

IN THE MATTER OF A REFERENCE  
UNDER THE HCV LATE CLAIMS BENEFIT PLAN  
ESTABLISHED UNDER  
THE JANUARY 1, 1986 – JULY 1, 1990  
HEPATITIS C CLASS ACTIONS SETTLEMENT  
AND SUBSEQUENT ORDERS

<b>Claim Number:</b>	711860
<b>Province of Alleged Infection:</b>	(Province)
<b>Province of Residence:</b>	(Province)
<b>Fund Counsel Representing Administrator:</b>	John Callaghan
<b>Referee:</b>	Daniel Shapiro, Q.C.
<b>Dates of Videoconferences:</b>	December 20, 2021, February 1, 2022
<b>Date of last written submissions:</b>	March 14, 2022
<b>Date of Decision:</b>	April 13, 2022

## **DECISION**

### **A. Introduction**

[1] By way of Late Claim Request Form dated January 20, 2019,<sup>1</sup> the Claimant, a (Province) resident then 48 years of age, applied for compensation as a spouse of a deceased HCV<sup>2</sup> Infected Person pursuant to the HCV Late Claims Benefit Plan (the “Plan”).<sup>3</sup> The Deceased died intestate on June 30, 2009. The Claimant is unrepresented.

[2] In her Late Claim Request Form, the Claimant stated that she first became aware of the deadline to submit a claim to the Hepatitis C 1986-1990 Settlement on January 8, 2019, with the following explanation:

My husband passed away suddenly at (City) General Hospital leaving me a widow and single parent of two young children, aged 5 and 10. My complete focus has been directly consumed with dealing with such a catastrophic loss and the various stages of grief, both for the children and myself. At times it was quite consuming. I do apologize for the late claim; it was in no way intentional. My life has not been an easy one since (husband’s) passing. I’ve had to carry on without him while keeping his memory alive for the children... I was completely unaware that a deadline was in place.

[3] On February 8, 2019, Court-Appointed Referee Reva Devins issued a Decision<sup>4</sup> permitting the Claimant to file an application form to file a Late Claim, finding that the Claimant was unable to meet the first claims deadline for reasons beyond her control.

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<sup>1</sup> The appeal file consists of 212 pages. The Late Request Application is found at pp 16-22. In addition, a Supplementary Record was provided, including portions of the Deceased’s claim and those of his children, consisting of 263 pages. Both sets of materials were provided to the Claimant.

<sup>2</sup> Hepatitis C Virus

<sup>3</sup> The sections of the Late Claims Benefit Plan are identical to the Transfused Plan in respect of these claims.

<sup>4</sup> Appeal file, p 23

[4] The Claimant's Late Claim Benefits Plan General Claimant Information Form, dated February 29, 2019,<sup>5</sup> states that she was: 1. A spouse of the HCV Infected person at the time of his death *and*; 2. A Dependant of the deceased HCV Infected Person at the date of his death and claiming as such.

[5] The Claimant completed a Loss of Income/Support Master Form<sup>6</sup> saying:

- The claim is for loss of support.
- Her spouse became disabled due to his HCV infection, which led to a loss of income starting January 1, 2004.
- Her spouse was working prior to his infection with HCV.
- Her spouse received the following CPP disability benefits:
  - 2004: \$7,512/month (tax return shows this was the annual total)
  - 2005: \$8,334/month (tax return shows this was the annual total)
  - 2006: \$8,550/month (tax return shows this was the annual total)[Tax returns show CPP disability benefits of \$8,713 in 2007 and \$8,888 in 2008]
- Her spouse received the following pre-claim "Normal Employment" income for the following 3 consecutive years of her choosing:
  - 2000: \$21,325
  - 2001: \$ 9,661
  - 2002: \$34,728

[6] The "Supplementary Record" includes materials regarding the following claims under the Hepatitis C 1986-1990 Class Action Settlement, all of which were approved by the Administrator and are not in issue in this Reference:

(a) A claim by the Deceased while he was alive, including a positive PCR report and Traceback Report confirming transfusion of 2 units of blood in 198X, at age X, arising from back surgery. He applied for compensation from the Settlement Fund in 2005 and was approved as a Class Member in 2007. He received compensation for past years including Loss of Income for most years and Loss of Services for at least 2004 (a claimant cannot claim both.) His Loss of Income was set at the average industrial wage as his prior taxes disclosed income below that level and he contracted HCV when he was under age X, resulting in his eligibility for a higher amount.

(b) Separate claims for loss of services brought on behalf of the two children of the marriage (\$215,619 in total, payable over time until age 25,) approved by the Administrator in April 2021).<sup>7</sup>

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<sup>5</sup> TRAN 1 FMD PIP, Appeal file pp. 25-30

<sup>6</sup> GEN 10, Appeal file pp. 210-212

(c) Payments to the Claimant and her children for “loss of the deceased’s guidance, care and companionship”. The amount paid to the Claimant as spouse was \$36,650.

[7] The Claimant provided, among other documents, Ontario Death Certificate for her spouse,<sup>8</sup> Letters of Administration, dated February 2, 2018, appointing the Claimant as Administrator of the estate of her late spouse<sup>9</sup> and Uninsured Funeral Expense Form, dated February 12, 2019.<sup>10</sup>

[8] On April 5, 2021, the Claimant submitted a Request for Review by a Referee of the Administrator’s denial of her Late Claim.<sup>11</sup> Her grounds for review were:

... I am the Spouse (Widow) of (HCV infected person), Administrator of the Estate, and approved Family Member under the HCV Late Claims Benefit Plan. I have been denied both Loss of Services, and Loss of Support.

All forms and required documentation have been ... received by the Administrators... The actual time of processing and follow-up by the Administrators has been disappointing to say the least. As of today’s date, I have NOT received the Administrator’s Letter of Decision; I had a very brief telephone call on February 4, 2021 with explanation: no formal letter... I am therefore presenting a Request for Review without a clear understanding of Denial of both Services. Without a letter... I cannot make an accurate rebuttal, only present my view...

... I truly do not know the reason why I am denied to receive Loss of Support. I believe as wife (widow) and as well, Administrator of the Estate, I ought to qualify to receive such support.

In 2007, my Husband and I had returned from (City), after a series of tests and consultations at X General Hospital. He was given the devastating news that nothing more medically could be done to extend his life; there were no options due to Hepatitis C that he unknowingly contracted as a child. The impact was devastating for him, myself and our young Family. My Husband was facing his mortality head on, and it showed mentally and physically. Do any of us know what we would have done in the situation he found himself in? He wished for time alone, quiet time, away from the everyday stresses of life. We had many serious conversations, and came to a mutual understanding, as a married couple, to live separately in respect to **residence only**. As a wife, how could I not give my Husband what he so desperately wanted in the last days on this earth. I supported and loved by Husband. I continued to provide care for him; running errands, grocery shopping, cleaning, preparing meals and washing up; as he was unable. We did **not** have a Legal Separation. I understand that my claim as Spouse, I would have to be living with my Husband at the time of his death. I am asking the Referee to please consider the extraordinary circumstances of my Family. Not everyone’s Family dynamics are the same, so cut and dry. I am asking the Referee for inclusion as I continued to care and support my Husband until his passing...

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<sup>7</sup> pp. 209-233

<sup>8</sup> P. 190

<sup>9</sup> P. 189

<sup>10</sup> pp. 197-204

<sup>11</sup> Pp. 5-10

[9] The Administrator wrote the Claimant on September 24, 2021:<sup>12</sup>

As requested, I am writing to advise that we are unable to proceed with paying loss of support on your claim due to the reasons outlined below and discussed in our conversations in December 2020, January 2021, and June 2021.

Loss of Support is only payable to a dependant spouse, which the documentation provided does not support. The 2007 documents you provided indicated your marital status in 2007 as Separated. Further the 2007 tax documents, and subsequent year's tax documents, do not indicate any support payable by the primary applicant. As you advised that there was no separation agreement in place evidencing a legal obligation of alimony/support.

As you are aware we did approve and distribute payment for loss of services for the 2 dependant children (claim #22259 and #22260)...

[10] I am a court-appointed Referee under the Hepatitis C 1986-1990 Class Action Settlement. On December 4, 2021, I received an email from Fund Counsel's office, requesting a file update. Unfortunately, I had no record of receiving the file, which evidently had been sent by electronic means early in the fall of 2021. I immediately arranged for the file materials to be sent to me and convened a Zoom meeting with the parties on December 20, 2021. In that meeting, we discussed the meaning of "support". I advised that at her hearing, the Claimant could call evidence to seek to flesh this issue out. This could include bank or credit card records and cheque stubs, which might be difficult to provide this long after her late husband's passing. However, oral evidence from the Claimant or others could also help to establish the economic value of other items that might be considered "support" provided to the Claimant by her late husband. The Claimant said she still had not heard directly from one member of the Administrator's staff that she had been communicating with, in order to better understand the reasons for the denial of her claim. It was therefore agreed that, before scheduling a hearing, Fund Counsel would advise as to dates for a Zoom meeting which this individual could attend, to answer the Claimant's questions.

[11] Ultimately, it was arranged for this individual to speak with the group on February 1, 2022 on a pre-hearing basis. I circulated an email invitation on January 27, 2022. The Claimant replied that morning confirming her attendance. That evening, Fund Counsel circulated a 3-page memorandum summarizing the reasons for the Administrator's decision. Shortly afterwards, the Claimant wrote:

Tonight I am formally withdrawing my application for review and therefore will not be attending the scheduled meeting.

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<sup>12</sup> p. 5

It is proving more difficult than ever mentally... rehashing and reliving the past and on top of all that, facing you all on my own and obviously not getting across what I need each of you to hear. The letter sent to me this evening was disheartening and hurtful to read.

Reading a synopsis of your life by an outsider with a mismatch of facts and opinions pieced together, along with the noticeable absence of attention to detail including the very spelling of my name, is proving too much tonight.

I have been on this journey for many years, representing myself. The endless process of paperwork combined with the lack follow ups and communication from Hep C Compensation has been frustrating and disconcerting.

My hope this evening is that other Spouses who have suffered loss from this disease are treated with more empathy and respect.

[12] After the Zoom meeting started on February 1, 2022, the Claimant submitted by email the following document, with a request that it "be entered":

I relayed to Mr Shapiro a few days ago that I would not be physically in attendance to today's Hearing. It is proving more difficult than ever mentally... rehashing and reliving the past and on top of all that, facing you all on my own and obviously not getting across what I need each of you to hear. The letter sent to me last week was disheartening and hurtful to read. I am the approved Dependent as described in Section 6.01. I have been on this journey for many years, representing myself. The endless process of paperwork combined with the lack follow ups and communication from Hep C Compensation has been frustrating and disconcerting. Last week my children received confirmation of their entitlement to compensation, with my name included on the submission, and once again I have been excluded. While I am in Arbitration I "assumed" that decisions pertaining to the further release of funds would be on hold until a formal decision was made. I have NO intention of taking from my children, I feel unjustly ignored and not compensated from the very start as (Deceased's) spouse. Is my understanding from the summary that was sent that if we were divorced/separated that I would have more reason to be supported?? Is that how you feel with your spouses? Marriage is supporting each other in sickness, in health, for richer, for poorer. That was our vow anyways. Monies were in a melting pot to support each other. Yes, I was helping more in 2003. (Deceased) had increasingly become ill and was receiving Long term disability, I had our Daughter in November 2003 and returned to work to help further support our Family. Disability is also considered an Income, which also helped us along. Who determines my worth in (Deceased's) life? I am struggling to "prove" my spouse status and that we actually spent time together?? (Deceased) and I went through hell and back with this disease and the prognosis. I was his wife, mother of his children and caregiver up until his death. (3) of us. Did we live together... obviously yes. He was terminal. "Living with at time of death" as stated, does NOT state full time, part time or occasionally. I lived with my Husband, as he was terminal, whether it be in our Family home OR his apartment...which he found personal solace in his last days.

Please, I ask you to consider all things. I am not trying to set a precedent, only to be heard fairly.

[13] I invited the parties to provide anything further that they wished me to consider. Fund Counsel provided submissions on February 25, 2022, copied to the Claimant.

[14] On March 2, 2022, I wrote the Claimant, copying the other participants:

I received ... on Feb 25, 2022, the final Submissions of Fund Counsel and the updated record, both of which are shown as having been sent at the same time to (Claimant).

(Claimant), while I understand and respect your decision not to participate in any setting where you face everyone, at the same time, I note that while you have been critical of the assessment of facts set out by the Administrator and Fund Counsel, you have not provided specifics as to where you believe they have misunderstood or misstated the facts. I wish to provide you with an opportunity to provide a final response to the submissions of Fund Counsel and materials supplied. If you do wish to provide a response, I ask that it be provided by March 15, 2022. If I do not hear further from you by then, I will proceed to write my decision without the benefit of further input from you.

[15] The Claimant replied the same day: "I will give this great consideration and will get back to you before the set deadline." On March 14, 2022, she wrote:

To begin, my critical approach to recent exchanges is in response to the very nature of this case. I am solely representing my position as Administration of the Estate, Widow and calling attention to how our lives as a Family were forever changed due to the transmission of tainted blood through a blood transfusion, unbeknownst to my Husband, as a child.

I have been asked to state examples of said misunderstandings from the Counsel including: mistaking that I have two sons, the misspelling of my name on multiple occasions, putting me in the position of "clawing back" funds given to my children which was **never** my intention, nor have I ever expressed that it was the resolve I've been looking for.

My criticality derives from the multiple attempts of contact through reaching out to representatives without any success, having this case be dragged continuously whilst being denied and rejected on the basis that I am somehow not "entitled" without any clear instruction on what to provide to somehow be accepted. And furthermore, be denied on a technicality of the status of our marriage. I've previously explained to you all that myself and (Deceased) were not separated. He was a terminally ill man who longed for solace in his last days. He was facing his mortality at 38 years old, head on. As a Family we made this decision. He was within walking distance, so cleaning, cooking, laundry, running errands such as buying groceries, taking him to appointments we easily taken care of by myself. We supported each other financially (light & heat, food, medicine was covered though my work Insurance). (Deceased) received disability and Hep C Compensation, I worked at \$11/hr part- time/full-time. Our Family dynamic

may not fit the Counsel's definition of "normal", but it was a decision that we made as a married couple.

I have provided a considerable amount of material over the years; I have provided evidence of my status to my husband until his death. I have provided doctor, funeral, income tax, expense forms, various completed Hep C Forms, etc. I on my own have compiled evidence showing Hep C was the cause of (Deceased's) death through reaching out to multiple physicians to obtain medical records and discharge summaries. You all have copies of the examples I have listed plus more. I encourage you all to again review what I have provided once more before a conclusion is made.

If it is set that I am to be denied because I was not physically living in his house 24/7, then please excuse my confusion on how I can even begin to prove myself to the Counsel, or that there is any sort of hope left for me and a satisfying resolution.

I do not mean to let my emotions deter any accountability from my words, but you must understand the rejection and constant back & forth is enough to convince me to physically withdraw from these exchanges. This process in its entirety has taken a toll. If you believe there is any hope for there to be a resolve I am satisfied with, then please tell me exactly what I need to provide to turn this case back into my favour. If not, then I am afraid this has already been concluded and I will not continue to repeat myself to then be denied once more. This process has been so very difficult mentally and consuming after nearly 13 yrs after my Husband's passing. I am asking to please receive support of Loss of Income/Services as (Deceased's) Spouse/Widow.

[16] In the end, given the Claimant's decision not to participate further, there was no oral hearing. I am left to decide this Reference on the basis of the written materials provided. The parties have differing views as to the interpretation and use that can or should be made of these documents.

## **B. Issue**

[17] Has the Claimant established grounds for reversing the denial of her Claim by the Administrator? Put another way, is the Claimant entitled to "loss of support" benefits?

## **C. Positions of the Parties**

### Claimant

[18] The Claimant's position is set out above.

## Administrator

[19] Fund Counsel's January 27, 2022 Memorandum was provided in order to assist the Claimant in understanding the reasons for the Administrator's denial of her claim, ahead of the planned meeting of February 1, 2022. Given the Claimant's criticism of this document, and the fact that it appears to have precipitated her decision not to participate in a hearing, I reproduce it in full below:

This claim addressed (Claimant's) entitlement to Loss of Support and Loss of Services as a result of the death of (her late spouse). The Administrator has denied both claims. This memo is intended to set out the issues as seen by the Administrator. It is not intended as final submissions but rather to assist in discussions about how this claim ought to proceed.

### **BRIEF FACTS**

(Deceased) had Hepatitis C. He was a class member who died on June 30, 2009. He had been married to (Claimant), who was also the Administrator of his estate. At the time of death, they had been separated for a few years and did not co-habit. They had two children: (redacted born: 1999) and (redacted born: 2003).

(Deceased) was born in 1970. He had Hep C and had been transfused in the class period. He applied as a class member as of 2007. His application was accepted. He was awarded loss of income based on the average industrial wage. He died in 20XX.

(Claimant) and (Deceased) had been living apart for a few years prior to (Deceased's) death. This was not a formalized separation and there was no divorce. There is no issue that (Claimant) continued to support and love (Deceased) and was there for (Deceased) as needed.

### **COMPENSATION FOR APPROVED FAMILY MEMBERS**

Upon the death of (Deceased), (Claimant) and the children filed for the applicable benefits under the Transfused Plan. Those benefits are found under section 6 of the Plan. First, s. 6.02 provides a benefit to Approved Family Members (capitalised phrases have the meaning in the Plan) which includes a Spouse [s. 6.02 (a)], Child [s. 6.02 (b)], Parent and others. (Claimant) and the children received payments under this section. (Claimant) received the payment as a Spouse as she was married to (Deceased). The amount was \$36,650.86 paid in two installments.

Justice Winkler who approved the settlement described the payment as being a payment for "loss of the deceased's guidance, care and companionship" (see *Parsons v. Canadian Red Cross*, [1990] O.J no. 3572, at para 50).

### **OTHER BENEFITS**

There are also payments available for Loss of Support or Loss of Services. These are benefits that function independently and address separate losses but are interdependent. They are defined in s. 6.01 (produced below). Loss of Services reflect the loss of



services performed by the claimant who dies in the home where the claimant lives. Loss of Support addresses the loss of financial dependency of the claimant.

They are interdependent in that there can only be a claim for one of the two benefits in a given period but not both. This is reflected at the end of s. 6.01(3). In addition, the payment reflects the loss of the HCV Infected Person's services or support. There is a single upper limit that may be attributed to a deceased's loss of support or services. This single sum may be shared by a number of Approved Dependents. Section 6.01(3) requires either the Approved Dependents must agree on how the money is to be divided or the Administrator must divide the money.

Both (children) have received Loss of Services payments.<sup>13</sup> As dependant children they are entitled to the benefit until they reach the age of 25 (20XX and 20XX respectively). As such, the benefit is already at its maximum and any carve-out for the Claimant would have to address these amounts already paid and to be paid.

#### **SECTION 6.01**

The exercise in determining (Claimant's) entitlement is a matter of interpreting the Plan. Neither the Administrator nor the Referee can amend the Plan, no matter how deserving or sympathetic the situation. The applicable section is 6.01.

##### *6.01 Compensation to Approved Dependants*

*(1) If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved Dependants of such HCV Infected Person will be entitled to be compensated for their loss of support. The loss of support is an amount each calendar year equal to 70% of the deceased HCV Infected Person's Annual Loss of Net Income for such year until he or she would have attained the age of 65 years determined in accordance with 4.02(2), provided, however, that the annual amount payable under this provision will be reduced by an amount equal to 30% of the net amount as calculated to allow for the personal living expenses of the HCV Infected Person, and provided further that, for purposes of calculating the annual amount payable under this provision, "Post-claim Net Income" will be computed without reference to clauses (A), (C) and (D) of the definition of "Post-claim Net Income" and that the words "the person" and "on account of illness or disability for the year" in clause (B) and the words "the person" in clause (E) of the definition of "Post-claim Net Income" were replaced with the words "the Dependants as a result of the death of the person".*

*(2) If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved Dependants of such HCV Infected Person living with such HCV Infected Person at the time of his or her death will be entitled to be compensated for the loss of the services of the HCV Infected Person in the home at the rate of \$12 per hour to a maximum of \$240 per week.*

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<sup>13</sup> One applied in his own right as he was of age. The Claimant applied on behalf of the other. The Administrator's decision advised that the amount available for compensation for Loss of Services had to be allocated amongst them as Approved Dependants: Supplementary Record, pp. 216, 226-229, 230-232.

*(3) The amounts payable pursuant to Sections 6.01(1) or (2) will be allocated as the Approved Dependants may agree or, failing any agreement, as the Administrator so determines based on the extent of support received by each of the Dependants prior to the death of the HCV Infected Person. Notwithstanding any of the provisions hereof, the Approved Dependants of a HCV Infected Person whose death was caused by his or her infection with HCV cannot claim compensation for loss of support and compensation for the loss of services in the home for the same period.*

To properly read this section, certain definitions are needed. Those are found in section 1.01 of the Plan and include:

*“Approved Dependant” means a Dependant whose Claim made pursuant to Section 3.06 has been accepted by the Administrator.*

*“Dependant” means a Family Member of a HCV Infected Person referred to in clauses (a) and (c) of the definition of a Family Member in this Section 1.01 to whom that HCV Infected Person was providing support or was under a legal obligation to provide support on the date of the HCV Infected Person's death.*

*“Family Member” means:*

- (a) the Spouse, Child, Grandchild, Parent, Grandparent or Sibling of a HCV Infected Person;*
- (b) the Spouse of a Child, Grandchild, Parent or Grandparent of a HCV Infected Person;*
- (c) a former Spouse of a HCV Infected Person;*

#### **LOSS OF SUPPORT CLAIM**

In considering the claim for Loss of Support, in s. 6.01(1), the key to the interpretation is the definition of Approved Dependent which refers to a Dependent and s. 3.06. The referable portion of s. 3.06 is that the claimant must file proof that “the claimant was a Dependant of the HCV Infected Person.” As such, s. 3.06 refers back to the definition of Dependant which provides that the HCV Infected Person was “providing support or was under a legal obligation to provide support on the date of the HCV Infected Person’s death”. The Administrator rightly considers support to be financial support. This is consistent with the calculation in s. 6.01(1) which is based on 70% of the loss of income of the HCV Infected Person. 70% is used as 30% of the income is attributable to the personal use of the now deceased HCV Infected Person. It is clearly not for the loss of “guidance, care and companionship” which has already been compensated. The payment of the \$36,650.86 was intended to cover that general damage loss. It is admittedly imperfect which was recognised when the settlement was approved by Justice Winkler. The Loss of Support was intended for the loss of economic support of the HCV Infected Person to Approved Dependents.

The Administrator reviewed the material filed and there was no indication that (Deceased) was providing substantial support to (Claimant). This includes the financial statements and income tax returns that show no such payments from (Deceased) to (Claimant). There is no separation agreement or decision that indicates (Deceased) had a

legal obligation to pay support. In fact, (Claimant) wrote that since 2003 she had the responsibility for support.

**LOSS OF SERVICES CLAIM**

In the case of Loss of Services, s. 6.03(2) is very specific. It is intended to compensate for the loss of services in the home that were performed by the HCV Infected Person. The benefit only applies to Approved Dependents “living with such HCV Infected Person at the time of his or her death”.

(Claimant) was not eligible for this payment as she did not live with (Deceased) prior to his death.

Summary of Fund Counsel’s Written Submissions of February 25, 2022

[20] Fund Counsel’s submissions begin: “To the extent additional evidence or submissions are provided the Administrator reserves the right to provide responding evidence or submissions.”<sup>14</sup>

[21] Fund Counsel notes that the Deceased filed an application for Loss of Services in 2008. The application requires the claimant to list dependants for whom he provides services. Box 10 asks how many residents are in his home. He said one, by which he referred to his two children living part-time. The answer was “1 (2 kids as partial custody).”<sup>15</sup>

[22] In her appeal request, the Claimant sets out the serious impacts of the Deceased’s illness on the family. His health steadily declined beginning in 20XX. With two young children, the family chores fell to the Claimant, along with providing emotional and logistical support for the Deceased. She explains that in 20XX, they received the devastating news that nothing more could be done. She explains that this crushing news took a toll on them and they made the difficult decision to live separately. She continued to support him both emotionally and with her services, including through his stay in ICU and to deal with all his estate issues.<sup>16</sup>

[23] A report from Dr. Colman in 2009 indicates that the Deceased) was “on disability and was a stay-at home dad looking after his two children.”<sup>17</sup> The report states that the Deceased “is separated from his wife but cares for the children about half of the time.”<sup>18</sup> There are several tax returns of the Deceased in the file. He lists himself as married until 20XX, after which he lists his status as

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<sup>14</sup> Fund Counsel did not seek to provide further submissions following the Claimant’s email correspondence set out above.

<sup>15</sup> Supplementary Record, pp. 105-6

<sup>16</sup> Appeal file, pp. 35-36

<sup>17</sup> Supplementary record, p. 173

<sup>18</sup> Supplementary record, p. 174

'separated'.<sup>19</sup> There is nothing in his tax filings that suggest he is providing support to the Claimant. There was no evidence filed establishing that the Claimant was receiving financial support from the Deceased while they lived apart. The Claimant filed her tax returns from 20XX on. There is nothing in her 20XX tax return that indicates that any financial support was provided.<sup>20</sup> There was no evidence of financial support.

[24] The Administrator had no choice but to deny the claim.

#### **D. Discussion and Analysis**

[25] The Claimant evidently took offence to the January 27, 2022 three-page memorandum of Fund Counsel. However, having reviewed this document carefully, I do not find anything objectionable in it. It is simply a detailed explanation of the reasons for the Administrator's decision, which the Claimant requested and advised she was still waiting for. While it is understandable that the Claimant did not agree with the Administrator's ongoing denial of the claim, the memorandum was nevertheless responsive to the Claimant's request for further information as to why her claim was denied.

[26] Providing a detailed explanation for the Administrator's decision, explaining the provisions of the Plan on which the Administrator relied, while ultimately not supporting the claim, cannot reasonably be equated with disrespect or lack of empathy on the part of the Administrator.

[27] The record establishes that the Administrator was not looking for ways to deny the claim – far from it. This is evidenced by the significant claims arising out of the Deceased's illness and passing that the Administrator supported.

[28] I also wish to spell out clearly what this reference is **not** about. There is nothing in the Administrator's position or in this reference that in any way calls into question either the love and support provided by the Claimant to her late spouse, or his devotion to her. There is nothing to minimize their relationship or question the choices made as the Deceased's disease progression unfolded. It is simply about whether the Claimant, who bears the burden of proof to establish entitlement to benefits, has proven, on a balance of probabilities that the Administrator erred in its denial of this claim.

[29] As noted in Fund Counsel's submissions, each of Loss of Services and Loss of Support have specific requirements.

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<sup>19</sup> Appeal file, pp 92, 117

<sup>20</sup> Appeal file, pp 45-47

[30] For Loss of Services, the Approved Dependant must live with the HCV Claimant at the time of death. Here, the record is clear that the Claimant was not living with the Deceased. In no way does this ascribe fault to either the Claimant or her late spouse for the decision to live apart. It is purely a factual matter of whether they were living together. The Claimant has not established that they were. Regrettably for the Claimant, there is therefore no viable argument in support of a Loss of Services claim on these facts. Even if such a claim on her behalf could be established, the only potential source for such a claim would be the funds already allocated to the Claimant's children. To the Claimant's credit, once she became aware of this reality, she made it clear that she had no interest in pursuing such a claim.

[31] For Loss of Support, the Approved Dependant must have been financially dependent on the HCV Claimant or be entitled to support. The Administrator can only make decisions based on what the Claimant provided. While the Claimant provided a great deal of information about the economic support she provided to her late husband, the same cannot be said about the converse – economic support he is said to have provided to her. The income tax returns, while not conclusive, do not provide support for her submission that the Deceased provided financial support to her at the relevant time.

[32] The Claimant provided nothing to show that the Administrator erred in denying the claim based on the information provided. The first reference I could see to an assertion that the Deceased supported the Claimant economically, came much later, in her email of March 14, 2022, after advising that she would not participate in a hearing. "We supported each other financially (light & heat, food, medicine was covered through my work insurance). (Deceased) received disability and Hep C Compensation, I worked at \$11hr part-time/full-time."

[33] I am unable to place much if any weight or reliance on this assertion, for the following reasons:

- (a) I had invited the Claimant to provide specifics as to where she believed the Administrator misunderstood or misstated the facts. Instead, she provided new, untested and unsupported facts;
- (b) It is *at odds with the Claimant's previous statements*;
- (c) It is *inconsistent with the record*;
- (d) It came very *late* in the day;
- (e) The assertion is *vague*;
- (f) There is no explanation of the *extent* of the alleged economic support in terms of light, heat and food said to have been provided by the Deceased;
- (g) There is no explanation of the *timing* of this alleged support at the relevant time for the purposes of the Plan - the Deceased's death;

- (h) Although the Claimant was well aware of the existence of the Plan since her spouse received benefits from it prior to his death, *no documentary support* for this vague and belated assertion of economic support was provided. For example, we do not know if there was a joint chequing or credit card account, whether funds were paid in cash, etc.; and
- (i) Fundamentally, despite being encouraged to provide evidence at a hearing, which was to have taken place remotely, minimizing stress to the Claimant, almost 13 years after her late husband's death, she declined to testify to provide sworn testimony to support the basis of her claim. Further, Fund Counsel was denied the opportunity to question her under oath.

[34] In all the circumstances, the Claimant has not established on a balance of probabilities that she, as an Approved Dependant, was financially dependant on the HCV Claimant. The Claimant has not proved her entitlement to compensation under this category either.

[35] Turning to the second possible path to compensation for under the "Loss of Support" category, the Claimant has provided no evidence that the HCV Claimant was under a legal obligation, as of the date of his death, to provide financial support to the Claimant.

[36] This does not in any way ascribe fault to the Claimant. Indeed, she cannot be faulted, in the midst of what were undoubtedly incredibly stressful and difficult circumstances, for not taking legal action to obtain a separation agreement or court order requiring her late husband to provide financial support to her. Nevertheless, the burden is upon her to bring herself within the four corners of the Plan's requirements of proof in this respect. Regrettably for her, she has not done so.

## **E. Decision**

[37] Upon careful consideration of the Settlement Agreement, Plan, documentary and oral evidence tendered, the Administrator's denial of the Claimant's application for compensation is upheld. In the circumstances, I am unable to find that the Administrator has failed to properly apply the terms of the Plan to these facts. The Claimant has not provided further evidence within the context of this Reference, to overcome the Administrator's decision.

[38] I find that the Claimant has failed to meet the burden upon her to establish eligibility for further benefits under the Plan. As Referee, I have no authority to expand or alter the eligibility requirements under the extensively negotiated Plan approved by the Court, regardless of my sympathies for the Claimant.

[39] The appeal must therefore fail.

Dated at (City), (Province) this 13<sup>th</sup> day of April, 2022.

A handwritten signature in black ink, appearing to read "Daniel Shapiro". The signature is fluid and cursive, with the first name "Daniel" and the last name "Shapiro" clearly distinguishable.

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Daniel Shapiro, Q.C., C. Arb., Referee