

THE 1986-1990 HEPATITIS C CLASS ACTION SETTLEMENT

IN THE MATTER OF AN APPEAL FROM THE DECISION OF THE ADMINISTRATOR DATED
DECEMBER 16, 2024

CLAIM NUMBER: 712302

DATE OF HEARING: September 25, 2025.

DATE OF DECISION: October 21, 2025

REFEREE: Wes Marsden

APPEARANCES: Claimant
Claimant's Sibling
Three Witnesses
Belinda Bain, Fund Counsel

Decision

BACKGROUND:

- 1) The Claimant, a Saskatchewan resident, submitted an application for compensation as a Family Member under the 1986-1990 Hepatitis C Settlement Agreement (the “Settlement Agreement”) Transfused HCV Plan (the “Plan”). A.F. was the primarily infected person who passed away on December 20, 2017. A.F. was the Claimant’s paternal aunt. She was also affectionally known by the Claimant as T.M. which is an endearing Croatian term for aunt. I will refer to her as T.M. throughout this decision.
- 2) On December 16, 2024, the Settlement Administrator denied the claim for compensation on the basis that the Claimant did not qualify as a Child of the primarily infected person pursuant to the definition contained in the Plan.
- 3) The Claimant subsequently filed an appeal of the Administrator’s decision. The Claimant submits that pursuant to section 1.01 of the Plan, the definition of “Child” includes a child to whom a person has demonstrated a settled intention to treat as a child of his or her family.
- 4) The Claimant submits that he ought to fall within the definition of “child” under the Plan, due to the close relationship that he and his two sisters had with T.M. He states that T.M. had a settled intention to treat the Claimant as her own child.

- 5) Fund Counsel submits that the Claimant does not qualify for compensation on the basis that the evidence does not support a finding that T.M. had a settled intention to treat the Claimant as one of her own.
- 6) The Claimant requested that a Referee review the Administrator's decision. On September 25, 2025, a hearing was completed using the Zoom media platform. The Claimant called witnesses who testified about the close nature of the Claimant's relationship with T.M. In addition, the Claimant also testified and was subjected to cross-examination. The Claimant was self-represented during the process.
- 7) The Claimant's two sisters also filed appeals as all three claims were denied on December 16, 2024. Because the issues are common to all three siblings' cases, the Claimant and his sister opted to proceed jointly and to have each witness called once. The Claimant's other sister wanted to have her matter proceed separately and a decision has previously been finalized for her appeal.

SETTLEMENT AGREEMENT:

- 8) Section 3.07 of the Plan provides for compensation to be paid to Family Members of a Primarily Infected Person who's death was caused by HCV:

3.07 Late Claim by Family Member

A person referred to in clause(a) of the definition of Family Member in Section 1.01 claiming to be a Family Member of a HCV Infected Person who has died and who is determined eligible to make a Late Claim pursuant to Appendix E of this HCV Late Claims Benefit Plan or a person referred to in clause (a) of the definition of Family Member in Section 1.01 claiming to be a Family Member of a deceased HCV Infected Person whose

Late Claim is accepted by the Administrator a Late Claim application form prescribed by the Administrator together with:

- a. proof as required by Sections 3.05(1)(a) ¹ and (b) ² (or, if applicable, Sections 3.05(3)(Tran) or 3.05(3)(Hemo) or (4)) and 3.05(5)(Tran) or 3.05(5)(Hemo) and (6) ³, unless the required proof has been previously delivered to the Administrator); and
- b. proof that the claimant was a Family Member the HCV Infected Person referred to in clause (a) of the definition of Family Member in Section 1.01.

9) The plan also provides the following definition of “Family Member” in s.1.01:

"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 an HCV Infected Person;
- d. a Child or other lineal descendant of a Grandchild of an HCV Infected Person;
- e. a person of the opposite sex to a HCV Infected Person who Cohabited for a period of at least one year with that HCV Infected Person immediately before his or her death;
- f. a person of the opposite sex to a HCV Infected Person who was Cohabiting with that HCV Infected Person at the date of the HCV Infected Person's death and 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; and
- g. any other person to whom a HCV Infected Person was providing support for a period of at least three years immediately prior to the HCV Infected Person's death.

10) This same section of the plan also provides the following definition of “Child”:

- a. an adopted child;
- b. a child conceived before and born alive after his or her parent's death; and
- c. a child to whom a person has demonstrated a ***settled intention*** to treat as a child of his or her family; ***[Emphasis Added]***

11) The primary issue in this appeal is whether T.M. demonstrated a settled intention to treat the Claimant as a child of her family. The term “settled intention” is not defined in The Plan.

- 12) The primarily infected person was the Claimant's aunt. She was infected with HCV and passed away on December 20, 2017. A claim made by the estate was approved on May 4, 2021. On September 12, 2024, a Referee granted the Claimant permission to file a late claim. On December 16, 2024, the Administrator denied the claim on the basis that the Claimant did not qualify as a "Family Member" pursuant to The Plan.

EVIDENCE AT THE HEARING

- 13) The Claimant called witnesses who testified that he had a very strong and close relationship with T.M. The witnesses spoke about T.M. treating the Claimant like her own child. I will highlight some of the key points arising from the oral testimony.
- 14) The first witness (D.T.) was an extended family member through marriage. This individual provided a support letter in advance of the hearing. In her letter, she stated that because T.M. could not have her own children, she developed a more intimate and consistent relationship with the three siblings. The witness indicated that T.M. regarded her nieces and nephew as her own children. She believes that T.M. had a "settled intention" to treat the three siblings as her own children. The witness also testified that T.M. was basically their second mother and that she was more than just an aunt to the children. For example, she helped them with their schooling and provided guidance on their relationships. T.M. was on a fixed income, however, she would provide money to the children whenever she could.

15) During cross-examination, D.T. stated that the Claimant and her brother never permanently resided with T.M. The witness testified that T.M. was like a second mother to the children, however, she did not replace their biological mother. She also testified that T.M. did not consider adoption because in their Croation culture, "your parents are your parents." During re-examination, D.T. stated that the siblings' mother was very strict and not that nurturing. As a result, the siblings had a stronger emotional relationship to T.M. than they did with their biological mother.

16) The second witness (F.I.) is the Claimant's long-time friend and she provided evidence only in relation to his appeal. She testified that the Claimant's relationship with T.M. was very strong and the Claimant was like her son. She witnessed T.M. providing the Claimant with guidance on his education, employment and his relocation from Ontario to Saskatchewan. They celebrated birthdays and holidays together and the Claimant spent a lot of time with T.M. on the weekends. During cross-examination, the witness stated she has known the Claimant since the age of 12 as they met in grade school. She stated that the Claimant resided in the family home and that he never lived with his aunt.

17) The third witness (N.L.) provided a support letter prior to the hearing. She indicated that she is a long-time friend with one of the sisters and that she has known the siblings for over 20 years. She stated that the three siblings often referred to T.M. as their second mother and that the love and care they provided

to T.M. was nothing short of what children would provide to their own parents.

She stated that the siblings had a parent-child like relationship with T.M.

18) During cross-examination, N.L. stated she was not aware of any attempts by T.M. to adopt the children. The witness never observed T.M. administer discipline and she assumed the biological parents bought the groceries and paid the bills.

19) The Claimant also testified on his own behalf. In his brief oral testimony, he indicated that he resided with T.M. for a month after his parents “kicked” him out of the house. He was in the 10th grade when he stayed with T.M.

20) During cross-examination, the Claimant stated he never resided with T.M. on a permanent basis and that T.M. never expressed any intention to adopt him as a son. He noted that his parents had little involvement with his post-secondary education and still do not know what he does for employment. He paid for his education through a student loan and moved to Saskatchewan about six months after he graduated. He testified that T.M. encouraged him to enter the health care field whereas his parents did not provide any input. The Claimant maintains a relationship with his parents but only visits them a couple of time per year.

SUBMISSIONS:

Claimant:

21) The Claimant submits that T.M. had a settled intention to treat him and his sisters as her own children. He submits that T.M. was more like a mother than

his biological mother. T.M. guided the Claimant on his education and was proud of him for pursuing a career in the health sector.

- 22) The Claimant did not provide any written submissions however, he appended some of the legal arguments that his sister relied upon in her respective appeal.¹ The Claimant's sister submitted that T.M. and the three siblings should be recognized as a family, free from discrimination. She further submitted that the Settlement Agreement's failure to adopt an inclusive definition of family or child, and its disregard of supporting evidence, denies both T.M. and the Claimant access to fair and equitable policy and practice.

Fund Counsel:

- 23) Fund Counsel acknowledges that the Claimant had an incredibly close, loving and mutually supportive relationship with T.M., however, it was not one that meets the legal definition of "settled intention" as required under the Settlement Agreement. Fund counsel notes that the legal framework of the Settlement Agreement was entered into by the parties and that they are bound to follow the terms of the Settlement Agreement.
- 24) Fund Counsel submits that nieces and nephews are not included in the definition of "Family Members" under the Plan. Had it been the intention that nieces and

¹ These submissions arise from the sibling whose appeal has already been resolved. The Claimant included her letter addressed to the Administrator dated December 27, 2024. This letter provides a summary of her argument and includes references to the Canadian Human Rights Act.

nephews were to receive compensation, the parties and the Courts could have included them in the definition of Family Members.

25) Fund Counsel also adopts her preliminary written submissions dated September 3, 2025. In these submissions, Fund Counsel notes that while not defined under the Plan, the phrase “settled intention to treat as a child of one’s own” has a specific meaning in estates and family law jurisprudence. The leading case from the Supreme Court of Canada, *Chartier v. Chartier* (1999 CanLII 707), provides that every case must be determined on its own facts and it must be established from the evidence that the adult acted so as to stand in the place of a parent to the child. Kindness, common courtesy or hospitality is not enough.

26) Fund Counsel also tendered a legal opinion from the law firm Branch McMaster. This opinion was obtained by the Administrator on November 4, 2024. The author of this legal opinion concluded that the Claimant does not qualify for compensation based on the requirements set out in the Settlement Agreement and the applicable principles arising from the leading court decisions.²

27) Fund Counsel notes that the legal opinion provided by Branch MacMaster summarized the cases dealing with the legal term “Settled Intention”. She submits that there was not a single case where a niece or nephew fell within the “Settled Intention” scenario.

² This law firm provided an updated opinion letter dated December 13, 2024 based on additional supporting letters and screen shots of social media posts and emails that were submitted to the Administrator. The conclusions did not change.

DECISION:

28) The Claimant applied for compensation under the terms of the Hepatitis C 1986-1990 Class Action Settlement. The terms of the Settlement Agreement provide a detailed outline of who is eligible for compensation from the Fund and how eligibility is established. The Transfused HCV Plan is applicable in this case and is set out in Schedule A of the Settlement Agreement.

29) As noted at the outset of this decision, the primary issue is whether the Claimant qualifies as a “Child”. Specifically, was he a child to whom T.M. had demonstrated a settled intention to treat him as a child of her family.

30) Having considered all the oral and documentary evidence presented in this matter, I am not satisfied that the Claimant qualifies for compensation. Specifically, I find that the Claimant does not fall within the definition of “child” pursuant to the Plan.

31) I recognise that the Claimant had an incredibly close and loving relationship with his aunt, however, I must also be satisfied that T.M. took on the formal responsibility for the Claimant’s upbringing.

32) The phrase “settled intention” is not defined in the Plan, however, in *Chartier, supra*, the Supreme Court of Canada provided a list of relevant factors. These considerations are restated as follows:

- Whether the child participates in the extended family in the same way as would a biological child;

- Whether the person provides financially for the child (depending on ability to pay);
- Whether the person disciplines the child as a parent;
- Whether the person represents to the child, the family, the world, either explicitly or implicitly, that he or she is responsible as a parent to the child;
- The nature or existence of the child's relationship with the absent biological parent.

33) In this case, the evidence established that aside from some extended visits to T.M.'s house or cottage, the Claimant's primary residence was at his parent's house. According to the evidence, the Claimant's parents had primary financial responsibility for the Claimant. They provided sustenance and assumed the major child-rearing obligations. Clearly, the Claimant's aunt had a fixed income and could only provide limited financial support. I place minimal weight on the financial contribution factor due to T.M.'s limited ability to provide financial support. I recognise the T.M. was the driving force in the Claimant's career path and that she was proud of his work. I also considered the fact that the Claimant resided with T.M. for a month and that they spent a lot of time together on weekends and holidays. Clearly, the Claimant felt close to his aunt, particularly given that his biological parents were emotionally distant.

34) In my view, one of the more significant considerations is that the Claimant's biological parents were not absent. Rather, they were the primary caregivers for the Claimant and his sisters. Aside from a one-month period in high school, the Claimant resided with his parents on a full-time basis and relied on them for basic living needs such as food and shelter. They cannot be characterized as "absent" biological parents.

35) In the *Watts, supra* decision, the Court cites a research paper completed by Professor Rogerson. She conducted a review of the cases dealing with this issue post *Chartier*. This decision was made in a family law context where Justice Spence of the Ontario Court of Justice was grappling with the issue of whether a person should be required to pay support. Professor Rogerson wrote that the imposition of obligations and the acquisition of access and custody rights should only be imposed where the person can clearly be shown to have assumed the role of the natural parent and in substantial substitution for the natural parent's role. Professor Rogerson's opinion is relevant in this case in the context of considering a person's entitlement to a benefit for the loss of guidance, care and companionship as opposed to obligations imposed on someone. Based on the evidentiary considerations noted above, I am not convinced that T.M. assumed the role of the natural parent, nor was she acting in substantial substitution for the natural parents.

36) When applying the relevant legal considerations to the facts in this case, I cannot conclude that the T.M. had a settled intention to treat the Claimant as her own child. T.M. clearly had a very close and loving relationship with the Claimant, however, this is not sufficient to meet the definitions as set out in "The Plan."

37) Regarding the Human Rights argument, Justice Perrell stated in the decision of *Eidoo v. Infineon Technologies A.G.*, 2015 ONSC 5493, paragraph 6, that the Ontario Human Rights Code does not apply to a distribution protocol in a class

action. In that case, the Plaintiffs also argued that the distribution protocol discriminated against certain individuals. Similarly in this case, the Settlement Agreement arose from a class action claim and human rights legislation would therefore not apply.

38) To conclude, I find that the Administrator has properly determined that the Claimant does not qualify as a Child of the Primarily Infected Person. The decision of the Administrator to deny the Claimant compensation pursuant to Settlement Agreement is upheld. I want to again express my condolences and congratulate the Claimant for continuing to forge forward in his career path despite the troubling circumstances in his relationship with his parents. His aunt clearly played an integral part in this aspect of his life.

Dated October 21, 2025

A handwritten signature in black ink, appearing to read 'Wes Marsden', with a stylized flourish at the end.

Wes Marsden, Referee