

REFEREE'S DECISION
HEPATITIS C CLASS ACTION
JANUARY 1, 1986 – JULY 1, 1990

Claimant:	Claimant #70672
File No.:	1051
Province of Infection:	
Province of Residence:	
Date:	September 24, 2021

Decision

1. The Administrator denied the claim for compensation as a Primarily-Infected Person pursuant to the Transfused HVC Plan on the basis that there is no proof of a transfusion during the class period.
2. On May 17, 2018 the Claimant was granted leave to file a late claim to appeal the denial.
3. This is a review of the denial of the claim.
4. This matter first came before me in July, 2020, during which time conditions created in response to the Covid-19 pandemic resulted in all communications for prehearing and hearing issues occurring with the Claimant's agreement by telephone conference or email transmission.
5. The Claimant requested that I review the decision as a Referee.
6. I reviewed the claim file. The Claimant's contention was that after a car accident he was treated at a Hospital in Edmonton and received a blood transfusion.
7. The Claimant further contended that he was again transfused in 1990 at another hospital for insertion of screws in his leg resulting from the initial car accident. His claim form also includes a claim of a transfusion in 1991 at this Hospital during a leg operation.
8. Elsewhere in the claim file under a list of Other Risk Factors was found reference to a car accident in the 1980s resulting in a blood transfusion.
9. No medical records were filed in support of these procedures, except for the Treating Physician Form (Form), which listed one transfusion in the late 1970s. That treating physician had known the Claimant for only 6 months prior to the date of signing the Form.
10. There were medical reports filed which evidenced that the Claimant in the early 2010s was treated for Hepatitis C.
11. Traceback measures resulted in a search of the Hospital for records of any attendances in the class period and the blood bank. The chart from the former revealed no record of leg surgery in the hospital. The latter revealed a review of records of the first hospital back to 1970s but no indication of any attendance by the Claimant or that he was transfused.
12. At a telephone conference on November 26, 2020, attended by the Claimant, the Administrator and Fund Counsel, the claim file documentation was discussed. The Claimant agreed to request complete records from his current health care provider. Further, with agreement of the parties, I issued a summons to the hospitals for production of records of any transfusion during the class period.
13. Records received from his current health provider confirmed that the Claimant was diagnosed with HCV in the 2000s, but included no record of a transfusion and contained a reference indicating the cause was "unknown".

14. Fund Counsel communicated with Health Services to ensure and clarify results of searches of Hospitals which revealed that the searches undertaken included search of a system for recording transfusions. No records were found of any treatments in the time frames requested.
15. The Claimant presented no supporting testimony from any other person or physician to substantiate his claim of transfusions.
16. It was communicated to the Claimant that I had received no supporting testimony from any other person or physician to substantiate his claim of transfusions. It was also communicated that I would entertain written submissions by him and Fund Counsel before rendering my written decision.
17. Fund Counsel delivered written submissions summarized as follows:
 - (a) The evidence discloses that there are no records of a blood transfusion during the class period.
 - (b) The Transfused Plan requires under s. 3.0.1 of the Transfused Plan that the claimant establish that there was a transfusion during the class period which is ordinarily accomplished by submitting medical records confirming a transfusion or, alternatively, by evidence independent of the claimant or family member establishing on a balance of probabilities that the Claimant was transfused during the class period
 - (c) There is a Standard Operating Procedure followed where medical records have been destroyed. Ultimately, the criteria for establishing a transfusion during the class period where records do not exist or have been destroyed requires there be submitted independent corroborating evidence independent of a family member that there was a transfusion.
 - (d) The Hospital Records consistent with the Oracle data base show no treatment during the class period. Further, there is no indication any records were destroyed at the Hospital relevant to the class period.
 - (e) The attendances at the Hospitals are prior to the class period.
 - (f) The response from Alberta Health Services is consistent with an attendance at the hospital prior to, but not during, the class period.

There is no evidence of a blood transfusion during the class period.
 - (g) Any transfusion prior to the class period would mean the claimant is not eligible for compensation under this Settlement agreement.
 - (h)
 - (i) Both the Administrator and Referee are bound by the Settlement Agreement and Transfused Plan.

18. On September 20, 2021 the Claimant wrote that his claim was also based on the contention that the rooms and the medical instruments utilized for his medical care were unsanitary.
19. Fund Counsel in response submitted that the Settlement Agreement compensates only for blood transfusions administered from 1986-90 which came from a donor with HCV and which first infected the claimant with HCV and not HCV transmitted by unsanitary rooms or medical equipment, even if in this case such contention were proven.
20. After deliberation, I have arrived at the following conclusions.
21. Both the Administrator and Referee are bound by the Settlement Agreement and Transfused Plan.
22. Article 3.01 of the Plan requires that a person claiming to be 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".
23. Section 3.01(2) of the Plan provides as follows:

"Notwithstanding the provisions of Section 3.01(a), if the Claimant cannot comply with 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
24. Because of the requirements of the Transfused Plan, I could not accept the Claimant's testimony that he did undergo transfusions in the class period and he delivered no corroborating evidence to the Administrator as required by Section 3.01(2) of the Plan that he had received a blood transfusion in Canada during the Class Period.
25. Based on the foregoing, I consider it more probable that the Claimant sustained Hepatitis C from some source other than a blood transfusion in the class period.
26. Accordingly, I must uphold the Administrator's decision to deny the Claimant's request for compensation as a Primarily-Infected Person under the Plan.

Dated September 24, 2021.



Shelley L. Miller, Q.C. Referee