

IN THE MATTER OF AN APPEAL TO REVIEW
THE DECISION OF THE ADMINISTRATOR
concerning Claim No. 1300334 under the HCV 1986-1990
Settlement Agreement and the Transfused HCV Plan

DECISION OF THE REFEREE

Vincent R.K. Orchard, K.C., C. Arb.

Arbitrator and Referee for the Province
of British Columbia

DECISION

Claim ID No. 1300334

I INTRODUCTION

1. The Claimant brings this Appeal by way of a reference for review of a decision dated February 13, 2025 by the Administrator denying his Claim to retroactively re-elect to claim Loss of Income benefits for the years 2024 and before. From 2013 to 2024, the Claimant had elected to receive compensation as a Primarily-Infected Person and Approved HCV Infected Person for Loss of Services benefits under Article Four, entitled Compensation to Approved HCV Infected Persons, of the Transfused HCV Plan (the “Plan”) adopted under the HCV 1986-1990 Settlement Agreement (the “Agreement”) confirmed by court orders following settlement of class action litigation in Canada including the province of British Columbia. The Administrator denied the Claim specifically relying on Section 3 of Article 4.03 of the Plan.
2. The Administrator accepts that the Claimant is both a Primarily-Infected Person and an Approved HCV Infected Person under the Plan having been infected with HCV during the Class Period by a defined Blood product. It is agreed that the province of infection is British Columbia. This Claim and this Appeal are not about entitlement to compensation. Nor are they about proof of infection with HCV from Blood as defined during the Class Period. The issue before me as a Referee on this Appeal is limited to the kind of benefits the Claimant may be entitled to receive under Article Four of the Plan and whether he may now retroactively re-elect the kind of benefits for prior years when he initially chose a different kind of benefits.
3. At an in-person hearing of this Appeal in Victoria, B.C. on June 26, 2025, it was submitted on behalf of the Administrator that the Administrator was seeking a decision from me as Referee how the Plan should be interpreted when a Claimant who has received compensation for Loss of Services for multiple years now seeks compensation for Loss of Income for the same years.

4. At the in-person hearing, the Claimant and his adult daughter attended and gave evidence. The Claimant also made oral submissions. Fund Counsel, Ms. Belinda Bains, filed written submissions and made oral submissions as well. Ms. Jennifer Langlotz, a Nurse Evaluator and Appeal Co-ordinator employed by Epiq Global Claims Solutions (“Epiq Global”), also gave evidence. Epiq Global manages claims for compensation under the Agreement and the various Plans made under the Agreement, including the Plan which applies in this case. Ms. Langlotz is a registered nurse with a bachelor’s degree in nursing. She has considerable past nursing experience working as an on-duty hospital nurse in a number of hospital departments over twenty years or more. She is very familiar with hospital and medical records. She has on-duty nursing experience working in, for example, Surgical and Emergency departments and in Burn units. She is very familiar with hospital charts, blood bank procedures and in the administration of blood transfusions and other blood products. She has academic experience in the teaching of R.N.’s and L.P.N.’s. Her evidence was helpful in the interpretation of the Claim file, marked as Exhibit 1, and in providing me with definitions of the medical conditions which the Claimant has experienced over the years since 1993 when he became first disabled due to HCV infection.
5. The Claimant and his daughter testified at some length about all the hardships and setbacks the Claimant has endured since HCV infection during the Class Period. His medical and personal problems caused by his HCV infection and by other serious medical conditions have plagued him since approximately 1990. He has been a hard worker all his life. He worked on the family farm as a boy, operating farm machinery; married early; worked in “the bush” in logging camps and became adept at operating logging equipment including a very large logging machine called a “grappler”. His father, in addition to farming, was a heavy equipment operator and was engaged in construction including building logging roads. The Claimant and his brother also worked in construction over the years. The Claimant became a very experienced heavy equipment operator on construction building sites. He was sought after for his skill and dedication. Despite enduring significant medical conditions that caused serious physical symptoms, emotional and personal problems and financial hardship the Claimant worked when he could and has endured. His evidence was that he “lost it all since 1990”, at

approximately age 27. He deserves one's sympathy and admiration for what he has endured and his efforts to overcome his hardships and to keep as active as possible.

6. However, as moving as the evidence given by the Claimant certainly was, it is not necessary for my decision to recount the evidence of the Claimant and his daughter in any more detail.
7. In addition to Exhibit 1, the Claim file consisting of 205 pages, two additional Exhibits were marked. The Claimant submitted a letter dated September 13, 1995 from Blood Bank Director at the Vancouver Hospital and Health Sciences Centre, confirming a date of transfusion between September 28, 1988 to October 12, 1988 and that an HCV donor was located. The September 13, 1995 letter was marked as Exhibit 2. Exhibit 3 is a letter dated February 12, 2005 from a previous employer when the Claimant worked for periods of time in 2018 and 2019. The letter signed by the owner of the business noted that the Claimant was a valued employee whose dedication and expertise were greatly appreciated. The Claimant also referred to a letter dated January 23, 2025, from another Victoria based construction company (p. 203 of the Claim file) confirming the Claimant's employment during the period of time, July 9, 2012 to December 22, 2014. The general manager of the construction company noted that the Claimant would have had the opportunity to continue his employment with the company had he not taken a leave of absence for medical reasons.
8. In the written submissions of Fund Counsel, dated May 5, 2025, circulated prior to the in-person hearing of June 26, 2025, the position of the Administrator concerning the Claimant's request for review by way of a Referee was that the Administrator's decision denying the Claim was correct and therefore should be upheld on this Appeal. Thus, prior to the in-person hearing, the Administrator's position was that the Claimant, having elected under Article 4.03 of the Plan, entitled "Compensation for Loss of Services in the Home", to receive Loss of Services benefits for the years 2013 to 2024, he could not retroactively re-elect to receive Loss of Income benefits for the years 2024 and before.

9. As noted, the Administrator relied principally on Section 3 of Article 4.03 which reads as follows:

(3) Notwithstanding any of the provisions hereof, an Approved HCV Infected Person cannot claim compensation for loss of income and compensation for the loss of services in the home for the same period.

10. In Fund Counsel's written submissions, the Administrator's position was summed up as follows:

13. Section 4.03 of the Plan is clear that a claimant can only receive either Loss of Services or Loss of Income for the same period. The claimant has already received Loss of Services benefits for 2024 and the years prior. Each year he was given the option to choose the claim either Loss of Services or Loss of Income, and up to 2025, he has opted for Loss of Services, by filing a GEN 12 Renewal Form. Each year he had the option of instead seeking payment of Loss of Income, but each year opted not to do so.

14. As a result of the foregoing, it is submitted that the claimant is not entitled to receive Loss of Income benefits of the 2024 year and previous, as he has already received Loss of Services benefits over that period of time.

11. On June 26, 2025, the position of the Administrator was fundamentally altered. Rather than strictly relying on Section (3) of Article 4.03, the approach taken on behalf of the Administrator was that the Plan did not specifically allow nor disallow a retroactive re-election to claim compensation on the basis of Loss of Income rather than Loss of Services as previously elected.

12. Furthermore, relying specifically on the treating physician's statement, TRAN 2 dated October 18, 2016 (Claim file, Ex. 1, p. 162), the Administrator now accepts a pre-claim period between April 4, 1993 to March 20, 2002 of temporary disability due to HCV infection, subject of course to proof of loss of income as set out in Article Four of the Plan. In addition, for the Claim Period, the Administrator accepts a second period of temporary disability subject to proof as required under Article Four. The Administrator states that no Approved HCV Infected Person has ever retroactively re-elected the kind of compensation sought under Article Four in pursuing a claim. The Administrator now seeks from me as Referee my determination whether such retrospective re-election is allowed under the Plan. The Administrator accepts the earlier pre-Claim period for 1993

to 2002 subject to all the terms of Article Four as to proof of Loss of Income and quantification. No ruling is required of me on the pre-Claim Loss of Income period.

II DISCUSSION AND CONCLUSION

13. In considering my decision on whether the Plan under the Settlement Agreement allows the Claimant to re-elect Loss of Income benefits from 2013 to 2014, Fund Counsel submits that I should consider the principles of contractual interpretation described as the modern contractual approach, having regard to the contract as a whole and the object of the parties and surrounding circumstances, citing *Sativa Capital Corp. v. Creston Moly Corp.* 2014 SCC 53. Fund Counsel submits that “in this case the context of the Settlement Agreement was a recognition of the wrong visited upon Canadians who were infected with Hepatitis C through the blood supply, and a desire to properly and adequately compensate victims for that wrong.”
14. Fund Counsel also submits that the case law supports an approach to interpreting class action settlement agreements broadly and generously in a purposive manner. See *Penney v. Bell Canada* 2010 ONSC 2801 and *Hollick v. Metropolitan Toronto (Municipality)* [2001] 3 S.C.R. 158.
15. In my view, Fund Counsel’s submissions align with the modern principles of statutory interpretation. The modern approach requires that the words of a statute are to be read given their grammatical and ordinary sense in their entire context, harmoniously with the object of the legislative scheme. See *Bell ExpressVu Limited Partnership v. Rex* 2002 SCC 42 at paras. 26-27, 44-46. Since the Settlement Agreement and the Plan are approved under court orders, the modern approach to statutory construction is also apt.
16. In conclusion, I find that the grammatical and ordinary meaning of Section 3 of Article 4.03 of the Plan does not permit the Claimant to claim both Loss of Income and Loss of Services for the same period, specifically for the years 2013 to 2024. However, in my opinion, having regard to the legal principles of contract and statutory interpretation set out above, the Claimant is entitled to re-elect Loss of Income benefits in place of Loss of Services benefits that he has received to date. It is not my role to determine quantification of the Claimant’s Loss of Income benefits he now wishes to claim from 2013 to 2014. Obviously, deductions or credits for Loss of Services benefits and income

actually earned during that period must be taken into account. The Claimant will have to prove his claim for Loss of Income benefits as required by Article Four of the Plan.

17. Accordingly, I allow the Appeal on the basis as discussed.

Dated July 15, 2025

A handwritten signature in blue ink, appearing to read "Vincent R.K. Orchard". The signature is fluid and cursive, with the first name "Vincent" written in a smaller, more legible script than the last name "Orchard", which is written in a larger, more stylized cursive.

Vincent R.K. Orchard, K.C., C. Arb
Referee