

Claim No. 13

Province of Claim: Quebec

Province of Residence: Quebec

**In the Matter of a Reference to Review the Decision of the Administrator**

Present: Christian Leblanc

Appearance: Claimant

For the administrator: McCarthy Tétrault, Catherine Martin

## DECISION

### **Background:**

This decision relates to a referral application filed under the *1986–1990 Hepatitis C Settlement Agreement* (“Settlement Agreement”).

The Settlement Agreement covers compensation for individuals who were infected with the Hepatitis C virus as a result of a blood transfusion or the use of blood products received by the same person in Canada between January 1, 1986 and July 1, 1990.

### **The Facts:**

The Claimant submitted to the Plan Administrator (“the Administrator”) a claim (“Claim”) as a relative (brother) of an HCV Infected Person under the *Transfused HCV Plan* (“the Plan”).

It appears from the Administrator’s file that:

1. On July 29, 2019, the Claimant was authorized to submit her late claim to the Administrator.
2. The Claimant sent the Administrator her brother’s Death Certificate, which indicated that he died on June 23, 2012. X was apparently the person directly infected with HCV. The Claimant also sent the Administrator X’s birth certificate.
3. It appears from the Administrator’s file that on November 18, 2019, the Administrator recorded in its notes that there were no claims under the Settlement Agreement by the directly infected person (X) under the Settlement Agreement.
4. On January 23, 2020, the Administrator informed the Claimant that her claim for compensation was denied because it had not received or approved a claim from the directly infected person.
5. The Claimant therefore appealed this decision, stating that her brother X had been infected with HCV and had even been compensated for it. She added that her sisters had made a claim at that time as a relative of the deceased but that this claim was denied in 2013 because it was late.
6. However, after a search by the Administrator, it appears that the Claimant should have referred to the facts that her brother X had received compensation under the Pre-1986/Post-1990 Hepatitis C Settlement Agreement, which is a completely different agreement from the Settlement Agreement.

**Analysis:**

7. The Claimant's claim was denied because there is no evidence on file that the directly infected person made a claim under the Settlement Agreement.
8. However, section 3.07 of the Plan provides that a family member of a directly infected person may submit a claim but must provide the evidence required by section 3.05(1)(a and b) of the Plan.
9. Section 3.05(1)(a) of the Plan requests proof of death of the person directly infected with HCV and that this evidence shows that the death is due to the HCV infection, under the conditions and criteria required by the Settlement Agreement.
10. In this case, there was no claim on behalf of X as a directly infected person under the Settlement Agreement, which in turn makes it impossible to determine whether a family member of the directly infected person can be compensated.
11. The Referee does not question the Claimant's good faith and sympathizes with her, but the fact remains that neither the Administrator nor the Referee has any discretion under the Settlement Agreement to amend the criteria used to determine compensation under the Settlement Agreement.
12. See decision No. 154 of Referee Tatiana Wacyk.
13. The Administrator does not have the discretion to approve a claim where the necessary evidence is not provided. It must apply the terms of the Settlement Agreement and the Plan. The Honourable Chief Justice François Rolland of the Superior Court stated the following in this regard:<sup>1</sup>

*... 22. Again no one questions that the Claimant has Hepatitis C, but to be entitled to compensation under the Agreement the Claimant must comply with the Agreement's requirements.*

*... 26. The Agreement sets out the requirements that must be met by a Claimant. The Referee correctly interpreted those requirements and applied them to the finding of fact that he made with respect to the Claimant's situation that there was an insufficiency of evidence to prove that the Claimant received blood during the class period.*

Emphasis added

14. Regarding the Referee's role, the same decision states:

*... 17. In prior decisions in these class proceedings, the Court adopted standards to be applied to motions presented by infected claimants opposing confirmation of a*

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

*Referee's decision. Under these standards a Court will not interfere with the result unless there has been some error in principle demonstrated by the Referee's reasons, some absence or excess of jurisdiction or some patent misapprehension of the evidence.*

15. The conclusion in this case is that the Administrator has complied with the Settlement Agreement and the Plan.
16. The necessary evidence required by the Settlement Agreement was not met.
17. As noted above, the Referee sympathizes with the Claimant but unfortunately has no discretion.
18. Thus, in the absence of a claim on behalf of the directly infected person (in this case [REDACTED]), the demonstration that the death of the infected person was caused by his HCV infection, and that this person meets the criteria of the Settlement Agreement, the Claimant's claim must be denied, and the Administrator was right to deal with it this way.

**Conclusion:**

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

A handwritten signature in black ink, appearing to read 'Christian Leblanc', with a stylized, cursive script.

Christian Leblanc, Referee