

DECISION

BACKGROUND

1. On December 6, 2010, the Administrator denied the Claimant's request for compensation as a Primarily-Infected Person under the Transfused HCV Plan because the Claimant had not provided sufficient evidence that she received a Blood transfusion during the Class Period (January 1, 1986 to July 1, 1990).
2. On January 1, 2011, the Claimant requested that the Administrator's denial of her claim be reviewed. In a later communication on March 28, 2011, the Claimant requested that her claim proceed by way of a reference.
3. Although the Claimant initially requested an in person hearing and expressed an intention to call witnesses, she failed to remain in contact with my office and failed to provide available hearing dates. On August 30, 2013, as more than 21/2 years had elapsed with intermittent communication from the Claimant, I proposed to conduct the hearing by way of written submissions. The Claimant filed submissions on September 6, 2013 and Fund Counsel filed submissions on September 16, 2013. The hearing concluded on October 18, 2013, which I set as the final day for submissions.
4. In addition, I have reviewed all the material in the Claimant's file from the 1986-1990 Hepatitis C Claims Centre.

FACTS

5. The Claimant is infected with Hepatitis C, which was confirmed by her treating physician on November 10, 2008.
6. In her application for compensation, the Claimant indicated that she received blood transfusions on March 25, 1988 at the Ottawa General Hospital during a planned Caesarean Section.
7. The Claimant's specialist signed the Treating Physician Form on June 4, 2009. He indicated that he had known the Claimant for approximately seven months and presumably

from the history given by the Claimant, he believed that she received blood during the Class Period and that she had none of the risk factors for Hepatitis C.

8. The Administrator of the Fund requested that the Canadian Blood Services (CBS) conduct a traceback at the Ottawa Hospital - General Campus. On November 4, 2010, CBS confirmed that the blood bank records and medical records were searched from January 1, 1980 to November 26, 2009 and revealed no record of a transfusion. The Ottawa Hospital - General Campus medical records were also searched and revealed no records for the Claimant.
9. Subsequently, I issued a summons on May 18, 2011 to the Ottawa General Hospital - General Campus and a summons to the Ottawa General Hospital - Civic Campus for a further search for any transfusion or other medical records relating to the Claimant. On June 27, 2011, the Hospital again confirmed that it had conducted a search of the Health Records at the Civic Campus and no records of a blood transfusion were found. A further confirmation was received that the General Campus also had no records of a blood transfusion.
10. The Claimant filed what she claimed was a copy of a birth certificate for her daughter who was born on March 25, 1988 in Ottawa, Ontario. Her daughter's surname differed from that of the Claimant. Both my office and that of Fund Counsel, by way of correspondence dated October 28, 2011 and March 20, 2012, asked whether the Claimant may have had a different name when admitted to hospital for the birth. This information was requested on a number of occasions and no written response or authorization was received to issue a summons to search the blood banks and medical records under a different name.

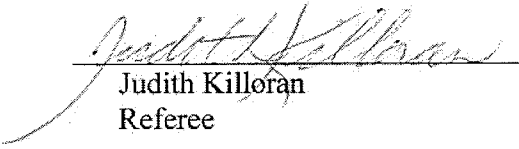
ANALYSIS

11. The Claimant seeks compensation as a Primarily-Infected Person under the Transfused HCV Plan of the Hepatitis C Class Action Settlement. The Transfused HCV Plan defines "Primarily-Infected Person", in part, as meaning "a person who received a Blood transfusion in Canada during the Class Period."

12. The 1986-1990 Hepatitis C Settlement Agreement defines "Class Period" as meaning "the period from and including 1 January 1986 to and including 1 July 1990." "Class Period" is defined identically in the Transfused HCV Plan.
13. Article 3.01 of the Transfused HCV Plan requires that a Primarily-Infected Person must deliver to the Administrator an application form together with, among other things, medical "records demonstrating that the Claimant received a Blood transfusion in Canada during the Class Period."
14. The Claimant has not submitted any medical evidence that supports her claim that she received a blood transfusion during the Class Period. She has not filed medical records documenting a transfusion. She has also not provided independent corroborating evidence that there was a transfusion.
15. Consequently, the Claimant has not met her burden of proof as required under the Settlement Agreement. I find, on a balance of probabilities, that the Claimant does not qualify for compensation under the terms of the Settlement Agreement.
16. The Administrator under the Settlement Agreement is required to administer the Transfused HCV Plan in accordance with its terms. The Plan sets out the requirements for compensation which is limited to defined classes of individuals. The Claimant does not qualify for compensation as she does not meet the definition of a Primarily-Infected Person.

CONCLUSION

17. I uphold the Administrator's denial of the Claimant's request for compensation.


Judith Killoran
Referee

November 17, 2013