

IN THE MATTER OF AN APPEAL TO REVIEW
THE DECISION OF THE ADMINISTRATOR
concerning Claim No. 70094 under the HCV 1986-1990
Settlement Agreement and the HCV Late Claims Benefit Plan

DECISION

Vincent R.K. Orchard, K.C., C. Arb

Arbitrator and Referee for the Province
of British Columbia

DECISION

Claim ID No. 70094

I INTRODUCTION

1. This is an appeal for review of a decision of the Administrator set out in correspondence dated May 14, 2024, denying a claim (the “Claim”) for compensation under the HCV Late Claims Benefit Plan.
2. The Claim and this Appeal were brought under the HCV Late Claims Benefit Plan (the “Plan”) adopted under the HCV 1986-1990 Hepatitis C Class Action Settlement Agreement (the “Agreement”) confirmed by court orders following settlement of class action litigation.
3. Initially the Claimant sought to proceed with this Appeal by way of review of the Administrator’s decision by an arbitrator. However, during this Appeal he elected to proceed by way of a referee as opposed to an arbitrator. At an in-person hearing conducted on April 9, 2025 in Abbotsford, B.C., the Claimant confirmed his election to proceed with review by a Referee. Accordingly, my decision is made in my capacity as Referee.
4. The Claim was denied by the Administrator on the basis of a failure to meet a fundamental threshold evidentiary requirement under Article 3.01(a) of the Plan requiring proof, as therein defined, that the Claimant received a Blood transfusion in Canada, during the Class Period January 1, 1986 to July 1, 1990.
5. In this Appeal, the Claimant asserts that he has a distinct memory of receiving a Blood transfusion at the time of an admission to an Edmonton, Alberta hospital in May 1989, where he had surgery. I do not doubt that the Claimant has a belief, honestly held, joined in by his wife, who appeared with him at the in-person hearing, that he did have a Blood transfusion at the Edmonton hospital where he underwent orthopedic surgery involving his right leg/ankle. He further admits that if the relevant hospital records, including Blood Bank records, contain no record of a Blood transfusion, which is the case, the records are wrong.

6. The position of Fund Counsel, on behalf of the Administrator, is that there is no admissible evidence, as required by the Plan, to suggest that the Claimant received a Blood transfusion during the Class Period. Therefore, the Claimant, is not entitled to compensation under the Plan.

II BACKGROUND

7. Fund Counsel concedes that the Claimant “was at one time infected with HCV.”
8. On September 24, 2024 I conducted a telephone conference attended by the Claimant and his wife, Fund Counsel, Ms. Belinda Bain and Ms. Jennifer Langlotz, employed on behalf of the Administrator. During the telephone conference, Fund Counsel and the representative of the Administrator, in an effort to assist the Claimant in obtaining records, agreed to process a subpoena or summons, to be issued by me, to the relevant hospital in Edmonton, Alberta to produce all blood bank records and all hospital records in its possession, related to the Claimant during the Class Period. Such records were thus obtained and sent by Fund Counsel to the Claimant in January, 2025. The said records included records of the Claimant’s 1989 hospital admission in connection with a right ankle fracture requiring surgery.
9. At the in-person hearing, the entire Claim file, including the said hospital records, was admitted into evidence and marked as Exhibit 1, consisting of 141 pages.
10. Ms. Langlotz, by agreement, was called as the first witness at the hearing. Much of her evidence involved a review of the hospital records contained in Exhibit 1. Ms. Langlotz was cross-examined by the Claimant. The parties made oral submissions. Fund Counsel provided written submissions. The Claimant and his wife made oral submissions.

III DISCUSSION: REVIEW OF THE EVIDENCE AND SUBMISSIONS

11. I will summarize the testimony of Ms. Jennifer Langlotz. Ms. Langlotz is employed by a company called Epiq Global Claims Solutions (“Epiq Global”). Epiq Global manages claims for compensation under the above-noted 1986-1990 Settlement Agreement and the various plans made under the agreement including the Plan that applies to this Claim, the HCV Late Claims Benefit Plan.

12. Claims are made to the 86-90 Hepatitis Claims Centre in Ottawa, ON. Epiq Global then manages the claims on behalf of the Fund Administrator. Ms. Langlotz is currently the evaluator of all the Hep C Claims files.
13. Ms. Langlotz has a professional background as an R.N. having obtained her R.N. nursing degree in 1990. She has a significant amount of experience working in various hospitals in Canada as an on-duty nurse in various hospital departments including E.R., surgery, including orthopedic surgery, burn units, urology and in surgical recovery. Her academic experience includes the teaching of R.N.'s and R.P.N.'s. She has a wealth of experience with the contents of patient's hospital charts and records and Blood bank records.
14. I found that Ms. Langlotz gave her evidence in a balanced, objective and impartial fashion. I found her evidence to be reliable and credible. Her evidence was very helpful in understanding the relevant records and entries in Exhibit 1, which included the hospital records for the admission to the Edmonton hospital in May, 1989 for orthopedic surgery to repair a fracture involving the Claimant's right ankle, the only hospital admission in the Class Period where and when the Claimant says he had a Blood transfusion.
15. In her testimony in chief, Ms. Langlotz referred to a number of relevant records and entries in Exhibit 1 as follows:
 - CBS conducted a Traceback as part of its investigation into the Claim. The Traceback was completed for the purpose of the Litigation Notification Program. CBS concluded on the basis of their search for the patient's Blood bank records from 1988-01 to 1996-01 and for the patient's health records available from 1989-05 to 1990-11 [which included the Edmonton hospital admission in May 1989] that "the patient was not transfused". The Transfusion Summary is dated 2024-05-10 as is the CBS letter sent to the Hepatitis C Claims Centre and to the Claimant (pp. 9 and 10, Ex. 1)
 - The record of Admission to E.R. on May 11, 1989 at 19:45 refers to a right ankle injury and a history of "twisted ankle playing soccer". (p. 91, Ex. 1). [This admission record and the following records and entries referred to by Ms. Langlotz

were obtained pursuant to my Summons dated September 24, 2024 and added to the Claim file]

- The Discharge Summary related to the subject hospital admission in May, 1989 noted an admission to hospital on May 11, 1989 in relation to a displaced ankle fracture. Surgery was performed for an open reduction and internal fixation of the displaced ankle fracture. Laboratory results were normal. Post-operatively the patient did well with no specific problems. He was discharged home on May 14, 1989. (p. 90, Ex. 1)
- Ms. Langlotz testified, based on her considerable experience, that if a patient required a blood transfusion, it would have been recorded in the Discharge Summary. No transfusion is recorded. In all her years of experience, she has not seen a medical chart where a transfusion was performed and not recorded in the chart records. Further, typically for such orthopedic surgery, a blood transfusion is not required.
- Ms. Langlotz pointed out that the Doctor's Orders on May 11 and 12, 1989, related to the patient's surgery did not contain any entry for a blood transfusion. The surgeon did not order any steps related to a transfusion. The surgery took place on May 12, starting at 19:25 hours and ending at 20:25 hours. The actual surgery began at 19:50 and ended at 20:20. The patient had an IV providing a saline solution with 5% dextrose (glucose). There is no record of a blood transfusion in the Doctor's Orders nor in the Operative Report (pp. 97 and 100, Ex. 1)
- The pre-operative nursing checklist, which is a running checklist, records that a Crossmatch for blood from the hospital Blood Bank Lab was not required nor were any other lab tests required. A Crossmatch is a lab test done prior to getting blood from the Blood Bank if a transfusion is required. The blood must be a match with the patient's blood. It is an essential step for a transfusion. There is no record of a Crossmatch nor that blood was obtained from the Lab. (p. 107, Ex. 1)

- The Intravenous Therapy (IV Therapy) record of May 12 and May 13 refers to all IV solutions given to the patient during his entire stay. If blood products were given to the patient by IV they would be listed on the IV Therapy record. No blood was given to the patient (p. 116, Ex. 1)
16. The Claimant cross-examined Ms. Langlotz. He asked her if it is possible there could be an absence of entries in the hospital records for reason of “reprisal”. Her answer was “no”. The Claimant asked about testing blood for HCV in 1989 in hospitals. Her answer, based on her experience and knowledge, was that a test of blood before a blood transfusion would only be done if ordered by the doctor and her experience was that such a test would only be ordered if the doctor suspected problems with the patient’s liver. The Claimant and his wife suggested to Ms. Langlotz that the hospital records must be wrong since they both believe a blood transfusion took place. Specifically, Ms. Langlotz was asked if “it has happened that nurses don’t follow doctor’s orders”. The last two questions were more in the nature of argument. The last question was not clarified as to what it meant. Does it mean the doctor actually ordered a blood transfusion, it was done but it was never recorded in the Doctor’s Orders or anywhere else for that matter? In any event, Ms. Langlotz was not aware of nurses deliberately not following doctor’s orders just as she was not aware of entries of procedures performed in a hospital not being recorded intentionally for reasons of reprisal. Further, it is not the role of a witness such as Ms. Langlotz to respond to an argument about the honest belief of the Claimant and his wife that a significant procedure such as a blood transfusion was not recorded in the records by mistake when the records are consistent as recorded in numerous places in the medical chart that no blood transfusion ever took place.

IV CONCLUSION

17. The Agreement related to the settlement of class actions commenced in a number of provinces in Canada concerning persons contracting HCV through Blood transfusions resulted, through various court orders, in a 1986-1990 Class Action Settlement Fund for claimants who qualified for compensation from the Fund. The various plans under the Agreement set out the requirements that claimants must meet in order to qualify for

compensation. In this case the relevant plan is the Late Claims Benefit Plan which I have been referring to as the “Plan”.

18. Article 3.01(1)(a) of the Plan requires proof by way of certain medical records, as therein listed, demonstrating that the Claimant received a Blood transfusion during the Class Period. No such records were presented to the Administrator nor were any such records presented in this Appeal. The onus is upon the Claimant to produce such records. Although there is a record of a hospital admission resulting in a surgical operation during the Class Period, specifically in May 1989, and it is conceded that the Claimant subsequently tested positive for HCV, his claim was denied by the Administrator for failure to prove, by any admissible evidence, that he received a Blood transfusion during the Class Period.

19. Articles 3.01(1) and 3.01(2) of the Plan read as follows:

3.01 TranLate Claim by Primarily-Infected Person

(1) A person claiming to be a Primarily-Infected Person who is determined eligible to make a Late Claim pursuant to Appendix E of this HCV Late Claims Benefit Plan must deliver to the Administrator a Late Claim application form prescribed by the Administrator together with:

- (a) medical, clinical, laboratory, hospital, The Canadian Red Cross Society, Canadian Blood Services or Hema-Quebec records demonstrating that the claimant received a Blood (Transfused) transfusion in Canada during the Class Period;
- (b) a HCV Antibody Test report, PCR Test report or similar test report pertaining to the claimant;
- (c) a statutory declaration of the claimant including a declaration (i) that he or she has never used non-prescription intravenous drugs, (ii) to the best of his or her knowledge, information and belief, that he or she was not infected with Hepatitis Non-A Non-B or HCV prior to 1 January 1986, (iii) as to where the claimant first received a Blood (Transfused) transfusion in Canada during the Class Period, and (iv) as to the place of residence of the claimant, both when he or she first received a Blood (Transfused) transfusion in Canada during the Class Period and at the time of delivery of the Late Claim application hereunder.

(2) Notwithstanding the provisions of Section 3.01Tran(1)(a), if a claimant cannot comply with the provisions of Section 3.01Tran(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 (Transfused) transfusion in Canada during the Class Period.

20. The Claimant has not met the onus of proof upon him under Article 3.01(1) (a) of the Plan based on the evidence put forward during the appeal. The drafters of the Plan decided that the personal recollections of the Claimant or any Family Member is not admissible evidence to establish, on a balance of probabilities, that the Claimant received a Blood transfusion in Canada during the Class Period, if the Claimant could not comply with the provisions of Article 3.01(a). The recollections of the Claimant and his wife, however honestly held their beliefs are that he received a Blood transfusion during an admission and stay at an Edmonton hospital where he underwent orthopedic surgery in May, 1989, are not admissible evidence under Article 3.01(2) that either the Administrator or the Referee on appeal could consider in the absence of proof through records specified in Article 3.01(a).
21. As a Referee, I am bound by the terms of the Agreement and the Plan established through court orders. I have no authority to vary, alter or amend the terms of the Agreement. Nor do I have any authority to vary, alter or amend the terms of the Plan. The Administrator denied the Claim on the basis that there was no evidence to show that the Claimant received a Blood transfusion during the Class Period. The Administrator's decision has not been shown on this Appeal to be in error. The Administrator was bound to deny the Claim. No admissible evidence was put forward in this Appeal as proof that the Claimant did receive a Blood transfusion during the Class Period. I uphold the Administrator's decision dismissing the Claimant's Claim for compensation under the Agreement and the Plan.

Dated May 8, 2025



Vincent R.K. Orchard, K.C., C. Arb
Referee