

Claim No. 12

Province of Claim: Quebec

Province of Residence: Quebec

In the Matter of a Reference to Review the Decision of the Administrator

Present: Christian Leblanc

Appearance: Claimant

For the Administrator: McCarthy Tétrault, Catherine Martin

DECISION

Background:

This decision relates to a reference to review filed under the *1986–1990 Hepatitis C Settlement Agreement* (“Settlement Agreement”).

The Settlement Agreement covers compensation for individuals who were infected with the hepatitis C virus as a result of blood transfusion or the use of blood products received by the same person in Canada between January 1, 1986 and July 1, 1990.

The Facts:

On March 11, 2018, the Claimant filed with the Plan Administrator (“the Administrator”) a claim (“the Claim”) from the HCV Infected Person under the *Transfused HCV Plan* (“the Plan”).

It appears from the Administrator’s file that:

1. On October 2, 2018, the Claimant was authorized to submit her late claim to the Administrator.
2. On November 29, 2018, the Administrator sent the Claimant forms necessary to complete the Claimant’s claim under the Settlement Agreement.
3. On September 11, 2019, the Claimant’s treating physician, Dr. A, completed the *Treating Physician Form* (TRAN 2), in which Dr. A stated in question 25 that the Claimant did not receive a blood transfusion between January 1, 1986 and July 1, 1990.
4. On November 22, 2019, the Claimant wrote to the Administrator and explained that following surgery performed on April 13, 1987, at Hospital X, she was infected with the hepatitis C virus.
5. On November 25, 2019, the Claimant completed the *General Claimant Information Form* (TRAN 1).
6. In response to question 1 of this form, the Claimant answered no to whether she believes she had already been infected with the hepatitis C virus as a result of a blood transfusion.
7. On the same date, she completed the *Declaration Form by HCV Infected Person* (TRAN 3), in which she states that she had received [translation] “infected tissue” “BC Ear Bank.”
8. On the same date, she completed the *Blood Transfusion History Form* (TRAN

5), in which she left the blood transfusion dates blank but stated that she had undergone surgery at Hospital X in Quebec.

9. On December 10, 2019, the Administrator wrote to the Claimant to inform her that the Administrator required additional information to complete the review of her Claim.
10. On January 13, 2020, the Claimant wrote to the Administrator and claimed that she had been infected with the hepatitis C virus during a surgical operation where she underwent an infected organ transplant on April 13, 1987, at Hospital X in Quebec. This surgery was apparently performed by Dr. S.
11. On January 27, 2020, the Claimant's treating physician, Dr. B, stated in a letter that the Claimant had never received a blood transfusion.
12. On November 13, 2020, the Administrator wrote again to the Claimant to request more information.
13. On November 20, 2020, the Claimant sent a note to the Administrator stating that she was infected with [translation] "an infected blood organ."
14. On December 15, 2020, the Administrator wrote to the Claimant, denying her claim as she did not submit any evidence of having received a blood transfusion during the period covered by the Settlement Agreement.
15. The Claimant submitted this decision for review by this Referee.

Analysis:

16. The Claimant stated that she was not infected with the hepatitis C virus as a result of a blood transfusion. She stated this on the TRAN 1 and TRAN 5 forms. This is corroborated by a letter from Dr. B dated January 27, 2020.
17. Rather, it appears that the Claimant claims to have been infected with the hepatitis C virus as she received an ear transplant that had infected tissue.
18. The surgeon who performed this transplant, Dr. S, confirmed that during this transplant, no blood transfusion occurred.
19. Furthermore, nothing in the transplant notes received by the Claimant and forwarded to the Administrator indicates a blood transfusion.
20. Finally, in a note following a medical consultation dated March 15, 2005, Dr. Savary notes that the Claimant has never received a blood transfusion.
21. Section 3.01(1)(a) of the Plan requires that the Claimant be able to demonstrate that she "received a Blood transfusion in Canada during the Class Period."

22. The Claimant stated that she did not receive a blood transfusion.
23. Rather, the Claimant claims to have been infected with the hepatitis C virus by infected tissue during her ear transplant.
24. However, infected tissue or organ transplants are not covered by the Settlement Agreement, nor are they included in the definition of “blood” in section 1.01 of the Plan.
25. However, it is clear that neither the Referee nor the Administrator have, under the Settlement Agreement, the discretion or the possibility to amend the compensation criteria.
26. The Administrator does not have the discretion to approve a claim where the necessary evidence is not provided. It must apply the terms of the Settlement Agreement and the Plan. The Honourable Chief Justice François Rolland of the Superior Court stated the following in this regard:¹

... 22. Again no one questions that the Claimant has Hepatitis C, but to be entitled to compensation under the Agreement the Claimant must comply with the Agreement’s requirements.

... 26. The Agreement sets out the requirements that must be met by a Claimant. The Referee correctly interpreted those requirements and applied them to the finding of fact that he made with respect to the Claimant’s situation that there was an insufficiency of evidence to prove that the Claimant received blood during the class period.

Emphasis added

27. Regarding the Referee’s role, the same decision states:

... 17. In prior decisions in these class proceedings, the Court adopted standards to be applied to motions presented by infected claimants opposing confirmation of a Referee’s decision. Under these standards a Court will not interfere with the result unless there has been some error in principle demonstrated by the Referee’s reasons, some absence or excess of jurisdiction or some patent misapprehension of the evidence.
28. These principles were also confirmed in *Claim No. 1850042* by Referee Tatiana Wacyk and in *Claim 11152* by the same Referee.
29. The Referee, like the Administrator, would therefore not be able to withhold a claim on the basis of infected tissue, nor create an exception for infected tissue, as they are clearly not included in the Settlement Agreement or the definition of “blood” in the Plan.

¹ Claimant number 2629 v. Canada (Attorney General) 2012, QCCS 4449

30. The Referee sympathizes with the medical problems that the Claimant may have suffered as a result of this ear transplant, but he has no discretion to amend the rules of the Settlement Agreement.
31. Thus, in the absence of evidence that showed that the Claimant was infected with HCV as a result of a blood transfusion received within the Settlement Agreement period, the Claimant's claim must be denied, and the Administrator was right to deal with it this way.

Conclusion:

32. Therefore, the request for review of the Administrator's decision submitted by the Claimant must be denied.

A handwritten signature in black ink, appearing to read 'Christian Leblanc', with a stylized, cursive script.

Christian Leblanc, Referee