Claim No.: 14

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

Context:

This decision is pursuant to an appeal from the decision of the Administrator pursuant to the *1986-1990 Hepatitis C Settlement Agreement* ("Settlement Agreement") and its Schedule "A" thereof *The Transfused HCV Plan* (the "Plan"). The Plan provides compensation to persons who are infected by HCV for the first time through a blood transfusion received in Canada during the period from and including January 1st, 1986 to and including July 1st, 1990 and secondarily – infected spouses, along with children and certain family members.

Facts:

1. On November 10, 2019, the Claimant on behalf of his Mother (Primarily Infected Person/ PIP) filed a *Late Claim Request Form* pursuant to the Settlement Agreement.

2. On May 11, 2020, the Claimant was informed of a decision that allowed him to file a late claim under the *HCV Late Claims Benefit Plan* found in the Settlement Agreement.

3. On March 17, 2021, the Administrator received the Claimant's *HCV Late Claim Benefit Plan* form dated March 15, 2021.

4. By letter dated March 24, 2021, the Administrator acknowledged receipt of the initial *Claims Forms Package* and informed the Claimant of outstanding items to be provided by the Claimant.

5. On March 29, 2021, the Administrator received the following information from the Claimant:

   a. *The Treating Physician Form* (TRAN 2)

   b. *Claimant's Statutory Declaration Form by HCV personal representative* (TRAN 3) PIP REP

   c. *Authorization to initiate the trace back procedure and/or to release information* (TRAN 4)

   d. *Blood Transfusion History Form* (TRAN 5)

6. By letter dated April 13, 2021, the Administrator communicated with Héma Québec to initiate a trace back procedure.

7. By letter dated July 8, 2021, the Administrator requested additional information from the Claimant.

8. On April 21 and 29, 2022, the Héma Québec final report signed by the Medical Director, Doctor of Microbiology and Epidemiology and dated February 18, 2022, was sent to the Administrator explaining the following:

a. According to the information received from the X Hospital's blood bank, the PIP received 152 blood products between September 16, 1987 and October 12, 1987 at this hospital.

b. According to the information received from the X Hospital's blood bank, the medical file stated that The PIP was admitted on September 16, 1987 with severe liver disease (decompensated cirrhosis).

c. Therefore the blood products transfused after that date have not been investigated.

9. On May 3, 2022, in response to the Administrator's request, Hema Québec explained that the 152 donors were not investigated, given the fact that the diagnosis of cirrhosis was noted on the medical file on September 16, 1987, beforethe PIP received any transfusion.

10. Héma Québec's medical director further stated that the blood products could not have been the cause of the liver disease in the case of The PIP.

11. By letter dated May 10, 2022, the Administrator's denial letter was sent to the Claimant.

12. On July 25, 2022, further to the denial of the claim by the Administrator, the Claimant filed his appeal.

13. The Claimant in effect requested that the 152 blood counts that his Mother, the PIP, received be analyzed to know if she contracted HCV from her hospital stay.

Analysis:

14. The information in the file establishes that the Claimant did not submit the required evidence to qualify under the Settlement Agreement. Indeed, there is no proof in the file that the death of the PIP was caused by an infection with HCV.

15. That evidence is requested under Section 3.05 of the Plan.

16. The Héma Québec final trace back report dated February 18, 2022, is signed by the Medical Director, Microbiology and Epidemiology and states the following:

a. The PIP was admitted on September 16, 1987 with severe liver disease (decompensated cirrhosis) before receiving any transfusion.

b. After admission, The PIP received 152 blood products between September 16, 1987 and October 12, 1987, at the X Hospital.

c. The PIP passed away on October 12, 1987.

17. Héma Québec's Medical Director further specifies that the time interval between the first transfusion (September 16, 1987) and death (October 12, 1987) is just about the time of incubation of HCV, which means that even if one of the donors would be positive, the recipient would not have had time to have symptoms of it, thus meaning that the liver disease and the unfortunate death of the PIP would not be related to a transfusion that would have been infected with the HCV virus.

18. Héma Québec's Medical Director concludes that the 152 blood products could not have been the cause of the liver disease.

19. Consequently, the 152 blood products transfused after September 16, 1987 have not been investigated.

20. As the PIP passed away less than a month after her admission, the Claimant is and will be unable to prove that an eventual infection with HCV contributed to the death of the PIP.

21. On the contrary, the medical evidence in the file demonstrates that the PIP died of her liver disease, which in return could not have been triggered by HCV contaminated blood.

22. Despite all the sympathy that the Arbitrator has with respect to the PIP's death and the pain that the Claimant no doubt suffered, it has no discretion to deviate from the Settlement Agreement and the Late Claims Benefit Plan.

23. The Arbitrator has no discretion or authority and can only apply the criteria outlined in the Settlement Agreement and the Late Claims Benefit Plan objectively.

24. This was affirmed by Chief Justice François Rolland of the Superior Court when he stated as follows:[1]

> *"[…] 22. Again no one questions that the Claimant has Hepatitis C, but to be entitled to compensation under the Agreement <u>the Claimant must comply with the Agreement's requirements.</u>*
>
> *[…] 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 insuffiency of evidence to prove that the Claimant received blood during the class period.*
>
> Our underlining

25. Furthermore, on the duties of the Arbitrator, Justice Rolland further 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 Referee's decision. Under these standards a Court will not interfere with the result unless there <u>has</u>*

[1] Claimant number 2629 v. Canada (Attorney General) 2012, QCCS 4449

> *been some error in principle demonstrated by the Referee's reasons, some absence or excess of jurisdiction or some patent misapprehension of the evidence.*

26. Those principles were also affirmed in the decision *Claim Number 1850042* by Tatiana Wacyk, Arbitrator, and the decision *Claim Number 11152* by the same Arbitrator.

27. The Judge-Arbitrator acknowledge the personal feelings and frustrations of the Claimant in having his claim rejected. It is understandable. Unfortunately, while that is an unsatisfactory result for him, neither the Administrator nor an Arbitrator has the authority or discretion to award his claim.

Conclusion:

28. 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 the PIP should be denied and that the Administrator's decision must be sustained.

Christian Leblanc, Judge-Arbitrator