

**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 1000321

- and -

The Administrator

**(On a motion to oppose confirmation of the decision of the C. Michael Mitchell,
Referee released on July 19th, 2010)**

Reasons for Decision

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. S.C.J.)). 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. The Settlement Agreement includes, among other things, the Transfused HCV Plan, which sets out the required proof for compensation.

Facts

3. The Claimant made a claim for compensation pursuant to the Transfused HCV Plan, as a primarily infected person. The Claimant is infected with Hepatitis C. Her Treating Physician Form indicates she has reached Disease Level 1 and 2.

4. In a letter dated October 25, 2002, the Administrator denied the claim on the basis that there was insufficient evidence that the Claimant received blood during the Class Period. The Administrator's decision was upheld by the Referee.

5. The Claimant opposes the confirmation of the decision of the Referee on the basis that she has a clear recollection of having received blood in June 1989, at Hospital "A", where she underwent surgery for a renal stone. Further, she states that the surgery was far more complicated than the medical notes suggest.

Standard of Review

6. 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.J., aff'd (1990), 39 C.P.C. (2d) 217 (Ont. 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*, Justice Anderson 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

7. In order to qualify for compensation as a primarily infected person under the Settlement Agreement, section 3.01 of the Transfused HCV Plan, requires the Claimant to provide evidence that she received a blood transfusion in Canada during the Class Period.

8. Where a Claimant is unable to provide proof of transfusion as required under section 3.01(1)(a), section 3.01(2) provides that, "...the Claimant must deliver to the Administrator corroborating evidence independent of the personal recollection of the claimant or any person who is a Family Member of the claimant establishing on a balance of probabilities that he or she received a Blood transfusion in Canada during the Class Period."

9. The Claimant has stated on her blood transfusion history form that she received seven possible transfusions. These transfusions took place from 1983 to 1990 at three different hospitals. All three hospitals have confirmed that they do not have any record of the Claimant receiving a transfusion.

10. As set out above, the Claimant believes that the transfusion that led to her Hepatitis C took place in June 1989 at Hospital "A" where she underwent surgery for a renal stone. The medical documents related to this surgery indicate that while the surgery was somewhat complex, no blood transfusion took place.

11. The Administrator contacted the doctors involved in the June 1989 surgery. Both confirmed that based on the medical records available it is clear that the Claimant did not receive a blood transfusion during her hospital stay in June 1989. Further, in

answer to the Referee's request for additional information, both doctors opined that there was nothing in the nature of the procedure or the operation which typically would have required a blood transfusion.

12. Where, as here, there is no documentary evidence of a blood transfusion, the onus falls to the Claimant to establish on the balance of probabilities that such a transfusion took place. The Claimant must do so by providing corroborating evidence as required under section 3.01(2) of the Transfused HCV Plan.

13. In this case, the Claimant has provided no corroborating evidence that she received a blood transfusion during the Class Period. The medical documents and the evidence provided by the doctors involved in her surgery do not assist the Claimant in this regard.

Result

14. The Settlement Agreement sets out the requirements that must be met by a Claimant seeking compensation under the Transfused HCV Plan. The Referee correctly interpreted those requirements and applied them to the finding of fact that he made regarding the absence of evidence that the Claimant received blood during the Class Period.

15. In my view, the Referee committed no errors in principle, with respect to jurisdiction or by misapprehending the evidence before him.

16. Accordingly, the Referee's decision ought to be confirmed.



Perell J.

Decision Released
October 28, 2013