

**CLASS ACTION – 1986-1990 Hepatitis C
Request for review no. 20143**

DECISION

This request for review was submitted under the 1986-1990 Hepatitis C Settlement Agreement hereinafter referred to as: ["The Settlement Agreement"]. The Settlement Agreement provides individuals who have been infected with hepatitis C through a blood transfusion or through the use of blood products received in Canada between January 1, 1986 and July 1, 1990 with compensation.

The Settlement Agreement also provides for the eligibility and evidentiary conditions required for the individuals involved to be compensated.

In June 2011, the Claimant sent the results of the test he was given in January 2011 to the 1986-1990 Hepatitis C Claims Administrator [hereinafter called: the "Administrator"]. The results showed that he had been infected with a chronic hepatitis C.

On December 17, 2012, the Claimant filed a claim form as an HCV primarily infected person, under the Transfused HCV Plan [hereinafter called the «Plan»].

By letter dated March 8, 2013, the Administrator advised the Claimant that his claim had been rejected on the ground that the evidence had not established that he had received a blood transfusion during the Class Action period covered by the Settlement Agreement.

This is the said Administrator's decision about which the Claimant requested a review on April 4, 2013 and about which I must now render a decision as Referee.

On April 17, 2013, I sent a letter to the Claimant in order to verify his intentions to testify before me.

I sent the Claimant a second letter dated June 4, 2013 asking him to confirm whether he wanted to

testify before me in favor of his request for review. I then gave him until July 5, 2013 to get back to me on the matter. I informed him that in case of failure to receive a reply from him before the deadline date, I would conclude that he did not intend to testify before me as Referee, and that he was relying on the documents already on his file. I also invited him, after his receipt of the Settlement Agreement's Fund Counsel's written submissions (hereinafter called the "Fund") to send me, before the same deadline date of July 5, 2013, any reaction he may consider relevant in respect of the Fund Counsel's arguments. I confirmed with the Claimant that beyond the set deadline date, his file would be final and that I would then proceed with my analysis of the file and render my decision as expeditiously as possible.

I received no response to my letters dated April 17 and June 4, 2013.

The file now being complete, I am now proceeding to reach my decision based on the documents sent to me including the written arguments submitted by the Fund Counsel.

* * *

Under the General Claimant Information Form (TRAN 1), the Claimant claimed that he had been infected with Hepatitis C following a blood transfusion received in Canada during the Class Action Period. The Claimant claimed that he had received such a blood transfusion at the Centre hospitalier régional de Lanaudière in 1989, but provided no supporting documentary evidence of his claim.

At the request of the Administrator, Héma-Quebec conducted, in June 2011, an investigation in order to obtain information relating to the Claimant's alleged blood transfusion. On or about January 11, 2013, Héma-Quebec transmitted to the Administrator a report confirming that the Claimant "had not received any blood product" at the Centre hospitalier régional de Lanaudière.

On or about February 22, 2013, after having completed an additional analysis, Héma-Québec sent a final amended report reconfirming that the Claimant "had not received any blood product" at the Centre hospitalier régional de Lanaudière. The report stated that although the Claimant's medical records at the Centre had been cleaned up, the blood bank records were, for their part, complete.

* * *

My role as Referee is to ascertain whether the Administrator's decision was consistent with the Settlement Agreement's application of the compensation eligibility criteria.

The burden of proof rests with the Claimant, who must demonstrate, on a balance of probabilities, that the Administrator's decision was not consistent with the Settlement Agreement.

To be eligible for compensation as a primarily HCV infected person, the Claimant has the burden to prove that he had been infected with HCV for the first time following a blood transfusion received in Canada during the Class Action Period.

Sections 3.01 and 3.03 of the Agreement set forth the kind of proof required to be eligible for compensation. More notably, section 3.01(1) a) stipulates the following:

"3.01 Claim by Primarily-Infected Person

1. A person claiming to be a Primarily-Infected Person must deliver to the Administrator an application form prescribed by the Administrator together with:
 - a. medical, clinical, laboratory, hospital, The Canadian Red Cross Society, Canadian Blood Services or Héma-Québec records demonstrating that the claimant received a Blood transfusion in Canada during the Class Period;

[...] "

Notwithstanding the terms and conditions of paragraph 3.01(1) a), section 3.01(2) of the Plan provides that:

"Notwithstanding the provisions of Section 3.01(1) (a), if a claimant cannot comply with the provisions of Section 3.01(1) (a), 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."

On analysis of the case as it stood before me, the evidence shows that the Claimant was infected with HCV. A test conducted in January 2011 confirmed such an infection.

On the other hand, the Claimant did not discharge his burden of proof, i.e. that none of the requirements of section 3.01(1) a) and 3.01(2) have been met.

The file, as submitted before me, shows that the Claimant did not receive any blood transfusion during the Class Action Period, i.e., between January 1, 1986 and July 1, 1990. The Claimant's medical documents and the Héma-Québec's research showed, on two occasions, that the

Claimant had not received a blood transfusion during the Class Action Period. Moreover, no independent corroborating evidence demonstrating that he had received such a transfusion in Canada during the Class Action Period had been filed.

As pointed out by the Referee in Decision No. 172 dated January 5, 2005, it is helpful to recall that the "1986-1990 Hepatitis C Settlement Agreement is not a universal program that compensates all those who were infected with the Hepatitis C virus". The Referee then added that:

"Rather, Claimants must meet certain conditions, the first one of which is to establish that he had indeed received a transfusion during the period covered by the Agreement. The Claimant in this case was unable to do so. The Administrator has no discretion to allow compensation to a person, even to a Hepatitis C infected person, if that person cannot demonstrate that he or she had received a transfusion during the Class Action Period."

As in the case of the Administrator, I cannot, as Referee, go beyond the provisions of the Settlement Agreement and attempt to compensate a Claimant who does not meet the eligibility criteria.

Having carefully examined all the documents that have been sent to me, I come to the conclusion that the Administrator's decision to reject compensation to the Claimant was well-founded.

Therefore, this request for review is rejected.

Montreal, September 12, 2013

Original Signed by
Jean-Francois Lepage
Referee