

CLAIM #712238

PROVINCE OF INFECTION: ONTARIO

PROVINCE OF RESIDENCE: ONTARIO

IN THE MATTER OF A REFERENCE (APPEAL)
TO REVIEW THE DECISION OF THE ADMINISTRATOR
UNDER THE HEPATITIS C (86-90) CLASS ACTIONS SETTLEMENT

REFEREE: Lisa C. Munro

APPEARANCES: Claimant

Belinda A. Bain, on behalf of the Fund

Jennifer Langlotz, on behalf of the Administrator

DECISION

Background to this Appeal

1. By Order of the Honourable Justice Winkler of the Ontario Superior Court of Justice dated October 22, 1999, a Settlement Agreement with respect to the “1986/1990 Hepatitis C Class Action” was approved as being, “fair, reasonable, adequate, and in the best interest of Ontario Class Members in the Ontario Class Actions”. A Transfused HVC Plan (called by the Administrator “the 8690 Plan”) established as part of the Settlement Agreement includes a fund for compensation to be paid to qualifying individuals who were infected with Hepatitis C (“HCV”) from the Canadian blood supply during the Class Period January 1, 1986, to July 1, 1990. In some circumstances their family members were also entitled to compensation. Subject to a few exceptions, the deadline for making a claim expired on June 30, 2010.
2. In December 2017, the Court approved an HCV Late Claims Benefit Plan (called by the Administrator the “Late Benefit Plan”) for those who missed the original deadline.
3. In this decision I refer to the HCV Primarily Infected Person, whose claim was approved under the 8690 Plan as “PIP”. I refer to the family member whose claim for compensation under the Late Benefit Plan was denied - which is the subject of this Request for Review (Appeal) - as “Dependant”. I mean no disrespect in so doing. These are the terms used in the Plans and identifying them in this way preserves their confidentiality. Claimant is the personal representative of both PIP and Dependant.
4. The key dates for the purposes of this Appeal are as follows:
 - (a) PIP passed away on December 20, 2017;
 - (b) Dependant passed away on February 23, 2019; and
 - (c) On May 4, 2021, Claimant’s claim (in her capacity as the personal representative of PIP) as a Class Member and for compensation under the 8690 Plan was approved.
5. In June, 2024, Claimant’s late claim (made in her capacity as the personal representative of Dependant) for approval as an “Approved Late Claim Dependant” entitled to compensation for Loss of Support and Loss of Services in the home under the Late Benefit Plan was denied. The Administrator accepts that the Dependant was a dependant of PIP but denied the claim on the basis that the Loss of Support and Loss of Services benefits claimed: (1) only become available to a Dependant once the PIP’s claim is approved; and (2) are not available for any period after the Dependant has passed away. Therefore, because the Administrator did not approve the late claim, the “Dependant” was not an “Approved Late Claim Dependant” entitled to compensation under the Late Benefit Plan.
6. On July 29, 2024, the Claimant filed a Request for Review (Appeal) by a Referee. She argued that the Administrator’s delays prevented Dependant’s claim from being processed before he passed away. Claimant was provided with a copy of the Administrator’s Appeal File containing the Administrator’s decision and the documents showing its processing of the Dependant’s claim, including communications with Claimant.

7. This constitutes my decision with respect to the Claimant's Appeal of the Administrator's decision to deny Dependant's claim for compensation under the Late Benefit Plan.

Procedural History

8. On or about August 13, 2024, I was appointed as the Referee to hear this Appeal. I contacted Fund Counsel and Claimant to notify them of my appointment on August 19, 2024, and for the purpose of convening a preliminary meeting to discuss this Appeal, including whether an oral hearing was necessary, and the evidence that each party would rely on.
9. In preparation for that meeting, I wrote to Claimant and Fund Counsel on August 21, 2024, and advised that after having read the Administrator's Appeal File I had questions about whether it was complete. The Appeal File referred to records of certain phone calls between Claimant and the Administrator which seemed to be missing.
10. On September 5, Claimant advised that she had reviewed her file and had no additional documents to add. On September 6, Fund Counsel produced all recordings of phone calls in the possession of the Administrator. She advised there were no records available of any calls made in 2019, when the Plans were being overseen by a different Administrator.
11. The preliminary meeting took place, via videoconference, on September 19, 2024, during which Claimant requested an oral hearing of the Appeal. Claimant was advised that she was entitled to have a lawyer represent her and she declined. Fund Counsel advised Claimant that the Administrator does not dispute that the family member seeking compensation under the Late Benefit Plan was a "Dependant" or that he co-habitated with PIP at the relevant time; therefore, it was not necessary for Claimant to introduce any evidence on those issues. Claimant said that she did not understand the basis for the Administrator's denial of Dependant's claim and Fund Counsel advised that the Administrator did not know if Claimant was seeking compensation under the Late Benefit Plan for Loss of Support, Loss of Services, or both. Therefore, I set the following procedural timetable with the consent of the parties: by October 3, Claimant would advise whether she was making a claim for Loss of Services, Loss of Support, or both; (2) by October 10, the Administrator would provide written submissions to further explain the decision of the Administrator to deny the claim; and (3) another case conference would take place on November 1, 2024.
12. Thereafter, Claimant advised that she was pursuing a claim for both Loss of Services and Loss of Support and the Administrator delivered its written submissions in support of its decision to deny the claim for both Loss of Services and Loss of Support.
13. The parties and I attended a case conference, via videoconference, on November 1. Claimant advised that it is her position that the Administrator's delay prevented Dependant's claim from being brought earlier, that is, while he was alive. It became clear as this matter progressed that it would be necessary to examine how long it took the Administrator to process PIP's claim as well. With the parties' agreement, I set a December 2 hearing date and a timetable for the exchange of final written submissions thereafter.

14. After that, both parties sought to introduce additional evidence. Therefore, I held a further video case conference on November 14, which resulted in an amendment to the timetable to accommodate this new evidence. Both parties agreed to proceed with the December 2 hearing date. The new evidence came from the parties' files with respect to both PIP's claim and Dependant's claim. In the period November 18 to 25, the parties produced additional documents. Fund Counsel advised that the Administrator had supplementary submissions to make with respect to the delay issue raised by the Claimant and I ordered it to deliver those on November 22. During this period, and even after the hearing, Claimant had questions for the Administrator to which it responded, although it did not have answers to some of them.
15. Claimant objected to the introduction of some of the new evidence that the Administrator sought to introduce. I allowed all new evidence to be admitted on the basis that it was relevant to the delay issue raised by Claimant. On November 25, Claimant advised that she wanted to request her cell phone records from her provider for the period 2018 to 2019 to show that she had faxed to the Administrator the Late Claim Request Form with respect to Dependant's claim in March 2018, and that she had followed up in conversations with the Administrator's representative regarding it having been received. This was important because, as described below, she was advised in July, 2019, that the Late Claim Request Form had not been received. However, she agreed shortly thereafter to proceed with the hearing without this evidence and the Administrator agreed that the Late Claim Request Form was received by the Administrator on March 13, 2018. Therefore, this issue which Claimant viewed as contentious was resolved.
16. The hearing took place by videoconference on December 2. The Claimant testified under oath and was questioned by Fund Counsel. A representative of the Administrator, Jennifer Langlotz who holds the title Nurse Evaluator and Appeal Coordinator, also testified under oath and Claimant asked her questions. I asked a few questions of Claimant and Ms. Langlotz and both Fund Counsel and Claimant had an opportunity to ask further questions. Both parties referred to and showed specific documents during their evidence. The parties agreed that final submissions would be made in writing in accordance with the following timetable: Administrator's final written submissions due on December 6; Claimant's final written submissions due on December 13; and Administrator's reply submissions, if any, due December 16. This gave Claimant the opportunity to read the Administrator's final submissions on the evidence before she was required to deliver her own. The Administrator's reply submissions relied upon an additional section of the Late Benefit Plan that previously had not been the focus of either evidence or argument. I gave Claimant the opportunity to deliver additional written submissions to respond to this new issue, which she did on December 21.
17. I advised the parties that I would consider all evidence in the way of testimony at the hearing, in both parties' files, and in their written submissions. I have done so.

The Facts

18. The relevant facts for the purpose of this Appeal include the requirements under the 8690 and Late Benefit Plans with respect to the proof necessary to establish entitlement to compensation to be paid to both PIP and Dependant. The Administrator's practice seems to have been to send out an "information claims package" to allow claimants to assemble the necessary information and documentation for their claims to meet these requirements.

The 8690 Plan

19. This is the Plan that applied to the processing of PIP's claim, which was originally made under the Late Benefit Plan. The Administrator later determined that the claim should be processed under the 8690 Plan because it met the time requirements under Section 3.05.1.
20. Section 3 deals with a claim by a PIP, a personal representative of a PIP, or a claim by a Dependant:

3.01 Claim by Primarily-Infected Person

1. A person claiming to be a Primarily-Infected Person must deliver to the Administrator an application form prescribed by the Administrator together with:
 - a. medical, clinical, laboratory, hospital, The Canadian Red Cross Society, Canadian Blood Services or Hema-Québec records demonstrating that the claimant received a Blood transfusion in Canada during the Class Period;
 - b. an 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

...

 - iii. as to where the claimant first received a Blood 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 transfusion in Canada during the Class Period and at the time of delivery of the application hereunder...

...

3.05 Claim by HCV Personal Representative of HCV Infected Person

1. A person claiming to be the HCV Personal Representative of a HCV Infected Person who has died must deliver to the Administrator, within three years after the death of such HCV Infected Person or within two years after the Approval Date, whichever event is the last to occur, an application form prescribed by the Administrator together with:
 - a. proof that the death of the HCV Infected Person was caused by his or her infection with HCV;
 - b. unless the required proof has already been previously delivered to the Administrator:
 - i. if the deceased was a Primarily-Infected Person, the proof required by Sections 3.01 and 3.03

...

- c. the original certificate of appointment of estate trustee, grant of probate or of letters of administration or notarial will (or a copy thereof certified to be a true copy by a lawyer or notary) or such other proof of the right of the claimant to act for the estate of the deceased as may be required by the Administrator...

...

6. If requested by the Administrator, the HCV Personal Representative must also provide to the Administrator:

- a. all medical, clinical, hospital or other such records in his or her possession, control or power;
- b. a consent authorizing the release to the Administrator of such medical, clinical, hospital records or other health information as the Administrator may request;
- c. a consent to a Traceback Procedure;
- d. a consent to an independent medical examination;
- e. income tax returns and other records and accounts pertaining to loss of income; and
- f. any other information, books, records, accounts or consents to examinations as may be requested by the Administrator to determine whether or not a person is a HCV Infected Person or to process the Claim.

If any HCV Personal Representative refuses to provide any of the above information, documentation or other matters in his or her possession, control or power, the Administrator must not approve the Claim.

3.06 Claim by Dependant

A person claiming to be a Dependant of a HCV Infected Person who has died must deliver to the Administrator, within two years after the death of such HCV Infected Person or within two years after the Approval Date..., whichever event is the last to occur, an application form prescribed by the Administrator together with:

- a. proof as required by Sections 3.05(1)(a) and (b)... (or, if applicable, Section... 3.05(5) ...(6), unless the required proof has been previously delivered to the Administrator; and
- b. proof that the claimant was a Dependant of the HCV Infected Person.

21. Section 6 deals with compensation to Approved Dependents:

6.01 Compensation to Approved Dependents

- 1. If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved Dependents of such HCV Infected Person will be entitled to be compensated for their loss of support...
- 2. If a HCV Infected Person dies and the death was caused by his or her infection with HCV, the Approved Dependents 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...

3. ...Notwithstanding any of the provisions hereof, the Approved Dependants of the 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.

The Late Benefit Plan

22. The 8690 Plan provisions cited above are, as the Administrator argues, “functionally equivalent” to those in the Late Benefit Plan. This means that the words “Dependant” and “Approved Dependant” in the 8690 Plan are changed to “Late Claim Dependant” and “Approved Late Claim Dependant” in the Late Claim Benefit Plan. Otherwise, the Late Benefit Plan operates in the same way.
23. Dependant’s claim for eligibility to receive compensation was processed under the Late Benefit Plan.
24. The Administrator agrees that Dependant is a “Late Claim Dependant” within the meaning of the Late Benefit Plan but states that he is not an “Approved Late Claim Dependant”. Section 1.01 of the Late Benefit Plan defines “Approved Late Claim Dependant” as a Late Claim Dependant whose Claim made pursuant to section 3.06 has been accepted by the Administrator. “HCV Infected Person” includes a Primarily Infected Person.
25. Appendix E to the Late Benefit Plan concerns “Eligibility to Make a Late Claim under the HCV Late Benefit Plan”. It provides that when the Administrator has received a Late Claims Request, a Late Claims Referee shall determine whether the claim is eligible to proceed to the Administrator for consideration. Para. 7 states:

The Administrator shall forthwith provide the Late Claims Referee’s decision to the person making the Late Claim Request. Where the Late Claims Referee denies a Late Claim Request, the Administrator shall notify the person making the Late Claim Request in writing that the decision will be automatically confirmed and be final and binding unless he/she serves and files a notice of motion with the Court having jurisdiction opposing confirmation of the decision within 30 days of its delivery...

The claims made by PIP and Dependant

26. Claimant, as personal representative of both PIP and Dependant, made claims on behalf of them both. The documents in relation to both claims are relevant to this Appeal and both Claimant and the Administrator produced documents with respect to both claims.
27. Claimant kept a notebook in which she made entries in the period 2018 to 2021 about her communications with the Administrator and her steps to gather necessary information and documents to advance the claims. She produced pages of this notebook and screenshots of various email communications with the Administrator, some of which were not dated. The Administrator produced its Appeal File in respect of Dependant’s claim and also documents from PIP’s claim file, which also record communications with Claimant, including emails and notations in the Administrator’s computer system with respect to both

claims. The parties' records do not overlap entirely, but on significant facts they are consistent.

28. The Administrator's records show that on April 19, 2011, PIP first contacted the Administrator. She was advised that the 2010 claim deadline under the 8690 Plan had already passed. The Administrator's file shows that she completed a questionnaire in May, 2011. At some point, apparently in 2012, a representative of the Administrator advised her that there might be an application to the Court to approve late claims and that once the Court had made a determination, PIP would be advised. The Late Benefit Plan was approved in December, 2017. There is no evidence that the Administrator contacted her or tried to contact her.
29. On December 20, 2017, she passed away.
30. On February 20, 2018, Claimant contacted the Administrator. She advised that PIP had passed away. She testified at the hearing that she had found documents relating to the claim in PIP's purse after she passed away.
31. On March 6, 2018, Claimant's notes indicate that she submitted a Late Claim Request Form as personal representative of PIP by fax and mailed a copy on March 13, 2018. The evidence showed that there was some issue about whether and when that Late Claim Request Form was received by the Administrator when she spoke to a representative of the Administrator in July, 2019, but the Administrator agrees on this Appeal that it was received on March 13, 2018. Claimant indicated on the Form that she needed more time to obtain PIP's health records. Claimant agreed that at the hearing she had no formal status as a representative of PIP, was not the executor under PIP's will, and did not have the authority to access PIP's medical records.
32. This Form states that it was to be reviewed by a Court-appointed Late Claims Referee, who would decide whether a claimant who had missed the 2010 deadline would be permitted to make a claim as a late claimant. On April 17, 2018, the Referee allowed this late claim to proceed. In her decision, the Referee expressly stated that she had not considered whether PIP's estate was entitled to receive compensation. As Fund Counsel's submissions state, there is a difference between a late claim being allowed to be submitted notwithstanding that it was made after the claims deadline (June, 2010), and processing the claim to determine if it triggers an entitlement to compensation. In other words, even when this Form was completed and the Late Claim Request granted, the Administrator did not have sufficient information to process Claimant's claim as personal representative of PIP pursuant to the requirements of either Plan. Once the Referee decided that the late claim could proceed on April 18, 2018, the Administrator's file shows that it sent an initial claim package that set out the required medical information under the Plan to process the claim. Claimant's evidence was that she did not receive it. She also asserted in her written submissions that she was not notified of the Late Claims Referee's decision to allow the late claim to proceed.
33. The Referee's decision stated that the claim may proceed and "[a]waiting final approval of Forms". Mr. Langlotz testified at the hearing that the Court did not approve the initial claim package under the Late Benefit Plan until late 2019. Because PIP's claim proceeded under the 8690 Plan, this turned out to be a relevant fact only to the timing of the processing of Dependant's claim.

34. Claimant asserts and her contemporaneous notes reflect that she left a voicemail message for the Administrator on September 7, 2018, but this is not shown in the Administrator's file. Claimant's evidence at the hearing was that she diligently followed up on a regular basis with the Administrator for a status report on the processing of the PIP claim although she states that she may not have recorded every contact with the Administrator. The Administrator's records do not show any communication with Claimant between March, 2018 and July 9, 2019, although its file does not show every communication with Claimant that appears in her notebook. Neither Claimant's nor Administrator's files show any other communications between September, 2018 and July, 2019.
35. On February 23, 2019, Dependant passed away.
36. Both parties' files show that on July 9, 2019, the Claimant spoke to Ms. Langlotz, who advised that the Late Claim Request Form with respect to the PIP claim was not in the Administrator's database. Claimant re-sent it. Ms. Langlotz testified at the hearing that she was mistaken. She had just started her job with the current Administrator when it look over administrating the Plans in July, 2019, and did not appreciate that the Form was in the database, but filed under the incorrect Plan, so she could not locate it when Claimant called her. As Claimant has pointed out, the Administrator's files seem to suggest that it had determined by the summer of 2018 that the PIP claim should be processed under the 8690 Plan, not the Late Benefit Plan. This unfortunate event led to frustration and distrust of the Administrator by Claimant, which is evident in her communications with the Administrator thereafter, and in her testimony and argument on this Appeal. Claimant asserts that this shows that this claim was not properly documented and that there was no comprehensive overview of it.
37. On July 17, 2019, Ms. Langlotz contacted Claimant after having received the Late Claim Request Form again. She asked whether the initial claim package for the PIP claim had been received by her or the executor of PIP's estate (whom she wrongly identified) and advised that PIP was entitled to inclusion in the 8690 Plan. She sent the initial clam package. Claimant's notes indicate that she received the initial claim package on August 1, 2019.
38. On July 23, 2019, Claimant contacted the Administrator to ask if Dependant would qualify for compensation. Ms. Langlotz's notes show that she responded on July 31 and said that that she told Claimant that, "[t]here would be separate family member claims if you could get the primary claim [PIP] approved".
39. Claimant's notes show that from August to November, 2019, she was working to obtain PIP's medical records.
40. On September 9, 2019, the parties' files show that Claimant emailed Ms. Langlotz and advised, among other things, that she was still waiting for several documents, including the record of blood transfusions and death certificate of PIP. The Administrator's files show that on October 21, 2019, Claimant said that she had been advised that the doctor who was completing one of the forms would do so by early November.

41. On November 21, 2019, both parties' files show that Claimant messaged the Administrator enclosing documents with respect to the PIP claim. Claimant testified at the hearing that these documents included the death certificate.
42. Claimant's notes for December 31, 2019 state: "Hep C form notarized + letter allowing me to complete access to claim on [executor's] behalf" and on January 2, 2019 (sic?) "mailed out Hep C package."
43. One of the requirements for approval to receive compensation under the Plans is to provide evidence of PIP's transfusion by blood infected with HCV. The Administrator's records show that PIP's transfusion information was sent to the Canadian Blood Services ("CBS") for "traceback" in January, 2020. Ms. Langlotz testified at the hearing that this is the process starts with a request to the hospital where PIP was transfused for records showing the unit(s) of blood with which the PIP was transfused. That process is called "lookback". This information is then sent to CBS to allow it to search its records to see if those units were infected with HCV. This process undertaken by CBS is called "traceback".
44. Claimant produced a letter dated August 22, 2019, from the hospital at which PIP was transfused. Although the letter was very difficult to read, the parties accept that it showed that the hospital had completed its "lookback" by August 22, 2019. Thereafter, Claimant sent emails to the Administrator several times expressing concern about the delay and that the PIP claim was not being treated seriously.
45. The parties' records show that Claimant requested and received updates with respect to the status of the traceback on May 27, October 13, and November 20 and 25, 2020. Claimant's notes indicate that she also followed up several times in January, 2021. Ms. Langlotz advised Claimant that traceback usually took up to six months, but that COVID had delayed the process.
46. The notes in the Administrator's file show that the Administrator received the traceback report from CBS on February 11, 2021, and Claimant's notes show she was notified.
47. The Administrator's file shows that on March 5, 2021, additional forms were sent to Claimant, which she returned on March 15, 2021. There were further exchanges with Claimant and additional medical information requested in April and May, 2021.
48. On May 4, 2021, the Administrator received final documentation, a Full and Final Release. PIP was approved as a Class Member and Claimant's claim for compensation as PIP's personal representative was approved under the 8690 Plan.
49. Claimant relies on documents throughout 2021 and 2022, which she argues show that the Administrator continued to send incomplete or missing forms for physicians to complete. It appears to me that this information was being gathered to allow the Administrator to determine the quantum of compensation to which PIP's estate was entitled, after the claim for entitlement had already been approved.
50. The Administrator's file shows that on October 30, 2023, Claimant sent a Late Claim Request Form with respect to Dependant's claim.

51. On March 5, 2024, Claimant was advised that the Referee had allowed Dependant's Late Claim to proceed. The Administrator sent the initial claim forms. Claimant completed and returned them on March 20, 2024.
52. In June, 2024, Claimant's claim as personal representative of Dependant under the Late Benefit Plan was denied. Claimant was advised that Dependant could not apply for benefits because he had passed away; a Dependant who is deceased no longer requires support.
53. On July 29, 2024, Claimant filed a Request for Review (Appeal).
54. Claimant described in her testimony at the hearing and in her written submissions the tremendous toll HCV took on PIP, Dependant, and their family. It was a life altering tragedy that made it impossible for PIP to fulfill her ambitions. Naturally, Dependant was affected by this and Claimant described how his health deteriorated rapidly after PIP passed away.
55. The 8690 Plan and Late Benefit Plan created as part of the Settlement Agreement approved by the Court to resolve the HCV Class Action can never address these losses. They provide compensation for PIPs and Approved Dependents where they meet the Court-approved criteria. As Referee appointed by the Court, I must apply these criteria when I consider this Appeal.
56. It is the Claimant's responsibility to demonstrate that the Administrator's decision to deny Dependant's Claim should be overturned.
57. I now address the two issues raised by the parties.

The Issues relevant to that Appeal

58. This Appeal raises the following issues:
 - a) Was the Administrator correct to deny Dependant's claim on the basis that Loss of Support and Loss of Services benefits: (i) only become available to a Dependant once the PIP's claim has been approved; and (ii) are not available after the Dependant has passed away?
 - b) Did the Administrator's delay in processing PIP's claim prevent Dependant's claim from being brought while he was still alive?

a) Was the Administrator correct to deny the claim?

Parties' submissions

59. The Administrator argues that only an Approved Late Claim Dependant is entitled to compensation for Loss of Support or Loss of Services in the home pursuant to Sections 6.01 and 6.02 of the Late Benefit Plan. Pursuant to Section 1.01, an Approved Late Claim Dependant means a Dependant whose claim made pursuant to section 3.06 has been accepted by the Administrator. A Dependant cannot become an Approved Late Claim Dependant until the information required under section 3.06 has been delivered. That information includes the information to be delivered to the Administrator by the PIP in support of PIP's claim: medical records (including from CBS that PIP received a Blood Transfusion in Canada during the Class Period); and information to be delivered by the

Personal Representative of a PIP who has died in support of a claim (proof that the death of the PIP was caused by their HCV infection and proof that the personal representative has the right to act for the estate of the deceased PIP). Because Claimant's claim in her capacity as personal representative of PIP was not approved until after Dependant passed away, it was not possible for him to apply to become an "Approved Dependant" under the terms of the Late Benefit Plan until after he passed away. Entitlement to any such benefits under the Plan cease as of the date of Dependant's death. Therefore, Dependant was not entitled to Loss of Support or Loss of Services benefits for the period prior to his death.

60. In addition, the Administrator relies upon section 5 of the "Court Approved Protocol Loss of the Services of the HCV Infected Person in the Home" and section 6.01.3 of the Late Benefit Plan, which state that Approved Dependents may not recover both Loss of Support and Loss of Services in the home for the same period.
61. The Claimant argues that the Plan provides for compensation for every Dependant who was alive at the time of PIP's death. Dependant should be entitled to compensation for the period after PIP passed away and before Dependant passed away. There is nothing in the Plans that requires the Dependant to be alive to receive compensation.
62. In addition, the Administrator has repeatedly changed its position as to the reasoning for its denial of her claim as personal representative of Dependant.

Analysis and conclusion

63. In my view, while the Administrator's decision has always been consistent, I agree with the Claimant that the reasons have not always been clear. The Administrator did not set out a complete explanation for the denial of Dependant's claim with respect to the language in the Late Benefit Plan in its initial decision. Claimant stated at the preliminary meeting that she did not understand the Arbitrator's initial decision to deny the Dependant's claim and I shared her confusion. The Administrator provided further written submissions to explain it. In all subsequent submissions, the Administrator cited new references to the Plan, even in its reply submissions. Therefore, I provided Claimant with an opportunity to request additional information to respond to the Administrator's submissions.
64. Nonetheless, this issue requires me to determine whether I think the Administrator's interpretation of the Plans is correct and whether it was correct to deny the Claimant's claim made in her capacity as personal representative of Dependant.
65. Therefore, I look to the relevant language of the Plans. I agree with the Administrator that the Late Benefit Plan provides that a Late Claim Dependant can only become an Approved Late Claim Dependant once the claim of the PIP (or their personal representative) has been approved. In my view, this is clear from the wording of the Plan. Section 3.05(1) of the 8690 Plan requires Claimant (or their personal representative) to deliver medical records, including from CBS, that PIP received a blood transfusion in Canada during the Class Period, proof that the death of the PIP was caused by their HCV infection, and proof that the personal representative has a right to act for the estate of the PIP. Pursuant to section 3.06 of the Late Benefit Plan, a Late Claim Dependant who is determined eligible to make a Late Claim must deliver the same documents that a PIP (or their personal representative) must deliver and proof that the Claimant was a dependant of a PIP.

Because the Late Claim Dependant must provide the same information that PIP is required to provide – within two years of the date of PIP or two years after PIP's claim has been approved - PIP's claim must be approved first.

66. The Administrator also argues that Loss of Support and Loss of Services benefits are not available after the Dependant has passed away. In my view, the language of the Late Benefit Plan supports the Administrator's argument on this issue too. I note that a claim may be made under both Plans by the personal representative estate of a PIP (section 3.05), but not the personal representative of a Dependant (sections 3.06 and 6.01). In addition, Appendix E to the Settlement Agreement, the "Court Approved Protocol Loss of Services of the HCV Infected Person in the Home", states that Loss of Services are payable up to the date of death to the Approved PIP's personal representative and after the date of death to the Approved Dependant or Approved Late Dependant. Again, there is no entitlement by the personal representative of the Late Dependant. The Administrator's file shows that its position, presumably made by way of analogy, is that the Protocol provides that where the Approved Late Claim Dependant is a Spouse, such benefits are available only so long as the Spouse is alive. Therefore, I find that a Dependant must be alive to receive compensation and cannot receive any compensation after their death; there can be no claim by a personal representative of a Dependant. This answers Claimant's argument that Dependant's estate should be entitled to compensation for the period after PIP passed away and before Dependant passed away.
67. Finally, the Administrator's position is that Loss of Support and Loss of Services cannot be received for the same period of time. I agree that section 6.01.3 does not allow for recovery of both Loss of Support and Loss of Services.
68. I also address Claimant's evidence that Ms. Langlotz previously told her that Dependant was eligible to apply for benefits even after he had passed away. However, there is nothing in the evidence to suggest that Ms. Langlotz, whose title is Nurse Evaluator and Appeal Coordinator of the Administrator, had in fact the authority to actually approve claims or that Claimant believed she did.
69. Therefore, on the language of the Plans, I find that the Administrator was correct to deny Dependant's claim for compensation, brought by Claimant as his personal representative.

b) Did the Administrator's delay prevent Dependant's claim from being brought while Dependant was alive?

Parties' Positions

70. In the Request for Review by Referee (Appeal) Claimant asserts that the basis for this Appeal is that:

I was given incorrect, contradictory information. Inquired numerous times about loss of support, response was re: loss of services. Adv loss of support will cease upon death of dependant, however, no consideration of answer given for years he was alive and dependant on PIP...
71. The Claimant asserts that Dependant was incorrectly advised that he was unable to apply as a claimant (family member). Had he been advised otherwise, he could have submitted

his claim before he passed away. The Settlement Agreement does not provide for entitlement only while a Dependant is alive; there is entitlement to every Dependant who is alive at the time of a PIP death. Claimant was advised that compensation is going to estates of PIPs “which is something they are not in favour of”.

72. Therefore, Claimant, as personal representative of Dependant, seeks compensation for the period that Dependant was alive, after the PIP passed away. Claimant argues that if the Administrator had not delayed in processing the PIP claim, Dependant would have been eligible to apply for compensation as an “Approved Dependant” before he passed away.
73. Claimant gives several examples which she says demonstrate the Administrator’s delay.
74. Claimant argues that the Administrator did not advise her when the Late Claims Referee allowed PIP’s Late Claim to proceed in April, 2018, even though she was required to do so pursuant to para. 7 of Appendix E of the Late Benefit Plan. Claimant also argues that that Administrator failed to meet its duties under Section 5.02(f) of the Settlement Agreement to communicate with claimants, respond to queries, give notice of its decisions “within a reasonable period of time”. Claimant argues that had she known that PIP’s claim could proceed in April, 2018, it could have been approved before Dependant’s death.
75. Claimant asserts that the Administrator’s delay in identifying the correct Plan which applied to the PIP claim and to provide the estate with the initial claim package in March, 2018, led to a significant ongoing delay in the processing of the claim. She argues a hypothetical. Had she received the initial claim package by (say) the end of May, 2018, instead of July, 2019, she would have returned it by end of September 2018, which she argues was the four-month turnaround time after she received the initial claim package on August 1. Claimant argues that the blood transfusion information would have been provided to the CBS before COVID and returned within about 6 months, which was time to allow the PIP claim to be approved before Dependant passed away in February, 2019.
76. Claimant has produced portions of the Hepatitis C Class Action Settlement 1986 – 1990 Year End Reports for the years 2017, 2018, and 2019, which state that the Administrator who managed the Settlement at that time was not meeting its published timetable for paying benefits, was not returning class members’ calls in a timely way, and that there were delays caused by inadequate staffing levels and the implementing and testing of software. Claimant argues that this resulted in the mishandling of previously submitted documents. The 2018 Report said that as of December 31, 2018, “no late claims were processed due to administrative delays”. Claimant argues that all of this delay occurred during the processing of the PIP claim.
77. Finally, Claimant argues that the Administrator can be expected to be staffed sufficiently to carry out its duties to process the claim without delay and states that when she asked about the Administrator’s staffing during one of the case conferences, she was told that it was irrelevant to the Appeal. There was no evidence about this at the hearing. But in any event, on this Appeal I have considered the Annual Reports. Claimant asserts that she also asked for information on the average time in which a claim was processed. She was advised that the Administrator did not have that information.

78. The Administrator denies that it is responsible for any delay. In March, 2018, when Claimant delivered the Late Claim Request Form, she indicated that she needed more time to locate PIP's medical records. During the hearing, Claimant testified that it took time for PIP's estate to be probated.
79. The Administrator's position is that Appendix E required the Administrator to notify Claimant only if the Late Claims Referee had denied the Late Claim Request.
80. The Administrator argues that the steps it took to process the PIP claim upon being contacted by Claimant in July, 2019, did not involve undue delay and that it took time though to the late fall in 2019 for Claimant to obtain the necessary forms. It then took to the end of the year for Claimant to provide proof of her status to act on behalf of the estate. Further, the Administrator argues that it had no control over the time it took for the CBS traceback process to be complete – from January, 2020 to February, 2011. Thereafter, it states that it acted reasonably in processing PIP's claim once it received the traceback results.
81. In any event, the Administrator asserts that the Settlement Agreement and the Plans do not provide a required timeline for the processing of claims. Any delay in the processing of this claim which took place after Dependant's death did not affect the availability of Loss or Services and/or Loss of Support because those benefits were not payable after Dependant's death.

Analysis and conclusion

82. Neither party referred me to any provision in the Plans which require the Administrator to process either claim within a specific time. However, to determine whether the Administrator delayed in the processing of the PIP claim, it is useful to consider three relevant periods of time.
 - (i) Period between approval of Late Claim Benefit Plan and PIP's passing
83. The first is the period between the date of court approval of the Late Benefit Plan and when PIP passed away. These events both took place in December, 2017. There is no evidence that PIP was notified of the approval of the Late Claims Benefit Plan.
84. I find that there was no delay during this period.
 - (ii) Period between passing of PIP and passing of Dependant
85. The second is the period between the passing of PIP (December, 2017) and the passing of Dependant (February, 2019). Claimant seeks benefits (as the personal representative of Dependant) for Loss of Services in the home and Loss Support for the period between these two events.
86. In my view, the Administrator cannot be responsible for any delay before March, 2018, when Claimant sent the Late Claims Request Form to the Administrator. She was not the executor entitled to notice. She contacted the Administrator to advise of PIP's death in February. Claimant argues that the Administrator was responsible for the delay in processing the claim until July, 2019, at which time Claimant contacted the Administrator

and learned that the Late Claims Request Form had been placed in the wrong file. However, there is no evidence that this affected the timing of the processing of the claim. In fact, Claimant has referred to evidence in the Administrator's files that suggest that the claim was identified to qualify as an 8690 claim in the summer of 2018.

87. In my view, there are two other series of facts in this period to be considered.
88. The first is the Claimant's evidence that the Administrator did not notify her that the Late Claims Referee's April, 2018, decision that the PIP's Late Claim could proceed (before it has processed under the 8690 Plan). The Administrator did not provide any evidence to contradict the Claimant's evidence on this point but asserted that Schedule E of the Late Benefit Plan did not require it. I disagree. The first sentence shows that the Administrator was required to give notice of the Referee's decision. It states that if a late claim request is denied, the Administrator must notify the person making the late claim request of their right to challenge the decision by bringing a motion to the court. Therefore, Schedule E required the Administrator to notify Claimant that the late claim request had been granted by the Referee in April, 2018. It did not do so.
89. The second is that the Administrator's file shows that it sent the initial claim package for the PIP claim in March, 2018. However, the evidence shows that Administrator did not know that the Claimant had not received it until Claimant spoke to Ms. Langlotz in July, 2019. Nor did the Claimant know that something had been mailed to her. This caused a delay of 16 months. It is agreed that on August 1, 2019, Claimant received the initial claim package, at which point she was in a position to gather the necessary medical information to allow the Administrator to process PIP's claim
90. This is the critical period of time for this Appeal because in the interim the Dependant passed away.
91. During this period, the records of both Claimant and the Administrator show that there were no communications between Claimant and the Administrator between March, 2018, and July, 2019. Claimant's notes show that she left a message for a representative of the Administrator in September, 2018, but no records show that they spoke. The Claimant's evidence at the hearing was that she was diligent in following up with the Administrator to check on the status PIP's claim. I accept that she followed up with the Administrator diligently and regularly and that her notes may not record every contact. Her notes certainly show frequent contact in 2019. But during this period of time, apart from Claimant's September, 2018 note, neither party's files show any other contact. Nonetheless, I accept that Claimant followed up with the Administrator in September, 2018.
92. In my view, the Administrator had an obligation to process the PIP claim starting in March, 2018, regardless of whether the Claimant made contact for updates and I find that it did. It sent the initial claim package to the Claimant. It could not have known that the Claimant did not receive it. It was waiting for further information from Claimant.
93. However, in my view, these delays are not relevant to the outcome of this Appeal. Things would not have been different if Claimant had received the initial claim package for the PIP claim in March or April, 2018. This did not slow the processing of the PIP claim. CBS could not have started traceback until the hospital had completed its lookback results in

August, 2019, which is after Dependant passed away. Moreover, because the Court had not approved the Late Benefit Plan initial claim package until late 2019, this is the earliest the Administrator could have provided the forms which Claimant was required to complete to advance the Dependant late claim.

94. In the circumstances, in my view, any delay during this period cannot be attributed to the Administrator.

(iii) Period between PIP's passing and approval of her personal representative's claim

95. In my view, my conclusions on issues (i) and (ii) above are sufficient to decide this Appeal. However, the evidence Claimant relies upon and arguments she has made about the Administrator's delay also relate to the period after Dependant's death. Claimant continued to assert, even in final written submissions, that the Administrator's delay in processing the PIP claim - after the passing of the Dependant - prevented him from bringing his claim on time. As the Administrator's supplementary submissions on the delay issue state, the parties agreed to adduce evidence of what occurred during the period from when the PIP claim was first made to when her claim was approved by the Administrator. This also covers the period when the Dependant claim was being processed. Therefore, I address it here.
96. In addition to the evidence cited in issue (ii) I also refer to the following relevant evidence. The first is Claimant's testimony that she sent the Administrator PIP's death certificate on November 21, 2019. The second is Claimant's December 31, 2019 notes, which state that she mailed to the Administrator proof of her ability to act as PIP's personal representative.
97. The Administrator had no control over the timeline for Claimant's delivery of the documentation necessary to complete PIP's claim for compensation. This documentation was not delivered by Claimant to the Administrator until after Dependant had passed away.
98. I conclude that the Administrator did not delay in the processing of the PIP or Dependant's claims.

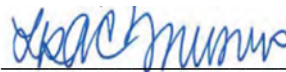
Conclusion

99. I have found that the Administrator was correct in its interpretation of the Late Benefit Plan: (i) Dependant's claim could not be processed by the Administrator until PIP's claim was approved in May, 2021; and (ii) Dependant was not entitled to Loss of Services in the home or Loss of Support benefits for the period before or after he passed away.
100. Because I have found that Dependant's claim does not meet the test of eligibility to receive compensation, Claimant's position that the Administrator delayed in its processing of the claims need not be addressed. Nonetheless, I have found that the evidence does not support Claimant's argument that the Administrator was responsible for delaying the processing of PIP's claim, which prevented Dependant's claim from being brought before he passed away. Dependant's claim could not start until PIP's claim was approved. There was no delay that can be attributed to the Administrator for the processing of PIP's claim.

101. I dismiss all other claims made by the Claimant.

Disposition

102. For all the reasons set out above, I dismiss Claimant's Appeal of the Administrator's decision to deny compensation to Dependant under the HCV Late Benefit Plan. The Administrator's decision stands.



Lisa C. Munro

Referee

January 9, 2025