

Claim No.: XXXX

Province where claim originated : Québec

Province of residence : Québec

Application for Reference to Review the Administrator's Decision

In the presence of : Christian Leblanc

Appeared : *(Claimant)*

For the Administrator : McCarthy Tétrault, Me Catherine Martin

DECISION

1. On August 19, 2021, the Claims Administrator denied the claim for compensation filed by (*Claimant*) (the “**Claimant**”) on behalf of the estate of her mother, (*Primarily Infected Person's Dependant*), for Loss of Services in the Home. The claim was denied on the grounds that the spouse, (*Primarily Infected Person's Dependant*), had to have been alive at the time of the claim in order to benefit from Loss of Services payments.
2. On September 26, 2021, the Claimant requested that the Claims Administrator’s denial of her claim filed on behalf of (*Primarily Infected Person's Dependant*)’s estate be reviewed by an Arbitrator.
3. The Claimant submitted documentation in support of her claim prior to the arbitration held on July 27, 2022, which has been reviewed and considered in connection with these proceedings. The Claimant was given the full opportunity to provide additional information and to make her submissions and representations.
4. The relevant facts are not in dispute and can be summarized as follows :
 - a) The Claimant is the daughter of (*Primarily Infected Person's Dependant*), who passed away on May 1, 2017, and the Primarily-Infected Person (“**PIP**”) who passed away on October 19, 2003. It was considered that the Hepatitis C virus (“**HCV**”) contributed to PIP's's death.
 - b) PIP had an approved claim under the Settlement Agreement for the period of 1986-1990. The claim was made on his behalf on June 25 2010, within the claim deadline. The payment for this claim was received in 2011 and is not disputed.
 - c) In 2015, a first attempt was made to contact the Claimant and her family regarding the new HCV Late Claims Benefit Plan, to no avail – the notice to the Claimant was returned as undeliverable.
 - d) In 2021, a second attempt to contact the Claimant and her family was made through the locator project regarding the HCV Late Claims Benefit Plan. This time, the attempt to contact the Claimant was successful.
 - e) On May 10 2021, (*Claimant*) filed a Late Claim Request Form to request that (*Primarily Infected Person's Dependant*) be approved as a Family Member of an HCV Infected Person. This request was approved on May 19, 2021 by the Court Appointed Referee Reva Devins.
 - f) On May 27, 2021, the Claimant submitted a claim under the HCV Late Claims Benefit Plan to the Claims Administrator on behalf of (*Primarily Infected Person's Dependant*)’s estate.
 - g) On June 23, 2021, the request for compensation on behalf of (*Primarily Infected Person's Dependant*)’s estate was approved exceptionally since there was an attempt by (Primarily Infected Person's Dependant) in 2011, while she was alive, to make a claim. (*Primarily Infected Person's Dependant*)’s estate received a lump sum of \$CAD 37, 541.16\$. This sum has been paid out and is not disputed.

- h) On August 16, 2021, the Claimant submitted a separate claim for Loss of Services in the Home on behalf of (*Primarily Infected Person's Dependant*)'s estate.
 - i) On August 19, 2021, the Claims Administrator informed the Claimant that her claim for Loss of Services had been denied. The Claims Administrator explained that pursuant to paragraph 18 of the *Court Approved Protocol for Loss of Services ("CAP" for Loss of Services)*, (*Primarily Infected Person's Dependant*) does not qualify as an approved Late Claim Dependant and can not benefit from Loss of Services – as the dependant needs to be alive at the time of the claim.
5. The Claimant, on behalf of her mother's estate, argues that her mother was unable to file a Claim for Loss of Services while she was alive for reasons beyond her control and that a greater effort should have been made to contact her mother before she passed.
 6. The Fund Counsel argues that the Claims Administrator correctly applied the relevant provision of the CAP for Loss of Services, which provides that the spouse must be alive at the time of the claim for Loss of Services.
 7. The original Settlement Agreement regarding HCV for the period of 1986-1990 was approved in 1999 by Justice Morneau and provided for the indemnification of persons infected by HCV following a blood transfusion received in Canada or following the use of blood products.
 8. Subsequently, Justice Corriveau approved the Late Claims Benefit Plan in 2017 for the Class Members who did not meet the claim deadline under the original Settlement Agreement.
 9. Sections 4.03 and 6.01(2) of this plan provided for claims of Loss of Services. Pursuant to these provisions, Justice Corriveau also approved the CAP for Loss of Services in 2017.
 10. As explained during the July 27, 2022, hearing by the Claims Analyst at Epiq, the purpose of the Loss of Services payments is to help the PIP, or their Approved Dependents or Approve Late Claim Dependant, with various household tasks if the HCV infection interferes with their ability to complete these tasks. Therefore, when the PIP or their Dependents pass away, the payments for Loss of Services become devoid of purpose.
 11. The Fund Counsel also argues that this decision by the Claims Administrator is in no way discretionary. Rather the Claims Administrator must work within the confines of the Late Claims benefit Plan and must specifically apply the objective criteria outlined in the CAP for Loss of Services.
 12. Furthermore, the Arbitrator must also apply the criteria outline in the CAP for Loss of Services and does not have the discretion to modify the eligibility criteria for a claimant to obtain compensation for Loss of Services.
 13. Unfortunately for the Claimant, I am obliged to find the claim relating to Loss of Services in the Home cannot succeed. Indeed, paragraph 18 of the CAP for Loss of Services reads as follows:

“Loss of services in the home will be paid to Approved Dependants or Approved Late Claim Dependants for the calculated life expectancy of the deceased HCV Infected Person, **so long as the Spouse who is an Approved Dependant or Approved Late Claim Dependant remains alive** or there is a Child who is an Approved Dependant or Approved Late Claim Dependant who continues to qualify for payments. **Loss of services in the home payments will cease upon the death of the Spouse who is an Approved Dependant or Approved Late Claim Dependant** unless there is a Child who continues to qualify for payments as an Approved Dependant or an Approved Late Claim Dependant.”

14. In this case, (*Primarily Infected Person's Dependant*) passed away on May 1, 2017, and the claim for Loss of Services on behalf of her estate was made on August 16, 2021.

15. The Claims administrator therefore respected the applicable provision of the CAP for Loss of Services when denying this claim.

16. Furthermore, the Claimant has not submitted any evidence demonstrating that on a balance of probabilities, the Claims administrator's decision was not made in accordance with the Late Claims Benefit Plan and CAP for Loss of Services.

17. While I consider the circumstances to be unfortunate, I do not have any discretion to ignore the terms of the CAP for Loss of Services.

18. The decision by the Claims Administrator, as well as an Arbitrator, are in no way discretionary. Indeed, as explained in *Claim no XXXXX*:

“The Administer must administer the Plan in accordance with its terms and he does not have the authority to alter or ignore the terms of the Plan. **An Arbitrator, called upon to review a decision of the Administrator is also bound by the terms of the Plan and can not amend it or act contrary to its terms**”

(Our underlining)

19. The denial of this Loss of Services claim on behalf of (*Primarily Infected Person's Dependant*)'s estate is also in line with the very purpose and nature of the compensation for Loss of Services, which become devoid of purpose following the passing of the PIP or spouse.

20. I acknowledge the personal feelings and frustrations of the Claimant in having her claim rejected. It is understandable that she feels as she does. Unfortunately, while that is an unsatisfactory result for her, neither the Administrator nor an Arbitrator has the authority or discretion to award her claim.

21. Accordingly, for the reasons set out above, I find that the Administrator has properly determined that the claim filed by the Claimant on behalf of Mrs. Laveau's estate for Loss of Services should be denied and that the Administrator's decision must be sustained.

A handwritten signature in black ink, consisting of several loops and a final flourish, positioned above the name of the arbitrator.

Christian Leblanc, Judge-Arbitrator