

Claim No. 17

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 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 October 10, 2019, the Claimant filed with 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. The Claimant tested positive for hepatitis C on May 5, 2005.
2. On October 10, 2019, the Claimant filed his Claim.
3. On May 7, 2020, the Claimant was authorized to submit his late claim to the Administrator.
4. On May 18, 2020, the Claimant submitted the *General Claimant Information Form* (TRAN 1) to the Administrator. In this form, the Claimant states that he was [translation] “indirectly” infected with the hepatitis C virus.
5. On June 30, 2020, the Claimant submitted to the Administrator the *Treating Physician Form* (TRAN 2), signed by Dr. A.
6. In June 2020, the Claimant submitted the *Declaration Form by HCV Infected Person* (TRAN 3) to the Administrator. The Claimant also submitted an *Authorization to Initiate Traceback Procedure and/or to Release Information* (TRAN 4), but this document is not dated and does not include a witness signature.
7. On June 7, 2020, the Claimant submitted to the Administrator the *Authorization for Release of Information by HCV Infected Person* form (GEN 5).
8. In June 2020, the Claimant also provided the *Authorization for Release of Information by HCV Infected Person* form (GEN 6).
9. On July 23, 2020, the Administrator informed the Claimant that additional information was requested from him in order to properly assess his claim. In particular, the Administrator

requested a full version of the TRAN 1 form, a full version of the TRAN 4 form, as well as details on each transfusion that the Claimant supposedly received by completing the TRAN 5 form.

10. On August 20, 2020, the Claimant submitted a new TRAN 5 form, in which he states that he received blood transfusions from Hospital X, Hospital X's, V General Hospital or Hospital X.
11. On September 21, 2020, the Claimant submitted to the Administrator additional explanations regarding his blood transfusions that he claims to have received.
12. On October 6, 2022, the Administrator informed the Claimant that his claim for compensation was denied because there was insufficient evidence to confirm that he had received a transfusion during the period required by the Plan, i.e., between January 1, 1986, and July 1, 1990.
13. The Claimant submitted this decision for review before this Referee.
14. In the TRAN 2 form completed and signed by the Claimant's treating physician, Dr. A, the response to question 25 states that the Claimant did not receive any blood transfusions between 1986 and 1990.
15. Subsequent to this form, the Claimant claimed in the TRAN 5 form that he received transfusions between 1986 and 1990 at Hospital X, Hospital X's, Hospital X, X General Hospital or Hospital X.
16. At the Administrator's request, Héma Québec conducted a search of the transfused products and concluded that there was no evidence of such blood transfusions at the above-mentioned hospitals.
17. More specifically, with respect to X General Hospital of X, no evidence was found that the Claimant had been a patient.
18. With respect to hospitals X and X's, Héma Québec informed the Administrator that it was impossible to confirm or deny the blood transfusions because the Claimant's blood bank records and medical records had apparently been purged.
19. Therefore, the Claimant's Claim was subject to the record destruction protocol to determine whether further evidence of transfusions existed. This protocol is included in the *Transfused HCV Plan*. Specifically, section 3.01(2) states that the Administrator may accept other reliable evidence to show, on a balance of probabilities, that a transfusion occurred during the claim period. To implement this protocol, a *Standard Operating Procedure* was put in place.
20. In section 5 of the *Standard Operating Procedure*, an example of the type of evidence that could be provided is an affidavit from a general practitioner who treated the Claimant.

21. On February 16, 2022, the Claimant submitted to the Administrator a letter from his family doctor, Dr. A, as well as Dr. B, gastroenterologist and hepatologist, who confirmed that they had not seen any blood transfusions in the Claimant's records. This letter refers in particular to records prior to 1999, when the Claimant was being followed by Dr. C at the Current Clinic. It should be noted that the date "1999" is amended by hand, and a handwritten entry indicating "0" is placed next to the last "9" of "1999." When asked about this, the Claimant did not know who had made this handwritten annotation.
22. In May 2022, the Claimant resubmitted what appears to be the same letter, but with handwritten amendments where this time the date of "1999" relating to earlier records is replaced by a handwritten annotation: "1986–1990." In addition, portions of sentences are deleted from this letter so it now states that it would be possible to confirm that the hepatitis C virus infection was transmitted by blood transfusion for the Claimant. When asked who changed this letter in this way, the Claimant did not know. However, it is surprising that this letter, which appears to have been amended to change the word "impossible" to "possible," is not given any explanation.
23. In any event, a subsequent letter dated October 6, 2022, signed by Dr. A confirms that there is no evidence of blood transfusions between 1986 and 1990 for the Claimant.

Analysis:

24. 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.
25. 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.
26. Furthermore, before the Referee, the Claimant's testimony did nothing to change this state of affairs or to enhance this evidence of transfusions.
27. 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:¹

... 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.

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

... 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

28. 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 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.*

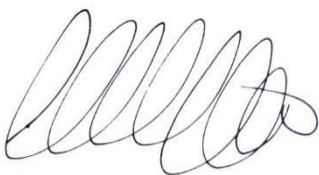
29. These principles were also confirmed in *Claim No. 1850042* by Referee Tatiana Wacyk and in *Claim 11152* by the same Referee.

30. 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.

31. 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:

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



Christian Leblanc, Referee