

**THE 1986-1990 HEPATITIS C CLASS ACTION SETTLEMENT**

IN THE MATTER OF AN APPEAL FROM THE DECISION OF THE ADMINISTRATOR  
DATED May 20, 2008

CLAIM NO: 8162

DATE OF HEARING: By Conference Call July 22, 2008

IN ATTENDANCE: Claimant  
Claimant's son  
John Callaghan, Fund Counsel  
Carol Miller, R.N., Appeal Coordinator

REFEREE: C. Michael Mitchell

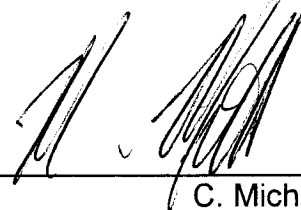
## DECISION

1. This is an Ontario-based claimant, claim #8162.
2. A conference call between the Administrator and the Claimant, represented by her son, MH, took place on July 22, 2008.
3. It was agreed by all parties that this matter would be adjourned without setting a further date, but that it could be brought on to be decided by either party in its discretion at any time. Subsequently the claimant asked that it a decision be issued without any hearings.
4. In 2001 the Claimant's application for compensation as a Family Member under the 1986-1990 Hepatitis C. Settlement Agreement was approved. Under the Court Approved Protocol - Loss of Services of the HCV infected person in the home, the "entitlement of Dependants of deceased HCV infected persons" is set out in paragraphs 16 and 17 which provide the following:
  16. The Administrator will use the *most current* Canada life Tables to calculate a *notional* life expectancy of the deceased HCV Infected Person without reduction for pre-existing ailments or illness (including HCV) to determine the maximum period loss of services may be payable.
  17. Loss of services will be paid to Dependants for the *calculated life expectancy* of the deceased HCV Infected Person, so long as the Spouse who is Dependant remains alive or there is a Child who is Dependant who continues to qualify for payments. Loss of services payments will cease upon the death of the Spouse who is a Dependant unless there is a Child who continues to qualify for payments as a Dependant.
5. Thus, under the Agreement, the quantum of the loss of services to be paid to a Dependant is based on the calculated life expectancy of the deceased. In this case, the life expectancy of the deceased meant that the claim for loss of services was to be paid until September 22, 2008. In all the correspondence on this matter between the Claimant and the Administrator throughout the years, it has been clear that the loss of services would continue to be paid only until September 22, 2008.
6. The Claimant seeks added payments for loss of services beyond September 22, 2008.
7. From the correspondence, the Claimant, who is now 82 years of age, indicates that she is in poor health and is in need of additional supports which, according to her submissions "would greatly enhance her quality of life by providing increased home care and nursing services".
8. The Claimant points out that the life expectancy tables are based on averages and that many Canadian males clearly live past the ages set out in those tables.

But for the illness of her husband she argues, he might well have lived longer than the average. The Claimant also points out that the fund is in strong financial condition and could easily afford to provide additional benefits for persons like the Claimant who have suffered a significant loss requiring compensation in the first instance.

9. I find that the Hepatitis C Settlement Agreement does not allow the Referee discretion with respect to this matter. The Agreement calls for the use of the life expectancy tables and limit payments in accordance with their terms. It was also clear throughout the process over many years that these payments would cease as of September 2008. I have no jurisdiction to make any change to the Agreement or to order that any additional support payments for loss of services be paid to the Claimant.

DATED at Toronto this 18th day of February, 2009

A handwritten signature in black ink, appearing to read 'C. Michael Mitchell', is written over a horizontal line.

C. Michael Mitchell  
Referee