

Claim No. 16

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 a 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 a 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 13, 2018, the Claimant submitted to 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 hearing held in this case and the Administrator’s file that:

1. On October 3, 2018, the Claimant was authorized to submit her late claim to the Administrator.
2. The Claimant subsequently submitted several forms to formalize her claim submission with the Administrator.
3. On November 20, 2018, the Administrator requested additional information from the Claimant, including the completed *Blood Transfusion History Form* (TRAN 5).
4. On October 20, 2019, the Claimant submitted a TRAN 5 form indicating that she received a blood transfusion at Hospital X on September 26, 1999.
5. The Administrator then contacted Hospital X to make a request for an investigation of the blood products that may have been transfused to the Claimant.
6. By letter dated September 7, 2020, Héma Québec stated that the information obtained from the Hospital X blood bank indicated that two blood products had been prepared for the Claimant but that they had never been transfused to her.
7. It should also be noted that the Claimant’s medical record, from Hospital X, specifically a form from the blood bank, shows that two blood products were apparently requested on September 25, 1989, for the Claimant, but the same form indicates that the blood products were returned on a date that appears to be September 26, 1989.
8. The [translation] “not used” columns with dates are empty, as are the “not returned” columns with dates. Only the [translation] “without returning” column with the date of

what appears to be September 26, 1989, is completed. This confirms Héma Québec's letter dated September 7, 2020.

9. In addition, in her request for review of the Administrator's decision, the Claimant states that she did not undergo surgery or blood transfusions before or after the C-section she underwent on September 26, 1989.
10. The Claimant testified at the hearing of this case that she was under general anesthesia and unaware of a blood transfusion. However, she questioned the fact that she did not receive a blood transfusion, stating in particular that since she did not undergo surgery or a blood transfusion before or after her C-section, she does not understand how she could have contracted the hepatitis C virus, if not because of that transfusion. The testimony of her sister, the Claimant, is to the same effect.
11. The Claimant also filed Exhibit P-1 at the hearing of this arbitration. This exhibit consists of excerpts from her medical record from University Centre X dated 1992 showing various medical problems, which she says are related to her contracting hepatitis C. Again, the Referee does not want to downplay the health problems that Exhibit P-1 shows and sympathizes with the Claimant in this regard. However, Exhibit P-1 does not add any relevant information as to whether the Claimant actually received blood transfusions within the period covered by the Settlement Agreement.

**Analysis:**

12. While the Referee has a great deal of sympathy for what the Claimant has gone through, he must find that there is no evidence, the burden of which lies with the Claimant, to show that she received blood transfusions during the period covered by the Settlement Agreement, i.e., between January 1, 1986, and July 1, 1990.
13. Section 3.01(2) of the Plan provides that if a claimant cannot comply with the provisions of section 3.01(1)(a), they may still provide the Administrator with corroborating and independent evidence of the personal recollections of the claimant, or of any person who is a member of the Claimant's family, in order to establish on a balance of probabilities that the claimant received a blood transfusion in Canada during the period described above.
14. In this case, the evidence is that the Administrator's file shows that the Claimant did not comply with the provisions of section 3.01(1)(a) and was unable to provide evidence under section 3.01(2) of the Plan.
15. Furthermore, before the Referee, the Claimant's testimony changed nothing in terms of this state of affairs or to enhance this evidence of transfusions.
16. 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:<sup>1</sup>

*... 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

17. 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.*

18. These principles were also confirmed in *Claim No. 1850042* by Referee Tatiana Wacyk and in *Claim 11152* by the same Referee.
19. The conclusion in this case is that the Administrator has complied with the Settlement Agreement and the Plan. The necessary evidence required by the Settlement Agreement was not met at the time of the claim or at the hearing before the Referee. The burden of proof was on the Claimant on the balance of probabilities. This burden was not met. The Referee sympathizes with the Claimant in terms of what she went through medically and can understand her frustration but unfortunately has no discretion.
20. 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:**

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

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<sup>1</sup> Claimant number 2629 v. Canada (Attorney General) 2012, QCCS 4449

A handwritten signature in black ink, consisting of several overlapping, cursive loops and flourishes.

Christian Leblanc, Referee