

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: 07-10239

**REASONS FOR DECISION**

**INTRODUCTION**

[1] The HCV Personal Representative has appealed a decision of the Administrator dated August 14, 2008, in which her claim for compensation under the *Pre-1986/Post-1990 Hepatitis C Settlement Agreement* (“*Settlement Agreement*”) was denied on the basis that she did not have status as a “Family Member”

**FACTS**

[2] The HCV Personal Representative filed a claim for compensation under the *Settlement Agreement* on December 3, 2007. In the claim, the HCV Personal Representative stated that she was a Family Member, as well as a former Spouse and a Dependant to whom the HCV Infected Class Member was providing support or was under a legal obligation to provide support on the date of his death.

[3] The HCV Personal Representative and the HCV Infected Class Member began dating in February 1985. A few months later, they were engaged to be married. In October 1985, he had a blood transfusion in a hospital. They were married on June 28, 1986 and, in the next four years, had two children. Over the years, he began to experience health problems that affected their relationship and family life. In May 1998, he was diagnosed with Hepatitis C. During the next year and a half, his health continued

to deteriorate, with devastating consequences for their family life. In February 2000, they separated.

[4] On October 1, 2001, the HCV Personal Representative and the HCV Infected Class Member signed a formal Separation Agreement in which each of them had independent legal advice. The preamble stated that the Separation Agreement was intended "... to settle the ownership and division of their property and their duties and obligations to one another arising from their marital status including the care and support of their children". The Separation Agreement contained a waiver of spousal support which stated as follows:

**WAIVER OF SPOUSAL SUPPORT**

Neither party is in need of alimony, support or maintenance and support and hereby releases and discharges the other party from any and all support obligations which may arise as a result of the marital relationship.

The Separation Agreement provided for the joint custody of the children and required the HCV Infected Class Member to pay the monthly sum of \$762.00 to the HCV Personal Representative for the support and maintenance of the children. There was also a provision dealing with the post-secondary education costs of the children.

[5] The HCV Personal Representative and the HCV Infected Class Member were divorced by a judgment of a superior court that became effective on March 5, 2002.

**DECISION OF THE ADMINISTRATOR**

[6] In a decision dated August 14, 2008, the Administrator denied the claim for compensation on the basis that the HCV Personal Representative was not a Family

Member, as defined in the *Settlement Agreement*. In its reasons, the Administrator stated as follows:

**Criteria for Class Membership**

The Settlement Agreement provides compensation for certain Family Members of the HCV Infected Class Member.

In accordance with Section 4.01(1) of the Settlement Agreement, the criteria for filing a claim as a Family Member are the following:

*(1) To be eligible for Family Member compensation, a person claiming to be the Spouse, Child, Grandchild, Parent, Grandparent or Sibling of an alive HCV Infected Class Member or an HCV Infected Class Member whose death was caused by the HCV Infected Class Member's infection with HCV must deliver to the Administrator, within one year after the date of approval of an application for compensation under this Agreement by or on behalf of such HCV Infected Class Member or within one year of the claimant attaining his or her age of majority, whichever event is the last to occur, an application form prescribed by the Administrator together with:*

*(a) the applicable proof with respect to the HCV Infected Class Member as required by Sections 2.01 or 2.02, and 2.03, unless the required proof has been previously delivered to the Administrator; and*

*(b) proof that the claimant is or was the Spouse, Child, Grandchild, Parent, Grandparent or Sibling of the HCV Infected Class Member.*

Since the evidence you have submitted fails to support your status as a "Family Member" as defined above, your claim must be rejected.

As you may already know, every claim for compensation is reviewed and approved based on our review of documentation confirming a series of different but related proven facts. As soon as a claim submission fails to meet one of several approval criteria as set out in the Settlement Agreement, the claim must be denied. It is important to note that in some cases, the subsequent claim evaluation steps were not completed after determining the need to deny the claim. Should you opt to appeal our decision to deny your claim and should you succeed on appeal, any and all pending evaluation steps will have to be completed.

## REQUEST FOR REVIEW

[7] On August 27, 2008, the HCV Personal Representative filed a Request for Review. In specifying her reasons for appealing the decision, she noted that her former spouse, the HCV Infected Class Member, had a legal obligation at the time of his death to pay child support. On December 3, 2008, she filed a very touching letter explaining the devastating effect of her former spouse's Hepatitis C illness on her family.

## ISSUE

[8] The issue to be determined is whether the HCV Personal Representative is eligible for compensation as a Family Member or a Dependant under the terms of the *Settlement Agreement*.

## ANALYSIS

[9] A review of the Reasons for Decision denying the claim for compensation confirms that the Administrator has used "generic" reasons that made no specific reference to the circumstances of the HCV Personal Representative's claim. In the Reasons for Decision rendered on the appeal in Claim File 07-03416, I stated as follows in a case where the Administrator had also used generic reasons:

[17] A decision-maker, such as the Administrator, who has the obligation to conduct an evidentiary assessment and to make a decision that affects the right of a claimant to obtain compensation has a corresponding obligation imposed by the duty of fairness to provide some reasons to explain the decision reached in each particular case. In the context of the framework established in the *Settlement Agreement*, the reasons do not have to be elaborate and, indeed, may even be very minimal in some cases. Furthermore, there is nothing to preclude the Administrator from using certain generic or standard paragraphs in a decision to explain the applicable provisions or definitions that apply to the claim. However, the decision must also contain sufficient detail to demonstrate that the Administrator understood and considered the specific circumstances of the case, as revealed in the evidence. In the decision, *R. v. Sheppard*, [2002] 1 S.C.R. 869, Binnie J., writing for the Court, explained in paragraph 24 the practical function of reasons as follows:

“... reasons justify and explain the result. The losing party knows why he or she has lost. Informed consideration can be given to grounds for appeal. Interested members of the public can satisfy themselves that justice has been done, or not, as the case may be”.

[18] Both a claimant and the public at large have a significant interest in seeing that redress is provided under the *Settlement Agreement* in appropriate circumstances and in understanding why it is not provided in others. In the absence of reasons that explain succinctly the result in the particular case, there is no justification for the decision and no transparency in the decision-making process. In other words, reasons constitute a form of accountability and also assist a claimant in deciding whether to exercise the right of appeal. Indeed, a claimant may decide not to appeal in circumstances where the decision is properly explained.

[19] The Appeal File contained abundant evidence to justify the decision made by the Administrator. In the circumstances, I have decided that it would be simpler and more expeditious for me to prepare reasons that support the decision, rather than remitting the matter to the Administrator [See, by way of analogy, the approach taken by Rothstein J. in *Apotex v. Sanofi-Synthelabo Canada Inc.*, 2008 SCC 61 at paragraph 72]. I hasten to note that the Administrator could have satisfied the requirement to provide reasons by simply adding a few succinct sentences to its decision. [Emphasis Added]

[10] In applying the principles enunciated above, I have determined that there is sufficient evidence in the Appeal File to enable me to make the necessary factual findings and that it would be simpler and more expeditious for me to do so, rather than to remit the matter to the Administrator. I also note that the HCV Personal Representative had made her claim as both a Family Member and a Dependant. The decision of the Administrator denied her compensation on the basis that she did not meet the eligibility criteria as a Family Member under section 4.01, but failed to address the question of whether she was a Dependant under section 4.03.

[11] A determination of the HCV Personal Representative's claim requires an interpretation of sections 4.01 and 4.03 of the *Settlement Agreement*, as well as the definitions of the terms “Spouse”, “Family Member” and “Dependant”. Those provisions “... must be interpreted in a textual, contextual and purposive way” [See *Pelletier v. Canada*, [2008] 3 F.C.R. 40 (F.C.A.) at paragraph 47].

[12] Under the terms of the judicially approved *Settlement Agreement*, a person claiming to be a Family Member, such as the HCV Personal Representative, must satisfy the eligibility requirements in section 4.01 in order to make a successful claim for compensation. Section 4.01 provides as follows:

#### **Article Four**

#### **Compensation to Dependants and Family Members**

##### **4.01 Eligibility – Family Member**

(1) To be eligible for Family Member compensation, a person claiming to be the Spouse, Child, Grandchild, Parent, Grandparent or Sibling of an alive HCV Infected Class Member or an HCV Infected Class Member whose death was caused by the HCV Infected Class Member’s infection with HCV must deliver to the Administrator, within one year after the date of approval of an application for compensation under this Agreement by or on behalf of such HCV Infected Class Member or within one year of the claimant attaining his or her age of majority, whichever event is the last to occur, an application form prescribed by the Administrator together with:

- (a) the applicable proof with respect to the HCV Infected Class Member as required by Sections 2.01 or 2.02, and 2.03, unless the required proof has been previously delivered to the Administrator; and
- (b) proof that the claimant is or was the Spouse, Child, Grandchild, Parent, Grandparent or Sibling of the HCV Infected Class Member.  
[Emphasis Added]

[13] In order to determine whether the HCV Personal Representative meets the eligibility criteria in section 4.01, the definitions of the term “Spouse” and “Family Member” in section 1.01 must be considered. For the purposes of the *Settlement Agreement*, the terms “Spouse” and “Family Member” are defined as follows:

**“Spouse”** means:

- (a) either of two persons who,
  - (i) are married to each other;
  - (ii) have together entered into a marriage that is voidable or void, in good faith on the part of a person asserting a right under this Plan;
  - (iii) have Cohabited for at least two years; or

- (iv) have Cohabited in a relationship of some permanence if they are Parents of a Child.

**“Family Member”** means:

- (a) the Spouse, Child, Grandchild, parent, grandchild or sibling of an HCV Infected Class Member; [...]
- (c) a former Spouse of an HCV Infected Class Member; [...]

[14] In order for the Claimant to be eligible for compensation as a Spouse, paragraph 4.01(1)(b) requires her to provide proof that she “...is or was the Spouse...of the HCV Infected Class Member [Emphasis Added]”. The usage of the word “was” in that phrase must be read in the context of the whole of subsection 4.01(1) which permits a Spouse to apply for compensation in circumstances where the HCV Infected Class Member is alive or deceased. When read in context, the usage of the past tense “was” is clearly intended to permit a Spouse, as defined in section 1.01, to be eligible for compensation where the HCV Infected Class Member is deceased. Furthermore, the expression “former Spouse”, which forms part of the definition of “Family Member”, is not used in subsection 4.01, and the definition of “Spouse” does not include the words “former Spouse”.

[15] The evidence in the Appeal File establishes that the HCV Personal Representative and the HCV Infected Class Member were divorced on March 5, 2002. As of that date, they were no longer married to each other. The HCV Personal Representative is therefore not a Spouse, as that term is defined for the purposes of the *Settlement Agreement*. As a result, she is not eligible for compensation as a Family Member under section 4.01 of the *Settlement Agreement*.

[16] It must now be determined whether the HCV Personal Representative is eligible for compensation as a Dependant under section 4.03 of the *Settlement Agreement*. Section 4.03 provides as follows:

**4.03 Eligibility - Dependant**

(1) A person claiming to be a Dependant of an HCV Infected Class Member whose death was caused by the HCV Infected Class Member's infection with HCV must deliver to the Administrator, within one year after the death of such HCV Infected Class Member or within two years after the Implementation Date or within one year of the claimant attaining his or her age of majority, whichever event is the last to occur, an application form prescribed by the Administrator together with:

(a) proof as required by Sections 3.01(1)(a) and (b) (or, if applicable, Section 3.01(2) or (3)) and 3.01(4) and (5), unless the required proof has been previously delivered to the Administrator; and

(b) proof acceptable to the Administrator that the death of the HCV Infected Class Member was caused by his or her infection with HCV; and

(c) proof that the claimant was a Dependant of the HCV Infected Class Member. [Emphasis Added]

The term "Dependant" is defined in section 1.01 as follows:

**"Dependant"** means a Family Member of an HCV Infected Class Member referred to in clauses (a) and (c) of the definition of a Family Member in this Agreement to whom the HCV Infected Class Member was providing support or was under an obligation to provide support on the date of the HCV Infected Class Member's death; [Emphasis Added]

[17] The definition of the word "Dependant" includes a Spouse or a former Spouse to whom the HCV Infected Class Member "... was providing support or was under an obligation to provide support on the date of [his] death". The purpose of section 4.03, read in conjunction with the definitions of the terms "Dependant" and "Family Member", is therefore to ensure that a Spouse or former Spouse continues to receive spousal support

that the HCV Infected Class Member was providing or was under an obligation to provide at the time of his death.

[18] Since the HCV Personal Representative is not a Spouse, within the meaning of the definition of that term, she is a former Spouse. Unfortunately, the Separation Agreement signed by her and the HCV Infected Class Member on October 1, 2001 contained a “Waiver of Spousal Support” clause, reproduced in paragraph 4, in which they released each other “... from any and all support obligations arising from the marital relationship”. The HCV Infected Class Member was therefore neither providing her with support in her capacity as a former Spouse, nor was he under any obligation to provide any support to her. The support payments for the children that he made to her under the Separation Agreement related solely to his ongoing obligations to support the children, but were not for the purposes of providing support to her. As a result, she is not a “Dependant”, as defined for the purposes of the *Settlement Agreement*, and is not eligible for compensation under section 4.03. However, her children are clearly Dependents for the purpose of compensation under the *Settlement Agreement*.

[19] Regrettably, the HCV Personal Representative is not eligible for compensation either as a Family Member under section 4.01 or as a Dependant under section 4.03 of the *Settlement Agreement*.

**CONCLUSION**

[20] The appeal is dismissed.

"D. McGillis"

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

DATED December 23, 2008

TO: Claimant  
Fund Counsel  
Administrator