proceeding, the standard of review set out in *Jordan v. McKenzie* (1987), 26 C.P.C. (2d) 193 (Ont. H.C., aff'd (1990), 39 C.P.C. (2d) 217 (C.A.) was adopted as the appropriate standard to be applied on motions by a rejected claimant to oppose confirmation of a referee's decision. In *Jordan*, Anderson J. stated that the reviewing court "ought not to interfere with the result unless there has been some error in principle demonstrated by the [referee's] reasons, some absence or excess of jurisdiction, or some patent misapprehension of the evidence."

Analysis

13. To succeed in this motion, the Claimant must establish that she received blood or an eligible blood product during the Class Period. Due to section 3.01(2) of the Transfused HCV Plan, only evidence that is independent of the personal recollection of the Claimant or her Family Members can be considered when determining whether the Claimant received blood.

14. The Claimant has been able to establish that she received a single unit of blood, but the donor of this unit has been tested negative for HCV. Accordingly, this unit of blood does not assist the Claimant in establishing a claim.

15. Although the Claimant asserts that she received a second unit of blood, there is no evidence in her medical records to support this assertion, nor has the Claimant been able to adduce any evidence to support her position that is independent of her personal recollections and those of her Family Members. Accordingly, the Claimant's claim cannot succeed.

Result

16. In my view, the referee committed no errors in principle, with respect to jurisdiction or by misapprehending the evidence before her. Accordingly, the referee's decision is confirmed.



Winkler C.J.O.

Released:

Oct 12 / 2010