

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: 07-10282

**REASONS FOR DECISION**

**INTRODUCTION**

[1] The Claimant has appealed the amount of compensation granted to him in a decision of the Administrator dated September 11, 2008, in which his claim under the *Pre-1986/Post-1990 Hepatitis C Settlement Agreement* (“*Settlement Agreement*”) was approved on the basis that he was a Family Member of an HCV Infected Class Member whose death was caused by HCV infection.

**FACTS**

[2] On December 6, 2007, the Claimant filed a claim for compensation under the *Settlement Agreement* as a Family Member, specifically as a Grandchild of a deceased HCV Infected Class Member. He had never applied for or received benefits under any other settlements related to the Hepatitis C virus.

**DECISION OF THE ADMINISTRATOR AND REQUEST FOR REVIEW**

[3] In a decision dated September 11, 2008, the Administrator approved the claim for compensation in the amount of \$435.00, together with \$8.80 for indexation. The total amount of compensation approved was \$443.80.

[4] On November 10, 2008, the Claimant filed a Request for Review. He had previously filed a letter dated October 2, 2008, in which he had indicated his intention to

appeal the decision of the Administrator on the basis that the amount of compensation was unreasonable. In his letter, the Claimant described, in moving terms, the effect of the loss of his grandfather on his life.

## **ISSUE**

[5] The issue to be determined is whether the Administrator erred in approving the amount of compensation.

## **ANALYSIS**

### *i) Compensation Provisions in Settlement Agreement for Family Members*

[6] Article Four of the judicially approved *Settlement Agreement* contains the framework governing the compensation process for Dependents and Family Members of HCV Infected Class Members. With respect to Family Members, section 4.01 prescribes the eligibility requirements that must be met to make a successful claim, and section 4.02 contains the provisions for the payment of compensation.

[7] Under the terms of subsection 4.01(1) of the *Settlement Agreement*, a person who makes a claim for compensation as a Family Member must submit the required proof to the Administrator. In circumstances where the Administrator accepts the claim, the person becomes an “Approved Family Member”, as defined in section 1.01. The definition of “Approved Family Member” provides as follows:

**“Approved Family Member”** means a Family Member referred to in clause (a) of the definition of Family Member as defined herein, whose Claim made pursuant to Section 4.01 has been accepted by the Administrator.

Clause (a) of the definition of Family Member in section 1.01 states as follows:

**“Family Member”** means:

- (a) the Spouse, Child, Grandchild, Parent, Grandparent or Sibling of an HCV Infected Class Member;  
[...]  
unless any person described above opts out of the Class Action in which he or she would otherwise be a Class Member. [Emphasis Added]

A Grandchild is therefore included in the definition of Family Member for the purposes of compensation under section 4.02.

[8] Subsection 4.02(1) of the *Settlement Agreement* mandates the creation of a notional fund called the “Dynamic Non-Segregated Family Benefits Fund” within the Compensation Fund “...for the purpose of monitoring and accounting for compensation to Approved Family Members”. Following approval of a claim, subsection 4.02(2) provides for the notional transfer of the amounts set out in Schedule C3 to that fund.

[9] Under subsection 4.02(3) of the *Settlement Agreement*, an Approved Family Member is entitled to compensation in the amounts set out in Schedule C3A.

Subsection 4.02(3) states as follows:

**4.02 Compensation to Approved Family Members**

- (3) Subject to Section 5.02(2), each Approved Family Member will be paid compensation in the amounts set out in Schedule C3A in relation to the Disease Level of the HCV Infected Class Member, or in relation to an HCV Infected Class Member whose death was caused by HCV. On payment of such compensation, a corresponding deduction will be made to the notional balance of the Dynamic Non-Segregated Family Benefits Fund. [Emphasis Added]

[10] The compensation payable to an Approved Family Member in subsection 4.02(3) of the *Settlement Agreement* is expressly made subject to subsection 5.02(2), which requires a deduction of 8/11ths of any amount previously paid to or on behalf of a Family Member under the *Red Cross Settlement*, as defined in section 1.01. Subsection 5.02(2)

does not apply in the present case, as the Claimant did not receive compensation under the *Red Cross Settlement*.

[11] By virtue of the wording of subsection 4.02(3), as reproduced in paragraph 9 above, Schedule C3A is incorporated by reference into and forms part of the *Settlement Agreement*. Schedule C3A is entitled “Compensation to Family Members” and outlines a grid of lump sum compensation payments for Family Members. The amounts of compensation vary depending upon whether the HCV Infected Class Member is deceased or has attained a specific disease level, as the case may be.

[12] In addition to the compensation prescribed in Schedule C3A, subsection 4.02(4) provides for a pro-rata distribution of any positive balance remaining in the Dynamic Non-Segregated Family Benefits Fund on the Termination Date of the *Settlement Agreement*. In other words, additional compensation may be paid at a later date.

[13] A review of the compensation provisions for Family Members in the *Settlement Agreement* confirms that subsection 4.02(3) requires the payment of compensation to an Approved Family Member in the amount set out in Schedule C3A. Subsection 4.02(3) is mandatory in nature and gives the Administrator no discretion to use any other method, means or criteria to determine the amount of compensation to be paid to an Approved Family Member. In other words, the Administrator can only approve compensation for a Family Member in the amount specified in Schedule C3A, and only that amount of compensation can be paid under the terms of the *Settlement Agreement*. As indicated in the preceding paragraph, there is a possibility that an additional payment may be made on the termination of the *Settlement Agreement*.

*ii) Application of Compensation Provisions in Present Appeal*

[14] In the present appeal, the Administrator accepted the claim on the basis that the Claimant was a Family Member, a Grandchild, of an HCV Infected Class Member whose death was caused by HCV infection. As a result, by virtue of subsection 4.02(3) of the *Settlement Agreement*, the Administrator was required to pay compensation to the Claimant, an Approved Family Member, in the amount specified in Schedule C3A for a Grandchild of a deceased HCV Infected Class Member, namely \$435.00, together with indexation. The Administrator therefore committed no error in approving the total payment of \$443.80 for the Claimant. Indeed, the terms of the *Settlement Agreement* obliged the Administrator to pay compensation to the Claimant in exactly that amount.

[15] In paragraph 15 of the related appeal in Claim File 07-10295, I stated as follows:

Unfortunately, the provisions of the *Settlement Agreement* clearly dictate the specific amounts of compensation to be paid to Family Members. In the circumstances, neither the Administrator nor the Appeals Officer has any power or authority to substitute any other amount.

Regrettably, the appeal must be dismissed.

**CONCLUSION**

[16] The appeal is dismissed.

"D. McGillis"

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

DATED January 29, 2009

TO: Claimant  
Fund Counsel  
Administrator