

IN THE MATTER OF an appeal filed  
pursuant to the *Rules for Appeals* under  
the *Pre-1986/Post-1990 Hepatitis C  
Settlement Agreement* and its *Protocols*

CLAIM FILE: 07-03400

**REASONS FOR DECISION**

**INTRODUCTION**

[1] The Claimant has appealed a decision of the Administrator dated March 7, 2008, in which his claim for compensation under the *Pre-1986/Post-1990 Hepatitis C Settlement Agreement* (“*Settlement Agreement*”) was approved at Disease Level 2.

**FACTS**

[2] The Claimant is a Primarily-Infected Person who received blood transfusions in 1983 while undergoing cardiac bypass surgery. He filed his claim for compensation on September 24, 2007, which included a laboratory report dated October 31, 1997 confirming the presence of HCV antibodies in his blood and a Treating Physician Form indicating that he was at Disease Level 1. On January 31, 2008, he filed a laboratory report dated February 5, 2004, indicating a positive PCR test. He was therefore confirmed to be at Disease Level 2. The Claimant was born in 1929.

[3] The Claimant received compensation under the *Canadian Red Cross Settlement Agreement in the Pre-1986/Post 1990 Hepatitis C Claims* (“*Red Cross Settlement*”).

**DECISION OF THE ADMINISTRATOR**

[4] In its decision dated March 7, 2008, the Administrator approved compensation for the Claimant at Disease Level 2 in the amount of \$34,245.00 and added \$692.45 for

indexation. It also subtracted \$7,600.00 for the *Red Cross Settlement*, a pro-rated reduction required by the *Settlement Agreement*. The final amount of compensation approved for the Claimant was \$27,337.45.

### **CLAIMANT'S APPEAL**

[5] The Claimant filed a Request for Review on August 5, 2008, in which he appealed by checking the box "Fixed Payments (Disease Level)". In support of his appeal, he filed a letter dated March 31, 2008, in which he indicated that the approved amount of compensation was grossly inadequate, as he had lived with the debilitating effects of Hepatitis C on his health for almost 25 years. He further stated that compensation "... in the range of \$100,000.00 to \$125,000.00 (or \$4,000.00 to \$5,000.00 per year of infection) would be more equitable", and that the amount should not be reduced "...by the *Red Cross Settlement* of \$7,600.00 as ... the Government of Canada did not contribute funds towards this settlement".

### **ISSUE**

[6] The issue to be determined is whether the Administrator erred in approving compensation for the Claimant as a fixed payment for Disease Level 2.

### **ANALYSIS**

[7] Article Two of the *Settlement Agreement* contains the framework governing the compensation process for HCV Infected Class Members, including the eligibility requirements in section 2.01 and the provisions for the payment of compensation in section 2.04. The expression "HCV Infected Class Member" is defined in section 1.01 as

meaning “... collectively Primarily-Infected Class Members and Secondarily-Infected Persons”.

[8] In the present case, the Claimant satisfied the eligibility requirements for a Primarily-Infected Class Member under section 2.01 of the *Settlement Agreement* by establishing, among other things, that he was infected with Hepatitis C by Blood received in Canada during the Class Period. As a result, he became an “HCV Infected Class Member”, as defined in section 1.01. As soon as the Administrator made the decision to accept his claim, he became an “Approved HCV Class Member”, as defined in section 1.01, entitled to compensation in accordance with the provisions of section 2.04. For the purposes of the present appeal, the relevant parts of section 2.04 state as follows:

**2.04 Compensation to Approved HCV Infected Class Members**

- (1) Each Approved HCV Infected Class member who is alive will be paid compensation as set out in the compensation grid attached as Schedule C1 to this Agreement in accordance with the Approved HCV Member’s year of birth and Disease Level, subject to the deductions provided in this Agreement. [Emphasis Added]
- (2) Disease Level for the purposes of this Agreement will be determined as follows: [...]
  - (b) “Disease Level 2” means the HCV Infected Class Member has a positive PCR Test. [...]

Subsection 2.04(2) also specifies the requirements for Disease Levels 1 and 3 to 6.

[9] By virtue of the wording of subsection 2.04(1), Schedule C1 is incorporated by reference and forms part of the *Settlement Agreement*. Schedule C1 is entitled “Compensation to Alive HCV Infected Class Members” and outlines a grid of lump sum compensation payments for Disease Levels 1 to 6 for the years of birth from 2016 to and

including 1900 or earlier. The compensation grid in Schedule C1 is also prefaced by the following words:

These lump sum present values are to be reduced by 8/11ths of the compensation received from the Red Cross. In addition to these amounts, compensation for Past Economic Losses may be payable.

[10] A review of subsection 2.04(1) confirms that an Approved HCV Infected Class Member must be "... paid compensation as set out in the compensation grid attached as Schedule C1 ... in accordance with the Approved HCV Infected Class Member's year of birth and Disease Level, subject to the deductions provided in [the *Settlement Agreement*]"'. The provision is mandatory in nature and gives the Administrator no discretion to use any other method, means or criteria to decide the amount of compensation to be paid to an Approved HCV Infected Class Member. In other words, the Administrator can only approve compensation in the amount specified in Schedule C1, as determined by the year of birth and Disease Level of the Approved HCV Infected Class Member, and as reduced by 8/11ths of the amount of any monies paid under the *Red Cross Settlement*.

[11] In the present appeal, the evidence confirms that the Claimant had a positive PCR Test. As a result, by virtue of subsection 2.04(2)(b) of the *Settlement Agreement*, reproduced in paragraph 8 above, he must be categorized at Disease Level 2 for the purposes of the payment of compensation. The compensation grid in Schedule C1 provides that the lump sum payment for an Approved HCV Infected Class Member at Disease Level 2 who was born in 1929, such as the Claimant, is in the amount of \$34,245.00. However, the Administrator is required by the wording in Schedule C1 to reduce that lump sum "by 8/11ths of the compensation received" from the *Red Cross*

*Settlement*. The Administrator therefore committed no error in approving the lump sum payment of \$34,245.00 with indexation or in reducing that amount by 8/11ths of the compensation received from the *Red Cross Settlement*. Indeed, the Administrator was obliged by the terms of the *Settlement Agreement* to approve compensation for the Claimant in exactly that amount. Unfortunately, the appeal must be dismissed.

## **CONCLUSION**

[12] The appeal is dismissed.

"D. McGillis"

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The Honourable D. McGillis, Q.C.  
Appeals Officer

DATED December 8, 2008

TO: Claimant  
Fund Counsel  
Administrator