

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: 07-05086

REASONS FOR DECISION

INTRODUCTION

[1] The Claimant has appealed a decision of the Administrator dated May 21, 2008, in which her claim for compensation under the *Pre-1986/Post-1990 Hepatitis C Settlement Agreement* (“*Settlement Agreement*”) was approved at Disease Level 1.

FACTS

[2] The Claimant is a Primarily-Infected Person who received blood transfusions in 1994 and 1995 while being treated for leukemia. She filed her claim for compensation on September 25, 2007. A few months later, on December 6, 2007, she filed a laboratory report dated November 11, 2007 confirming the presence of HCV antibodies in her blood and a Treating Physician Form indicating that she was at Disease Level 1. The Claimant was born in 1954.

[3] The Claimant received compensation under the *Canadian Red Cross Settlement Agreement in the Pre-1986/Post 1990 Hepatitis C Claims* (“*Red Cross Settlement*”) in the amount of \$10,000.00.

DECISION OF THE ADMINISTRATOR

[4] In its decision dated May 21, 2008, the Administrator approved compensation for the Claimant at Disease Level 1 in the amount of \$8,453.00 and added \$170.92 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 \$1,023.92.

CLAIMANT'S APPEAL

[5] The Claimant filed a Request for Review on August 19, 2008, in which she appealed by checking the box "Fixed Payments (Disease Level)". In support of her appeal, she filed a letter dated July 31, 2008, in which she outlined, among other things, the symptoms that she lives with on a daily basis and the devastating effect that the Hepatitis C disease has had on her life. She also stated that the amount of the approved compensation was disgraceful and inadequate, and noted the time and energy that it has taken to fight for fair compensation.

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 1.

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 she was infected with Hepatitis C by Blood received in Canada during the Class Period. As a result, she became an “HCV Infected Class Member”, as defined in section 1.01. As soon as the Administrator made the decision to accept her claim, she became an “Approved HCV Class Member”, as defined in section 1.01, entitled to compensation in accordance with the provisions in 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: [...]
 - (a) “Disease Level 1” means the HCV Infected Class Member has a positive HCV Antibody Test. [...]

Subsection 2.04(2) also specifies the requirements for Disease Levels 2 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 HCV Antibody Test. As a result, by virtue of subsection 2.04(2)(a) of the *Settlement Agreement*, reproduced in paragraph 8 above, she must be categorized at Disease Level 1 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 1 who was born in 1954, such as the Claimant, is in the amount of \$8,453.00. However, the Administrator is required by Schedule C1 to reduce that lump sum "by 8/11ths of the compensation received" from the *Red Cross Settlement*, which amounted to \$7,600.00. The Administrator therefore committed no error in approving the

lump sum payment of \$8,453.00 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 therefore be dismissed.

CONCLUSION

[12] The appeal is dismissed.

"D. McGillis"

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

DATED December 8, 2008

TO: Claimant
Fund Counsel
Administrator