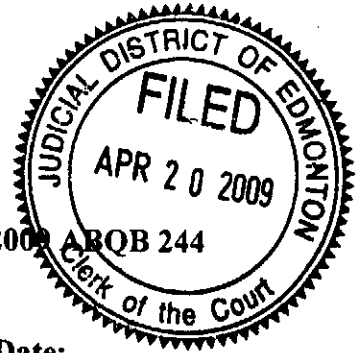


Court of Queen's Bench of Alberta

Citation: **Adrian v. Canada (Minister of Health) (Claimant #07-07332), 2009 ABQB 244**



Date:
Docket: 9903 19153
Registry: Edmonton

**IN THE MATTER OF AN APPEAL PURSUANT TO THE HEPATITIS C
PRE-1986/POST-1990 CLASS ACTION SETTLEMENT AGREEMENT**

Between:

Claimant #07-07332

**(In Order to Protect the Privacy of the Claimant, the Name of the Claimant
Has Been Substituted by a Number Assigned by the Administrator)**

Plaintiff

- and -

The Administrator

Defendant

**Reasons for Decision
of the Honourable Mr. Justice Vital O. Ouellette
Relating to an Appeal Pursuant to the
Pre-1986/Post-1990 Hepatitis C Settlement Agreement**

Introduction

[1] The Claimant appeals the decision of an Appeals Officer appointed pursuant to the terms of the Settlement Agreement in the pre-1986/post-1990 Hepatitis C litigation. The Claimant made a claim for compensation which was denied by the Administrator. The Claimant appealed the denial to an Appeals Officer, who upheld the decision of the Administrator.

Background

[2] The Settlement Agreement is pan-Canadian in scope. It provides that persons infected with Hepatitis C in Canada as a result of the receipt of blood or specified blood product before January 1, 1986 and between July 2, 1990 to September 28, 1998 are entitled to varying degrees of compensation.

Facts

[3] In July 1978 the Claimant was given one unit of the blood or blood product Rh Immune Globulin during childbirth. Almost 20 years later, the Claimant was diagnosed with a Hepatitis C infection. The Claimant's doctor (hepatologist) was of the opinion in 2002 that the Hepatitis C was most likely as a result of the blood transfusion in 1978.

[4] The Claimant made a claim for compensation from the Settlement Agreement. The Administrator denied the claim on July 14, 2008. The denial was appealed to an Appeals Officer.

Decision of the Appeals Officer

[5] On December 17, 2008, the Appeals Officer dismissed the appeal. Although the Appeals Officer was satisfied that the Claimant had developed the Hepatitis C infection after receiving the blood transfusion in 1978, the claim was still denied. The reason was that the blood product which the Claimant received, Rh Immune Globulin, is specifically excluded from the definition of "Blood" in the Settlement Agreement. As a result, the Claimant could not meet the essential eligibility requirements to qualify for compensation, namely that she received "Blood".

Standard of Review of the Court

[6] The Settlement Agreement allows a Claimant to appeal a decision of an Appeals Officer to this Court. The Court may:

- a) uphold the decision of the Appeals Officer;
- b) vacate the decision of the Appeals Officer and substitute its own decision;
- c) remit the matter back to the Appeals Officer or the Administrator with directions;
or
- d) make any other order the Court deems just.
(See para. 29 of the *Rules for Appeals*, which form part of the Settlement Agreement.)

[7] Paragraph 30 of the *Rules for Appeals* sets out the following standard of review:

The Court shall interfere with a decision of an Appeals Officer only:

- a) on a matter of law;
- b) where an Appeals Officer has exceeded his or her jurisdiction; or
- c) where the decision of the Appeals Officer is patently unreasonable.

[8] Subsequent to the Court approval of the *Rules for Appeals*, the Supreme Court of Canada released its decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, in which it held that the standard of review of patent unreasonableness shall no longer be applied on judicial reviews. As a result of this decision, the standard of review on judicial reviews must be either reasonableness *simpliciter* or correctness.

[9] Although appeals under the Settlement Agreement do not constitute judicial reviews, the standard of review set out in para. 30 of the *Rules for Appeals* is similar to the standard of review that had been applied in judicial review cases prior to the *Dunsmuir* decision. In light of the *Dunsmuir* decision, it is now appropriate to apply a standard of correctness rather than patent unreasonableness when assessing the decisions of Appeals Officers, notwithstanding the wording of para. 30(c) of the *Rules for Appeals*.

Analysis

[10] In order to qualify for compensation pursuant to the Settlement Agreement, the Claimant must meet the requirements set out in Article 2.01.

[11] In this particular case, the Claimant must demonstrate receiving “Blood” in Canada during the Class period (Article 2.01(a)).

[12] The problem facing the Claimant is that the blood or blood product she received in Canada was RH Immune Globulin. “Blood” is defined at Article 1.01 of the Settlement Agreement. The definition states what “Blood” means, and then goes on to provide what “Blood” does not include. One of the specified exclusions is RH Immune Globulin.

[13] The Claimant acknowledged that the terms of the Settlement Agreement excluded Rh Immune Globulin. She appealed to the Appeals Officer, seeking an answer as to why the RH Immune Globulin was excluded from the compensation package and on an emotional basis for justice.

Decision

[14] I am satisfied that the Appeals Officer’s decision to deny the claim because the Claimant has not shown that she received “Blood” as defined in the Settlement Agreement is correct. The Appeals Officer has no jurisdiction to change the definition of “Blood” or to approve a claim unless the eligibility requirements have been met.

[15] Accordingly, I uphold the decision of the Appeals Officer.

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Dated at the City of Edmonton, Alberta this 17th day of April, 2009.

A handwritten signature in black ink, appearing to read 'Vital O. Ouellette', written over a horizontal line.

Vital O. Ouellette
J.C.Q.B.A.

To: Claimant
To: Fund Counsel
To: Administrator
To: Appeals Officer