

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: 09-18036

REASONS FOR DECISION

INTRODUCTION

[1] The Claimant has appealed a decision of the Administrator dated November 16, 2009, in which the application for compensation under the *Pre-1986/Post-1990 Hepatitis C Settlement Agreement* (“*Settlement Agreement*”) was denied on the basis that it was not made within the time period specified in subsection 4.01(1).

FACTS

[2] On September 15, 2008, the primary application made by the HCV Infected Class Member was approved.

[3] On October 19, 2009, the Family Member application for compensation of the Claimant, as a Parent, was delivered to the Administrator by his daughter-in-law, the wife of the HCV Infected Class Member. The Claimant’s daughter-in-law included a covering letter dated October 15, 2009 with the application. She also sent the following documents: an e-mail from her mother-in-law (“wife of the Claimant”); the birth certificate of the Claimant; and the long birth certificate of the Claimant. In the letter, she stated, in part, as follows:

I am [the daughter-in-law of the HCV Infected Class Member] and I was speaking to someone at the Help Desk over the last couple of weeks on the status of my in laws claim for compensation. It appears that as of my last telephone call their applications had not been received by your office. I checked my correspondence with my mother in law and she had mailed off both hers and dad’s application on August 26th, 2009. I know I told her to get a tracking number

but it appears she just used regular Canada Post. She is 81 years old almost and I guess we can forgive her not remembering that one little detail to get a tracking number. I am resending their applications so that I can call and speak on their behalf and so that you have one application in file until the ones mailed regular finally turn up.

I have included a copy of the email [my mother-in-law] sent to me, [...]
[Emphasis Added]

[4] The application for compensation was signed by the Claimant on June 6, 2009. He signed the Form B – Authorization to Release Other Settlement Information on July 12, 2009.

[5] An e-mail dated September 3, 2009 and entitled “Hep C application” was sent from the wife of the Claimant to her daughter-in-law stated, in part as follows:

I mailed everything except the long birth certificate which has not yet come. [Illegible] problems with the numbers for payment. That has been rectified [sic]. The date of the [illegible] August 26/09. That is all I can do for now.¹ [Emphasis Added]

[6] The birth certificate of the Claimant was issued on October 28, 2008. His long birth certificate was issued on September 19, 2009.

DECISION OF THE ADMINISTRATOR

[7] In a decision dated November 16, 2009, the Administrator denied the claim on the basis that the Claimant had not delivered the application for compensation within the one year time period specified in subsection 4.01(1) of the *Settlement Agreement*. In the decision, the Administrator stated, in part, as follows:

You applied for Family Member compensation noting your relationship to an HCV Infected-Class Member. As noted previously, in order to be eligible for compensation you must deliver your application within one year after the date of approval made on behalf of the HCV Infected Class Member or within one year of the claimant attaining the age of majority, whichever event is the last to occur. The Claim made on behalf of the HCV Infected Class Member was approved September 15, 2008 and your application was delivered to the Administrator on

¹ The right hand side of the e-mail was cut off in the photocopy.

October 19, 2009, which is more than one year after the date of Approval. Based on this the Administrator must reject your claim as the eligibility deadline has passed. [Emphasis Added]

REQUEST FOR REVIEW

[8] On December 14, 2009, the Claimant delivered a Request for Review in which he indicated that the first application for compensation was “lost in the mail” and there was correspondence to confirm the date of mailing.

ISSUE

[9] The issue to be determined is whether the Administrator erred in denying the claim on the basis that the application for compensation was not delivered within the time period specified in subsection 4.01(1) of the *Settlement Agreement*.

ANALYSIS

i) Interpretation of section 4.01 of the Settlement Agreement

[10] In the Reasons for Decision on the appeal in Claim File 07-10239, I analysed the provisions in Article Four of the *Settlement Agreement* governing the payment of compensation for Dependants and Family Members and stated, in part, as follows:

iii) Eligibility Requirements in section 4.01 for Compensation as a Family Member

[10] Under the terms of the judicially approved *Settlement Agreement*, a person claiming to be a Family Member 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]

[11] Subsection 4.01(1) of the *Settlement Agreement* requires the application for compensation of a Family Member to be delivered within one year after the date of approval of an application made by or on behalf of the HCV Infected Class Member.

[12] The e-mail dated September 3, 2009 from the wife of the Claimant to her daughter-in-law was entitled "Hep C application". It stated that she had "mailed everything except the long birth certificate which has not yet come". She also referred to the date of August 26, 2009, although the sentence was not completely reproduced in the photocopy. In any event, the e-mail confirms that the application for compensation was sent by no later than September 3, 2009, a date within the prescribed time period in subsection 4.01(1) of the *Settlement Agreement*. Furthermore, the long birth certificate was issued on September 19, 2009 and corroborates the statement in the e-mail that the "long birth certificate had not yet come". In the circumstances, the Administrator erred by not considering the totality of the evidence in arriving at the decision to deny the application for compensation.

[13] The Claimant's application for compensation as a Family Member delivered on October 19, 2009 shall be deemed to have been delivered within the time period

prescribed in subsection 4.01(1) of the *Settlement Agreement*, and the Administrator shall consider the application on its merits.

CONCLUSION

[14] The appeal is allowed.

"D. McGillis"

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

DATED May 25, 2010

TO: Claimant
Fund Counsel
Administrator