

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL



No: 500-06-000065-983

DATE: DECEMBER 15, 2010

BY: THE HONOURABLE DANIEL H. TINGLEY, J.S.C

IN THE MATTER OF AN APPEAL FILED PURSUANT TO THE RULES FOR APPEALS UNDER THE PRE-1986/POST-1990 HEPATITIS C SETTLEMENT AGREEMENT APPROVED ON JUNE 7th, 2007 IN GUY DESJARDINS ET AL c. LE PROCUREUR GÉNÉRAL DU CANADA ET AL, S.C.M. 500-06-000065-983

BETWEEN:

CLAIMANT FILE: 08-10583
Claimant/Appellant

and

THE ADMINISTRATOR
Respondent

CORRECTED JUDGMENT

(In appeal from a Decision of the Appeals Officer released June 29, 2009)

[1] This is an appeal from a decision of an Appeals Officer appointed pursuant to the terms of the Rules for Appeal comprised in the abovementioned Pre-1986/Post 1990 Hepatitis – C Settlement Agreement (Agreement) which confirms the decision of the Administrator denying the Claimant's claim for compensation as a « Primarily – Infected Person » under the Agreement.

[2] The Agreement is pan-Canadian in scope - as was a prior agreement (the 1986-1990 Agreement) - concluded to compensate persons who were infected with Hepatitis C in Canada through a blood or specified blood product transfusion prior to January 1, 1986 or from July 2nd, 1990 to September 28, 1998 and, in certain cases, members of such person's family.

[3] The Claimant brought her claim as a « Primarily – Infected Person »¹ asserting that she was infected with the Hepatitis C virus through a « Blood »² Transfusion during the « Class Period »³. The Administrator denied the Claimant's claim on the basis that she had not received « Blood », as that Term is defined in the Agreement, during the « Class Period ».

[4] The Appeals Officer reviewed the evidence in the Appeal file and the supplementary evidence delivered by the Claimant on appeal and concluded :

« that the claimant was injected with Rh Immune Globulin, namely WinRho, a blood product that is specifically excluded from the definition of Blood for the purposes of compensation under the ... Agreement »,

adding that proof of infection with the Hepatitis C virus from an injection of Rh Immune Globulin does not establish eligibility for compensation since « she did not receive Blood ... » as defined in the Agreement.⁴

STANDARD OF REVIEW

[5] The Rules for Appeal comprised in the Agreement stipulate that the Court shall only interfere with a decision of an Appeals officer:

- 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."

¹ Defined in the Agreement as "a person who received Blood in Canada during the Class Period, including a person who has or had Thalassemia Major, and who is or was infected with HCV [...]."

² Defined in the Agreement as "[...] whole blood and the following blood products: packed red cells, platelets, plasma (fresh frozen and banked), white blood cells and cryoprecipitate. Blood does not include Albumin 5%, Albumin 25%, Factor VIII, Porcine Factor VIII, Factor IX, Factor VII, Cytomegalovirus Immune Globulin, Hepatitis B Immune Globulin, Rh Immune Globulin, (FEIBA) FEVIII Inhibitor Bypassing Activity, Autoplex (Activate Prothrombin Complex), Tetanus Immune Globulin, Intravenous Immune Globulin (IVIG) and Antithrombin III (ATIII); [Emphasis Added] [...]."

³ See paragraph [2] above.

⁴ Supra, note 2, see the highlighted exclusion from the definition of "Blood" for purposes of compensation under the Agreement.

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[6] The “patently unreasonable” standard of review has since been modified to a standard of “reasonableness simpliciter” as explained in the recent judgment of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*.⁵

REASONS FOR APPEAL

[7] The Claimant avers that the decision of the Appeals Officer is unreasonable because:

“The Administrator has used “generic” reasons that did not make specific reference to the circumstances of the claimant’s case.

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 duty of fairness to provide some reasons to explain the decision reached in each particular case.

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.

The appeal file contained abundant evidence to justify the decision made by the Administrator. In circumstances, he had decided that it would be simpler and more expeditious for him to prepare reasons that support the decision rather than remitting the matter to the Administrator.”

FINDING OF THE APPEALS OFFICER

[8] The Appeals Officer addressed the concerns raised by the Claimant in her Reasons for Appeal and, as noted above in paragraph [4], she dismissed the appeal before her as “a person who develops an infection with Hepatitis C after receiving an injection of Rh Immune Globulin cannot be awarded compensation under the ... Agreement” since the term “Blood” is defined to specifically exclude “Rh Immune Globulin”, notwithstanding that such globulin may have come from “plasma”, a blood product that is included in the definition of “Blood”.

[9] This finding flows logically from the definition in the Agreement of “Blood”; a definition that is clear and unambiguous. It is neither wrong, nor unfair nor unreasonable in all the circumstances of the Claimant’s claim to conclude that she was unable to demonstrate that she “received Blood in Canada during the Class Period”.⁶ Rather, such conclusion is entirely consistent with the plain language of the Agreement.

⁵ (2008) 1 S.C.R., 190, especially at paragraphs [45] to [47] inclusive.

⁶ See Article 7.01 (1), (2) and (3) of the Agreement.

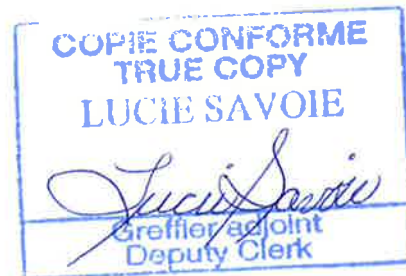
[10] Both the Appeals Officer and the Administrator are bound to observe, apply and enforce the terms of the Agreement, providing in essence that all claims whatsoever relating to or arising from the infection of persons with Hepatitis C through the blood system during the Class Period "are to be settled on the terms set out in this Agreement."⁷

[11] **FOR THESE REASONS, THE COURT:**

[12] **DISMISSES** the appeal from the Decision of the Appeals Officer.



DANIEL H. TINGLEY, J.S.C



⁷ As set out in the "Therefore" clause preceding Article One of the Agreement.