

**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 933

- and -

The Administrator

**(On a motion to oppose confirmation of the decision of the Judith Killorn, Referee
released on July 26, 2011)**

Reasons for Decision

Perell J.:

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. 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. The Claimant has stated that he was diagnosed with Hepatitis C in 1996, however the earliest lab report that was provided to the Administrator provides 2010 as the year of diagnosis.

4. The Administrator denied the claim in a letter dated February 16, 2011 on the basis that there was insufficient evidence to support a finding that the Claimant received blood during the Class Period. The Administrator's decision was upheld by the Referee, in a decision dated July 26, 2011.

5. The Claimant is opposing the confirmation of the decision of the Referee on the basis that he has a clear recollection of receiving blood during the Class Period, following a motorcycle accident. Further, the Claimant believes that the Canadian Blood Services has "buried" any documents that might have existed which could have confirmed his claim.

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 he 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 the blood transfusion history form that he believed he received a blood transfusion in 1988 at Hospital A in Ontario. The Claimant has stated that he was treated following a motorcycle accident and has a clear memory of walking around the hospital with an IV pole, from which he was receiving red liquid. The Claimant provided no medical records to support his claim, so the Administrator requested that Canadian Blood Services ("CBS") conduct a traceback.

10. The CBS confirmed that no medical records of a blood transfusion for the Claimant were found at Hospital A (or Hospital B, the successor hospital).

11. Further, Hospital B confirmed that a thorough search by the blood bank department failed to reveal any blood transfusion between August 9 and September 15, 1988.

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 he received a blood transfusion during the Class Period. There is simply no evidence, beyond the Claimant's assertion that he received a blood transfusion following a motorcycle accident.

14. Finally, with respect to additional risk factors, I note that the Claimant has acknowledged that he spent 6-months in jail in 1993 in relation to a conviction for trafficking narcotics.

Result

15. 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 she made regarding the absence of evidence that the Claimant received blood during the Class Period.

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

17. Accordingly, the Referee's decision ought to be confirmed and the appeal dismissed.

Paul J