

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: 10-19172

**REASONS FOR DECISION**

**INTRODUCTION**

[1] The Claimant has appealed a decision of the Administrator dated March 26, 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 October 22, 2008, the primary application for compensation was approved.

[3] On February 16, 2010, the Claimant delivered an application for compensation under the *Settlement Agreement* as a Grandchild of an HCV Infected Class Member.<sup>1</sup> The application indicated that it was signed on April 6, 2009.

**DECISION OF THE ADMINISTRATOR**

[4] In a decision dated March 26, 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:

You applied for Family Member compensation as the Grandchild 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

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<sup>1</sup> The Claimant inadvertently checked the box indicating that he was a “Grandparent”.

the claimant attaining the age of majority, whichever event is the last to occur. The HCV Infected Class Member's claim was approved on October 22, 2008 and your application was delivered to the Administrator on February 16, 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 AND WRITTEN SUBMISSIONS ON APPEAL**

[5] On April 13, 2010, the Claimant delivered a Request for Review in which he specified the reasons for appealing as follows:

I sent my original claim application in on April 6, 2009 and never heard back. Both my brother and sister sent in claims and said their response took some time so I waited patiently. Then I began calling and after many calls I learned my application was not received. Please see my original claim included in this envelope. Also during this time I was in the process of moving from [address deleted] to [another address deleted] so mail might not have got threw [sic] to me.

[6] The application delivered to the Administrator on February 16, 2010 was identical to the copy included with the Request for Review that the Claimant stated was sent on April 6, 2009.

[7] In an e-mail to the Fund Counsel dated May 20, 2010, the Claimant stated as follows:

11/11/08 [Name deleted]<sup>2</sup> got an acknowledgement of claim form [...]. On 11/21/08 he received an [sic] confirmation that his claim was approved and he was subsequently sent a check.

In December [my father] gave my brother, sister and I all the info required to file the claim. He showed us all how to fill out the claim form, where to mail it and gave us detailed notes for all the information.

02/02/09 I sent in my file in to Crawford.

In January, [my brother] send [sic] his info and got a response on 04/20/2009 that the administrator had received his submission [...]. Then on 05/19<sup>th</sup>/2009 he was informed that his application was approved and he was subsequently sent a check.

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<sup>2</sup> It would appear from the context that the person named was the father of the Claimant.

In January, [my sister] send [sic] her info and got a response on 03/05/2009 that the administrator had received her submission [...]. I don't have the date that she was approved but she was informed that her application was approved and she was subsequently sent a check.

04/06/2009 I mailed my information to the same address as both my brother and sister and never got a response. I did not send registered mail and will not make this mistake again. I was told that the process can take some time so I waited patiently.

10/27/09, 11/11/09, 11/18/09, 02/08/2010 I called Crawford Class Action Services to inquire on my submission but never learned that they had not received it.

On 02/08/2010 I learned that my submission was not received and I needed to send it again.

02/9/2010 I resent my original paperwork

02/18/2010 I got a letter or acknowledgement that my second mailing of the application had been received (file #[...]). I still didn't know at this time that there was a time frame and I was past it.

03/26/2010 I received a letter from Crawford that my claim was denied because I must have filed with in one year after the Approval of the Primary Claim. This was the first time in learned that there was a time limit on this process. [...] [Emphasis Added]

## **REQUEST FOR INFORMATION BY APPEALS OFFICER**

[8] In the e-mail reproduced in paragraph 7, the Claimant stated that he had “[...] sent his file in to Crawford” on February 2, 2009 and had also mailed his information on April 6, 2009 to the same address used by his brother and sister for their applications for compensation. By e-mail dated September 20, 2010, I requested information from the Administrator concerning the documents sent by the Claimant to the Administrator on February 2, 2009. In an e-mail response dated September 21, 2010, the Appeals Coordinator for the Administrator stated as follows:

I have reviewed the file and the first documents the Administrator received from the Claimant were received on February 16, 2010. There were no documents received prior to this time.

## 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 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]

[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.

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

[12] The evidence establishes that the primary application for compensation of the HCV Infected Class Member was approved on October 22, 2008. More than one year later, on February 16, 2010, the Claimant delivered an application for compensation as a Family Member. 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. In an e-mail to the Fund Counsel, reproduced in paragraph 7, the Claimant stated that he and his siblings had received from their father all of the information required to file a claim, including "where to mail it". Each of his siblings sent information to the Administrator on one occasion only. However, the Claimant stated that he had sent documents to the Administrator on two occasions: February 2, 2009 and April 6, 2009. In his outline of the circumstances surrounding his application, he made no further reference to the materials that were sent on February 2, 2009 and did not explain why he would have sent documents to the Administrator twice. In any event, the Appeals Coordinator of the Administrator confirmed that documents were received from the Claimant only on February 16, 2010. The Claimant also stated that he had called the office of the Administrator on four separate occasions to inquire about the status of his application. Although he provided the specific dates of the calls, he did not indicate the names of the persons to whom he spoke

or any other details concerning the conversations. Finally, the Claimant provided no independent evidence to corroborate any of the details provided in his outline.

[13] I have concluded that the evidence, when considered in its totality, does not establish that the Claimant sent his application for compensation within the mandatory time period 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.

[14] In the e-mail reproduced in paragraph 7, the Claimant stated that he was not aware of the prescribed time period for filing a Family Member claim until he received the decision of the Administrator denying the application. 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.

[15] 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.<sup>3</sup>

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<sup>3</sup> 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**

[16] The appeal is dismissed.

"D. McGillis"

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

DATED September 22, 2010

TO: Claimant  
Fund Counsel  
Administrator