

**IN THE MATTER OF AN APPEAL TO REVIEW THE DECISION
OF THE ADMINISTRATOR CONCERNING CLAIM NO. 70973 UNDER THE HCV 1986 - 1990
SETTLEMENT AGREEMENT AND THE HCV LATE CLAIMS BENEFIT PLAN**

Vincent R. K. Orchard, Q.C., Arbitrator / Referee for the Province of (Province)

Decision

Claim ID No: 70973

1. The Claimant brought this appeal for arbitral review of the decision of the Administrator set out in correspondence dated August 20, 2019, denying a claim for compensation under the HCV Late Claims Benefit Plan and the HCV Transfused Plan. The Claim was denied based on Article 3.01 (1) (a) of the 1986 – 1990 Hepatitis C Settlement Agreement Transfused HCV Plan (the “Transfused Plan”) which requires certain medical records, as stipulated by the Transfused Plan, demonstrating that the Claimant had received a Blood transfusion in Canada during the Class Period, January 1, 1986 to July 1, 1990. Upon review of the facts and evidence in the Claim file, including that provided by the Claimant and a records search conducted by Hema-Quebec, the Administrator concluded that there was no evidence that the Claimant received a Blood transfusion during the Class Period, which was really the only conclusion that the Administrator could rationally and judicially reach.
2. The Claimant elected to appeal the Administrator’s decision requesting a review by an arbitrator. His request for review was received on September 10, 2019. Since the Claimant resides in (Province), the arbitration was conducted in (Province) despite the assertion that the Claimant was infected by a Blood transfusion during the Class Period in the province of (Province).
3. The only evidence put forward by the Claimant in support of his claim and the appeal is his own evidence that he received a Blood transfusion at the (City) General Hospital during surgery for a gunshot wound in December 198X.
4. Despite being afforded ample time and assistance by Fund Counsel to obtain hospital records that might assist the Claimant’s subjective belief of a transfusion, he did not put forward any additional corroborative evidence of the kind required by Article 3.01 (1) (a) to suggest that the Administrator’s decision was actually wrong.
5. During a number of telephone conferences convened by myself as arbitrator involving the Claimant, Fund Counsel and a representative of the Administrator, the Claimant was encouraged to make attempts to obtain the type of evidence required under the Transfused Plan to prove the threshold requirement of a Blood transfusion during the Class Period. The requirements of the Transfused Plan were explained to the Claimant. In addition, in correspondence dated March 24,

2020 and November 10, 2020, he was asked to sign an authorization for release of medical records of the Montreal General Hospital which possibly could have lead to evidence supporting his Claim and appeal. He never returned the authorizations to Fund Counsel who had agreed to help the Claimant in a search for relevant records.

6. During the last telephone conference with the Claimant, on February 26, 2021, I directed him to provide to Fund Counsel by March 9, 2021, the authorization for release of medical records, as prepared by Fund Counsel and provided twice to the Claimant in March and November 2020. The Claimant declined to do so and has now requested my decision on the basis of the Claim file without any further submissions and without any further evidence. Neither party has requested an oral hearing.
7. Article 3.01 (1) (a) of the Transfused Plan requires a claimant to provide medical records to the Administrator “demonstrating that the claimant received a Blood transfusion in Canada during the Class Period”. Under the Settlement Agreement the role of the Administrator is to administer the Plan in accordance with its terms. Neither the Administrator nor an Arbitrator/Referee deciding an appeal has the discretion to vary, alter, amend or ignore the terms of the Transfused Plan.
8. In applying the terms of the Transfused Plan, the Administrator had no choice but to deny the Claim. The Administrator’s decision must be upheld. The appeal is denied.

Dated at (City), (Province), this 15th day of April, 2021.



Vincent R.K. Orchard, Q.C., Arbitrator Referee