

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: 10-20097

REASONS FOR DECISION

INTRODUCTION

[1] The Claimant has appealed a decision of the Administrator dated July 15, 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 August 5, 2008, the primary application for compensation was approved.

[3] On June 1, 2010, the Claimant delivered an application for compensation under the *Settlement Agreement* as a Spouse of an HCV Infected Class Member.

[4] In a decision dated September 30, 2010, I dismissed an appeal in a related Family Member application for compensation in Claim File 10-20138.

DECISION OF THE ADMINISTRATOR

[5] In a decision dated July 15, 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 Child 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 August 5, 2008 and your application was delivered to the Administrator on June 1, 2010, which is more than one year after the Approval of the Primary Claim. Based on this the Administrator has no choice but to reject your claim as the eligibility deadline has passed. [Emphasis Added]

REQUEST FOR REVIEW AND WRITTEN SUBMISSIONS ON APPEAL

[6] On August 10, 2010, the Claimant delivered a Request for Review in which she specified the reasons for appealing as follows:

To [sic] difficult to figure out the deadline for Family Members when looking in website and also from letters by the Administrator. I thought deadline was June 30, 2010 as this day was showing in one section of website.

[7] By letter dated September 5, 2010, the children of the HCV Infected Class Member wrote a letter on behalf of the Claimant, their mother, who was out of the country. The letter outlined the "many reasons" why she had missed the deadline. I have carefully read the letter, and it is unnecessary to reproduce it in its entirety. The children explained in detail, among other things, that the Claimant was unable to think about making a Family Member claim due to the time that she spent caring for the HCV Infected Class Member. She did not discuss the claim with him, and nothing was communicated directly to her. The reasons for appealing were summarized as follows:

1. The Deadline was not clearly communicated directly to the [Claimant] spouse
2. She was under enormous stress and was (still is) dealing with great depression
3. She is a senior lacking computer and legal know-how
4. English is not her first language.

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 August 5, 2008. Almost two years later, on June 1, 2010, the Claimant delivered the application for compensation.

[12] I have carefully considered all of the reasons advanced by the Claimant in the Request for Review and the submissions on appeal in the letter dated September 5, 2010, described and reproduced in part in paragraph 7. The Claimant stated, among other things, that it was too difficult to determine the deadline from the website and the Administrator's letters. It was also noted in the letter that English was not her first language.

[13] 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 on the website in the "Instructions" for Family Member applications, as well as in the "Claim Application Package for Family Members and/or Dependants" provided for Family Member claimants. In particular, both the website and the Claim Application Package specify the deadline for the filing of Family Member applications in the following clear and express terms:

Deadline for Family Member Claim

Family Members must submit an application form to the Administrator within one year after the date of approval of an application for compensation under this Agreement by or on behalf of the HCV Infected Class Member or within one year of the claimant attaining the age of majority, whichever is the last to occur.
[Emphasis Added]

In addition, both the website and the Claim Application Package give the coordinates of the Administrator, including the telephone number, for claimants who require assistance.

A person who requires assistance for any reason, including determining a deadline date or language difficulties, may telephone the office of the Administrator.

[14] 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 concluded that the responsibility for complying with the terms of subsection 4.01(1) rests with the person claiming to be a Family Member and stated 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]

[15] 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 time period prescribed 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.

[16] 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

[17] The appeal is dismissed.

"D. McGillis"

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

DATED October 18, 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).