

Claim No. 15

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: Guy Laurin, Claimant

For the Administrator: McCarthy Tétrault, Catherine Martin

## DECISION

### **Background:**

This decision relates to a reference to review 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:**

On March 5, 2018, the Claimant submitted to the Plan Administrator (“the Administrator”) a claim (“the Claim”) from the HCV Infected Person under the *Transfused HCV Plan* (“the Plan”).

It appears from the hearing held in this case and the Administrator’s file that:

1. On January 23, 2019, the Claimant was authorized to submit his late claim to the Administrator.
2. On February 27, 2019, the Claimant submitted the *Treating Physician’s Form* (TRAN 2). His treating physician, Dr. A, states in question 25 that the Claimant did not receive any blood transfusions between January 1, 1986 and July 1, 1990, inclusive.
3. On March 10, 2019, the Administrator informed the Claimant that it needed more information to assess the claim.
4. On April 15, 2019, the Claimant submitted the *Blood Transfusion History Form* (TRAN 5), in which he claimed that he had received transfusions from Hospital H, Hospital G, Hospital V, and Hospital D.
5. On November 22, 2019, Héma Québec forwarded a letter to the Administrator stating that according to the information received from these same hospitals, there was no evidence that the Claimant had received blood transfusions from them.
6. More specifically, and in the same letter, Héma Québec stated that according to information received from the Hospital H blood bank, two blood products were apparently prepared for the Claimant in May 1986 but were never administered.
7. On May 6, 2020, the Claimant was notified by the Administrator that his claim was denied because he was unable to prove that he had received a blood transfusion within the required period, that is, from January 1, 1986, to July 1, 1990.

8. The Claimant submitted this decision for review before this Referee.

**Analysis:**

9. First, it should be noted that there was an error in the decision dated May 6, 2020, denying the claim. In this decision, the Administrator refers to the record of Hospital S, Hospital R, and the Hôtel-Dieu de Lévis. These are not the hospitals in which the Claimant had reported receiving blood transfusions. However, at the hearing on this matter, Ms. Langlotz, representing the Administrator, testified that this was an administrative error. Ms. Langlotz referred to the notes in the Claimant's appeal record. However, it is clear that the blood transfusion checks were in fact made at the hospitals that the Claimant had reported, namely, Hospital H, Hospital G, Hospital V, and Hospital D.
10. Section 3.01(2) of the Plan provides that if a claimant cannot comply with the provisions of section 3.01(1)(a), they may still provide the Administrator with corroborating and independent evidence of the personal recollections of the claimant, or of any person who is a member of the claimant's family, in order to establish on a balance of probabilities that the claimant received a blood transfusion in Canada during the period described above.
11. In this case, the evidence is that the Administrator's file shows that the Claimant did not comply with the provisions of section 3.01(1)(a) and was unable to provide evidence under section 3.01(2) of the Plan.
12. Furthermore, before the Referee, the Claimant's testimony did nothing to change this state of affairs or to enhance this evidence of transfusions.
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

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

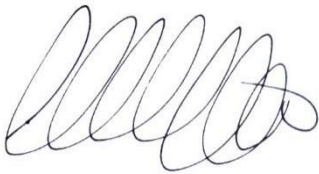
14. Regarding the role of the Referee, the same decision states:

*... 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 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. These principles were also confirmed in *Claim No. 1850042* by Referee Tatiana Wacyk and in *Claim 11152* by the same Referee.
16. The conclusion in this case is that the Administrator has complied with the Settlement Agreement and the Plan. The necessary evidence required by the Settlement Agreement was not met at the time of the claim or at the hearing before the Referee. The burden of proof was on the Claimant on the balance of probabilities. This burden was not met. The Referee sympathizes with the Claimant in terms of what he went through medically but unfortunately has no discretion.
17. Thus, in the absence of evidence that showed that the Claimant was infected with HCV as a result of a blood transfusion received within the Settlement Agreement period, the Claimant's claim must be denied, and the Administrator was right to deal with it this way.

**Conclusion:**

18. 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 be 'Christian Leblanc', written in a cursive style.

Christian Leblanc, Referee