

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: 09-18288

REASONS FOR DECISION

INTRODUCTION

[1] The Claimant has appealed a decision of the Administrator dated March 22, 2010, 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 prescribed in subsection 4.01(1).

FACTS

[2] On May 29, 2008, the primary application made by the HCV Infected Class Member was approved.

[3] On January 22, 2010, the Claimant delivered an application for compensation under the *Settlement Agreement* as a Spouse of an HCV Infected Class Member; the application was signed on December 3, 2009.

DECISION OF THE ADMINISTRATOR

[4] In a decision dated March 22, 2010, the Administrator denied the claim on the basis that the Claimant had not delivered the application for compensation within the one year time period prescribed in subsection 4.01(1) of the *Settlement Agreement*. In the decision, the Administrator stated, in part, as follows:

As noted previously in order to be eligible for compensation the Family Member must deliver the Application for compensation to the Administrator within one year after the date of Approval of the HCV Infected Class Member. The HCV Infected Class Member's application was approved on May 29, 2008 and you signed your Application Form "A" on December 3, 2009. Based on this your claim must be rejected.

REQUEST FOR REVIEW

[5] On April 15, 2010, the Claimant delivered a Request for Review in which she specified the reasons for appealing as follows:

- 1) Was in time limits according to Crawford Rep.
- 2) Claim was in final approval in Apr. 09
- 3) Information was unclear and poorly presented
- 4) Specifics will be available after appeal stats per Crawford Rep. instructions

SUPPLEMENTARY EVIDENCE

[6] On May 12, 2010, the HCV Infected Class Member (the spouse of the Claimant) delivered an affidavit that stated as follows:

1. Crawford Class Action Services (CCAS) employee in the Section 9 area told me not to file for Spousal benefits till Section nine was approved.
2. CCAS employee in Section 9 told me [the Claimant] had till June 2010 to file for benefits for herself.
3. Claim was not approved in its totality till Section 9 was done. That was made clear to me.
4. Even though my claim (Part A) was approved in May of 2008, by Christmas 2008 they (CCAS) had no idea how to calculate monies owed or even if I qualified.
5. The above is the information I received from CCAS and what I relied on in order to progress through the difficult and confusing parts of the settlement.
6. The web site with the settlement details was hard to read for a layman as it seemed to be written by lawyers. Even as it turns out Crawford employees knew only parts of the settlement and had quite inaccurate information that I relied on.
7. I told [the Claimant] to make the phone call to get the paperwork for spousal benefits before April 2010 to allow mail to get through. I believe she called in December.
8. I was not allowed to ask for the paperwork or have anything to do with the spousal benefits and relied on CCAS to steer me in the right direction.

9. It is my understanding all phone calls are taped and the conversations I had with CCAS will substantiate all of which has been stated above with the exception of my conversation with [the Claimant] asking her to call CCAS before April 2010 for the paperwork.

ISSUE

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

ANALYSIS

[8] In the Reasons for Decision on the appeal in Claim File 07-10239, I considered 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]

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

[9] In the Reasons for Decision on the appeal in Claim File 10-19049, I dismissed an appeal in circumstances where an HCV Infected Class Member had undertaken responsibility for handling the Family Member applications for compensation, but had not delivered them within the time period prescribed in subsection 4.01(1) due to very difficult personal circumstances. In dismissing the appeal, I stated, in part, as follows:

ii) Did the Administrator err in denying the claim?

[10] The evidence establishes that the primary application for compensation of the HCV Infected Class Member was approved on December 15, 2008. More than one year later, on February 3, 2010, the Claimant delivered the application for Family Member compensation as a Spouse. The Request for Review was not delivered by the Claimant, but by the HCV Infected Class Member who explained that she had missed the deadline for delivering the applications for Family Member compensation due to health problems suffered by her and her son. In written submissions on appeal, the Claimant indicated, among other things, that the HCV Infected Class Member was “taking care of the application” and he was taking care of their son. He also noted that the disabling effects of the Claimant’s injury “lasted all autumn”.

[11] Subsection 4.01(1) of the *Settlement Agreement* requires, in mandatory terms, “the person claiming to be a Family Member” to deliver the application for compensation within one year after the date of approval of the HCV Infected Class Member’s application. The responsibility for complying with the terms of subsection 4.01(1) rests on the person claiming to be a Family Member. The Claimant therefore had a responsibility to ensure that he delivered his application for compensation as a Family Member within the time period prescribed in subsection 4.01(1). The difficult family circumstances that arose in the fall of 2009 and the fact that he apparently relied on the injured and ill HCV Infected Class Member to assume his responsibility to deliver his application in a timely manner cannot excuse his non-compliance with the mandatory time period. Unfortunately, the Claimant did not comply with the deadline prescribed in subsection 4.01(1) of the *Settlement Agreement*. As a result, he is not eligible for compensation as a Family Member under section 4.01 of the *Settlement*

Agreement, and the Administrator did not err in denying the claim for compensation. [Emphasis Added]

[10] In the Reasons for Decision on appeal in Claim File 10-19081, I noted that the deadline for Family Member compensation under subsection 4.01(1) of the *Settlement Agreement* is clearly specified in the Instructions for Family Member applications on the website, as well as in the information package given to Family Member claimants.

[11] For the reasons given in Claim File 10-19049, the appeal is dismissed.

[12] Although I fully understand the frustration and distress that this decision will cause to the Claimant, the terms of the *Settlement Agreement* are the result of an agreement between the Parties that was approved by the Courts; neither the Administrator nor the Appeals Officer has any power or discretion to alter those terms.¹

CONCLUSION

[13] The appeal is dismissed.

"D. McGillis"

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

DATED June 4, 2010

TO: Claimant
Fund Counsel
Administrator

¹ See two recent decisions on further appeals to the Court concerning the binding nature of the provisions of the *Settlement Agreement*: Claim Files 08-15662, 08-13831 and 07-10252 dated March 25, 2010 (Chief Justice Winkler) and Claim File 07-01482 dated April 7, 2010 (Mr. Justice Pitfield).