

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: 07-04832

REASONS FOR DECISION

INTRODUCTION

[1] The Claimant has appealed a decision of the Administrator dated July 29, 2008, in which her claim for compensation under the *Pre-1986/Post-1990 Hepatitis C Settlement Agreement* (“*present Settlement Agreement*”) was denied on the basis that she was a Class Member of the *1986-1990 Hepatitis C Settlement Agreement*.

FACTS

[2] The Claimant filed a claim for compensation under the *present Settlement Agreement* on December 4, 2007 and stated that she was a Primarily-Infected Person who was infected with the Hepatitis C virus through blood transfusions received in Canada during the Class Period. The Claimant had received blood transfusions after childbirth in 1975 and surgery in 1988.

[3] The Claimant had applied for and received compensation in the amount of \$46,759.79 under the *1986-1990 Hepatitis C Settlement Agreement*.

DECISION OF THE ADMINISTRATOR AND CLAIMANT’S APPEAL

[4] In a decision dated July 29, 2008, the Administrator denied the claim for compensation on the basis that the Claimant was a Class Member of the *1986-1990*

Hepatitis C Settlement Agreement and therefore did not meet the criteria for class membership under the *present Settlement Agreement*. In support of its decision, the Administrator reproduced the definition of “HCV Infected Class Member”, as well as subsection 5.04(3) of the *present Settlement Agreement*.

[5] The Claimant filed a Request for Review on September 10, 2008, in which she appealed the denial of her claim for compensation. In support of her appeal, she submitted a letter dated November 29, 2008 which included, among other things a summary of the severe effects of the Hepatitis C disease on her life, such as surgeries that she was required to have, side-effects from medication, depression, loss of livelihood and isolation caused by others rejecting her. She indicated the she was appealing because “... no matter what year I was infected with the Hepatitis C virus everyone deserves the same compensation”.

ISSUE

[6] The issue to be determined is whether the Administrator committed any error in denying the claim for compensation on the basis that the criteria for class membership under the *present Settlement Agreement* were not met.

ANALYSIS

[7] In order to be eligible for compensation under the *present Settlement Agreement*, a person must be a Class Member, which is defined in section 1.01 as follows:

“Class Member” means all Primarily-Infected Class Members, all Secondarily-Infected Persons, all HCV Personal Representatives and all Family Members and Dependants, but excludes all persons who opt out, or are deemed to have opted-out of a Class Action; [Emphasis Added]

A Primarily-Infected Class Member is defined as follows:

“Primarily-Infected Class Member” means collectively “Primarily-Infected Person” and “Primarily-Infected Hemophiliac”. No person is a Primarily-Infected Class Member for the purposes of this Agreement if he or she is a Primarily-Infected Person or a Primarily-Infected Hemophiliac or Secondarily-Infected Person under the 1986-1990 Hepatitis C Settlement. [Emphasis Added]

The definition of “Primarily-Infected Class Member” therefore excludes from its meaning a person, such as the Claimant, who was a Primarily-Infected Person under the *1986-1990 Hepatitis C Settlement Agreement*. That exclusion also appears in the definition of “HCV Class Member” in section 1.01, which provides as follows:

“HCV Infected Class Member” means collectively Primarily-Infected Class Members and Secondarily-Infected Persons. No person is an HCV Infected Class Member for the purposes of this Agreement if he or she is a Primarily-Infected Person, Primarily-Infected Hemophiliac, or Secondarily-Infected Person under the 1986-1990 Hepatitis C Settlement Agreement. [Emphasis Added]

The definitions of “Primarily-Infected Class Member” and “HCV Infected Class Member” in section 1.01 therefore clearly indicate that a Primarily-Infected Person who received compensation under the *1986-1990 Hepatitis C Settlement Agreement* is not included in the class membership under the *present Settlement Agreement*.

[8] Subsection 2.01(1) of the *present Settlement Agreement* contains the eligibility requirements that must be met by a person claiming compensation as a Primarily-Infected Member. For the purposes of the present appeal, the relevant parts of subsection 2.01(1) state as follows:

2.01 Eligibility - Primarily-Infected Class Member

(1) A person claiming to be a Primarily-Infected Class Member must deliver to the Administrator, within three years after the death of such HCV Infected Class Member or within two years after the Implementation Date, whichever event is

the last to occur, an application form prescribed by the Administrator together with: [Emphasis Added] [...]

[9] The usage of the expression “Primarily-Infected Class Member” in subsection 2.01(1) of the *present Settlement Agreement* incorporates by reference the full definition of that term from section 1.01, as reproduced in paragraph 7 above. As a result, a claimant who was a Primarily-Infected Person under the *1986-1990 Hepatitis C Settlement Agreement* is specifically excluded from eligibility for compensation under the *present Settlement Agreement*.

[10] The Claimant made a claim for compensation under the *1986-1990 Hepatitis C Settlement Agreement*. Her claim was approved as a Primarily-Infected Person and she received compensation in the amount of \$46,759.79. She is therefore specifically excluded from the meaning of the expression “Primarily-Infected Class Member”, as that term is defined in section 1.01 and used in subsection 2.01(1) of the *present Settlement Agreement*. As a result, she is not a Primarily-Infected Class Member and cannot meet the threshold eligibility requirement in subsection 2.01(1) of the *present Settlement Agreement*. In the circumstances, her claim for compensation cannot succeed.

[11] The Administrator therefore committed no error in denying the claim for compensation on the basis that the Claimant did not meet the requirements for class membership under the *present Settlement Agreement*. I note in passing that the Administrator referred to subsection 5.04(3) in support of its decision. Subsection 5.04(3) is an evidentiary provision that has no relevance in circumstances where a claimant has failed to meet the threshold eligibility requirement in subsection 2.01(1).

CONCLUSION

[12] The appeal is dismissed.

"D. McGillis"

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

DATED December 10, 2008

TO: Claimant
Fund Counsel
Administrator