

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: 09-17004

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 prescribed in subsection 4.01(1).

FACTS

[2] On June 2, 2008, the primary application for compensation was approved.

[3] On July 21, 2009, the Claimant delivered a Family Member application for compensation under the *Settlement Agreement* as a sibling of an HCV Infected Class Member.

DECISION OF THE ADMINISTRATOR

[4] 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 prescribed 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 of the HCV Infected Class Member’s Application or within one year of the claimant attaining the age of majority, whichever event is the last to occur. The HCV Infected Class Members [sic] claim was approved on June 2, 2008 and

your application was delivered to the Administrator on July 21, 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 AND WRITTEN SUBMISSIONS ON APPEAL

[5] On December 4, 2009, the Claimant delivered a Request for Review in

which she specified the reasons for appealing as follows:

I was made aware middle of 2009. Forms were requested filled out and returned July 15, 2009. A Deficiency Letter was received and returned Aug. 6, 2009. In that letter it says the deadline for this is Dec. 10, 2009. I feel if there is money available for siblings (which I am) that my review should be considered.

[6] By letter dated December 18, 2009, the Fund Counsel advised the

Claimant, among other things, that the date of December 10, 2009 in the

deficiency letter was the date by which certain deficiencies in the application had to be cured.

[7] In letters dated May 11 and June 14, 2010, the Claimant reiterated her

position that, if money was available for the compensation of siblings, her claim should be considered

ISSUE

[8] 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

[9] 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 Dependents 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:

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]

[10] 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.

ii) *Did the Administrator err in denying the claim?*

[11] The evidence establishes that the primary application for compensation of the HCV Infected Class Member was approved on June 2, 2008. More than one year later, on July 21, 2009, the Claimant delivered the application for compensation. Subsection 4.01(1) of the *Settlement Agreement* requires, in mandatory terms, a Family Member application for compensation to be filed within one year after the date of approval of the HCV Infected Class Member's application. Unfortunately, the Claimant did not comply with the deadline specified in subsection 4.01(1) of the *Settlement Agreement*. As a result, she 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.

[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 July 26, 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).