

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: 08-12409

REASONS FOR DECISION

INTRODUCTION

[1] The Claimant has appealed a decision of the Administrator dated August 11, 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 had not received Blood during the Class Period.

FACTS

[2] The Claimant filed a claim for compensation under the *Settlement Agreement* on May 21, 2008. In that claim, the Claimant stated that she was a Primarily-Infected Person who was infected with the Hepatitis C virus through a blood transfusion received on June 9, 1981 in Poland. She never received a blood transfusion in Canada.

DECISION OF THE ADMINISTRATOR

[3] In a decision dated August 11, 2008, the Administrator denied the claim for compensation. In its Reasons for Decision, the Administrator stated as follows:

The Settlement Agreement requires the Administrator to determine a person’s eligibility for class membership.

All the material that you provided to support your claim was carefully reviewed by the Administrator. You have not provided sufficient evidence to support that you or the HCV Infected Class Member received **Blood** during the Class Period, as defined in the Settlement Agreement. [Administrator’s Emphasis]

After reproducing the full definition of “Blood” in the *Settlement Agreement*, the decision continued as follows:

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 approved 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.

The Administrator did not address or make any reference to the fact that the Claimant had never received Blood in Canada and was infected with Hepatitis C as a result of a blood transfusion in Poland.

ISSUE

[4] The issue to be determined is whether the decision of the Administrator denying the claim was reasonable on the basis of the evidence.

ANALYSIS

[5] A review of the Reasons for Decision denying the claim for compensation confirms that the Administrator has used “generic” reasons that do not address the central issue raised by the facts, namely whether the Claimant had received Blood in Canada. In the Reasons for Decision rendered on the appeal in Claim File 07-03416, I stated the

following in a case where the Administrator had used the same 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]

[6] In applying the principles enunciated above, I have determined that there is abundant evidence in the present case to justify the decision made by the Administrator,

despite the absence of cogent reasons. I have therefore decided to prepare the reasons that support the decision, rather than remitting the matter to the Administrator.

[7] Under the terms of the *Settlement Agreement*, a person claiming to be a Primarily-Infected Class Member, such as the Claimant, must satisfy the eligibility requirements in section 2.01 in order to make a successful claim for compensation. In the circumstances of the present claim, the relevant provisions are subsections 2.01(1) and (2) which 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 an application form prescribed by the Administrator together with:

a) medical, clinical, laboratory, hospital, The Canadian Red Cross Society, Canadian Blood Services or Hema-Quebec records demonstrating that the claimant received Blood in Canada during the Class Period; [...]

(2) Notwithstanding the provisions of Section 2.01(1)(a), if a claimant cannot comply with the provisions of Section 2.01(1)(a), the claimant must deliver to the Administrator corroborating evidence independent of the personal recollection of the claimant or any person who is a Family Member of the claimant establishing on a balance of probabilities that he or she received Blood in Canada during the Class period. [Emphasis Added]

Subsection 2.01(1) and (2) therefore clearly state that a claimant must have “received Blood in Canada” in order to be eligible for compensation under the *Settlement Agreement*.

[8] In the Reasons for Decision rendered on the appeal in Claim File 07-03-416, I also interpreted the meaning to be accorded to the phrase “received Blood in Canada”,

as it appears in the eligibility requirements in subsections 2.01(1) and (2) of the

Settlement Agreement, by stating as follows in paragraphs 21 to 23:

[21] Given the position of the Claimant that she received Blood by means of HCV-infected tools or equipment used during her surgery in 1991, it is necessary to interpret the meaning of the expression “received Blood in Canada”, as used in paragraph 2.01(1)(a) of the *Settlement Agreement*, in order to determine the question of her eligibility for compensation. In that regard, the words used in the enabling instrument “... must be interpreted in a textual, contextual and purposive way [See *Canada Trustco Mortgage Co. v. Canada*, [2005] S.C.R. 601, at paragraphs 10 and 11]. In other words, the purpose of the *Settlement Agreement* must be considered, as well as the usage of the expression “received Blood in Canada” in the proper context in which it appears in the text.

[22] The purpose of the *Settlement Agreement*, as expressed in the opening and concluding paragraphs of its recitals, is “... to settle all outstanding claims against Canada ... relating to or arising from the infection of persons with Hepatitis C through the blood system during the Class Period...”. That phrase is repeated in various sections of the *Settlement Agreement*, including the definition of “Compensation Plan” and the Release provision in section 1.09, as well as in the Release at Schedule “A” that must be signed by a successful claimant prior to the receipt of any compensation. The clear purpose and intent of the *Settlement Agreement* is therefore to compensate only those persons who were infected with Hepatitis C through the blood system in Canada.

[23] As indicated previously, the expression “received Blood in Canada”, as used in the eligibility requirements in paragraph 2.01(1)(a), subsection 2.01(2) and elsewhere, must be interpreted in a manner consistent with the fundamental purpose of the Settlement Agreement, having also regard to its context and usage in the text. When considered in that manner, the phrase “received Blood in Canada” can only be interpreted as meaning that a claimant must have received Blood that came from the blood system in Canada in order to satisfy the eligibility requirements under the Settlement Agreement.
[Emphasis Added]

I should also note that the Certification Orders and Judgments issued by the supervising judges in the superior courts of Ontario, Quebec, Alberta and British Columbia confirm that the settlement of the class action on the terms agreed to in the *Settlement Agreement* relates solely to Hepatitis C infections caused by Blood provided through the blood system in Canada during the Class Period.

[9] The evidence in the Appeal File confirms that the Claimant developed a Hepatitis C infection as a result of a blood transfusion that she received in Poland and that she never received Blood in Canada. As a result, the Claimant cannot satisfy the eligibility requirements in section 2.01 and is not entitled to receive compensation under the *Settlement Agreement*.

CONCLUSION

[10] The appeal is dismissed.

"D. McGillis"

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

DATED December 11, 2008

TO: Claimant
Claimant's representative
Fund Counsel
Administrator