

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 FILES:
10-19014, 10-19015, 10-19016

REASONS FOR DECISION

INTRODUCTION

[1] The Claimants in three related files have each appealed a decision of the Administrator dated March 22, 2010, in which the applications for compensation as Family Members under the *Pre-1986/Post-1990 Hepatitis C Settlement Agreement* (“*Settlement Agreement*”) were denied on the basis that they were not made within the time period prescribed in subsection 4.01(1).

FACTS

[2] On December 1, 2008, the primary application made by the HCV Infected Class Member was approved.

[3] On January 29, 2010, the three Claimants each delivered an application for compensation as a Family Member under the *Settlement Agreement*. The applications were made on the following basis in each file:

10-19014 – Sibling
10-19015 – Parent (Mother)
10-19016 – Parent (Father)

DECISION OF THE ADMINISTRATOR

[4] In decisions dated March 22, 2010, the Administrator denied the claims on the basis that the Claimants had not delivered the applications for compensation within the one year time period prescribed in subsection 4.01(1) of the *Settlement Agreement*. The

decisions were identical, save and except for the reference to the relationship with the HCV Infected Class Member. In the decision made in Claim File 10-19016, the Administrator stated, in part, as follows:

You applied for Family Member compensation as a parent of 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 Member's claim was approved on December 1, 2008 and your application was delivered to the Administrator on January 29, 2010 which is more than one year after the Approval of the Primary Claim. Based on this the Administrator must reject your claim as the eligibility deadline has passed. [Emphasis Added]

REQUEST FOR REVIEW

[5] The three Claimants each delivered a Request for Review on April 12, 2010. The reason for appealing the decision in each case was specified as "was not aware of time lapse".

SUBMISSIONS ON APPEAL

[6] In a letter to the Fund Counsel dated June 23, 2010, the Claimants made the following submissions on appeal:

We are writing in regards to our denial of claim for our son/brother's case. Firstly we were unaware that there is compensation for this and when we were given the forms we had them during holiday time and were not able to send them. We also, were not aware of the time lapse and deadlines. Since we had about 11/2 months, we were unable to respond in that time.

ISSUE

[7] The issue to be determined is whether the Administrator erred in denying the applications for compensation on the basis that they were 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.

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 1, 2008. More than one year later, on January 29, 2010, the Claimants delivered the applications for compensation as Family Members. 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 Claimants did not comply with the time period prescribed in subsection 4.01(1) of the *Settlement Agreement*. As a result, they are not eligible for compensation as Family Members under section 4.01 of the *Settlement Agreement*, and the Administrator did not err in denying the claim for compensation. I also note that the Claimants had the forms about one and half months before the expiry of the time period in subsection 4.01(1) of the *Settlement Agreement*. In the circumstances, they had ample time to deliver their applications within the prescribed time period.

[11] Although I fully understand the frustration and distress that this decision will cause to the Claimants, 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

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).

CONCLUSION

[12] The appeals are dismissed.

"D. McGillis"

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

DATED July 26, 2010

TO: Claimants
Fund Counsel
Administrator