

CLAIM #70734

Province of Infection: (Province)

State of Residence: (Province)

IN THE MATTER OF A REFERENCE
TO REVIEW THE DECISION OF THE ADMINISTRATOR
UNDER THE LATE CLAIM BENEFIT PLAN of the
1986-1990 HEPATITIS C SETTLEMENT AGREEMENT

REFEREE: Reva Devins

SUBMISSIONS: Claimant, on their own behalf

John Callaghan, on behalf of the Fund

DECISION

1. The Claimant, an (Province) resident at the time of infection, submitted an application for compensation as a Primarily Infected Person under the Late Claim Benefit Plan (the “Plan”) of the 1986-1990 Hepatitis C Settlement Agreement (the “Settlement Agreement”).
2. By letter dated August 20, 2019 the Administrator denied the claim because there was no evidence that the Claimant received a blood transfusion between January 1, 1986 – July 1, 1990 (the “Class Period”).
3. The Claimant requested that a Referee review the decision of the Administrator.

Terms of the Settlement Agreement

4. The Claimant applied for compensation pursuant to the 1986-1990 Hepatitis C Settlement Agreement. The terms of the settlement provide a detailed outline of who is eligible for compensation and how eligibility can be proven:

ARTICLE THREE REQUIRED PROOF FOR COMPENSATION

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, or Canadian Blood Services or Hema Quebec records demonstrating that the claimant received a Blood transfusion in Canada during the Class Period;
 - ...
- (2) 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.

Evidence

5. The Claimant believed s/he received a blood transfusion in connection with a medical procedure conducted in 198X or 198X at the (City) General Hospital. Due to the passage of time, the Claimant was unable to provide medical records of treatment or any other proof of a blood transfusion in the class period.
6. At the request of the Administrator, the hospital conducted a traceback search; the hospital found no record of admission for the Claimant between 1980-1989. Similarly, a separate search of blood bank records from 1985-1989 yielded no record of transfusion.
7. A further search, as part of these proceedings, produced the same result. A summons was issued to the (City) General Hospital to forward all medical records under the Claimant's current last name, previous surname or OHIP number. The hospital again confirmed that it found no records of admission between January 1, 1986 - July 1, 1990, although there were records of hospitalization outside of the class period.

Submissions

8. Fund Counsel referred to Article 3.01 of the Settlement Agreement as the basis for the Administrator's decision. Counsel maintained that neither the Administrator nor a Referee can admit a person into the class unless they meet the necessary criteria.

In this case, since there is no evidence of a transfusion during the class period, the Administrator was correct in denying the claim.

9. The Claimant acknowledged that there were no medical records and, after reviewing the submissions of Fund Counsel, agreed that eligibility under the Plan had not been established.

Analysis

10. There are certain conditions that must be met in order to obtain compensation under the Plan. Primary among them is the requirement that claimants provide evidence that they “received a Blood transfusion in Canada during the Class Period”. These eligibility requirements are mandatory and there is no discretion to waive their application in individual cases.
11. Unfortunately, despite several attempts to locate the Claimant’s hospital records, no medical documents were found to establish that the Claimant received blood products in the relevant timeframe. Through no fault of the Claimant’s, evidence of transfusion in the class period, an essential pre-condition to receive compensation, has not been provided. Without this proof, I must conclude that the eligibility requirements under the Plan have not been met.
12. Based on the evidence and submissions provided to me on this Reference, I confirm the decision of the Administrator that the Claimant is not an eligible Class Member.

Dated October 29, 2020



Reva Devins, Referee