

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: 09-17310

REASONS FOR DECISION

INTRODUCTION

[1] The Claimant has appealed a decision of the Administrator dated September 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 made for the first time after June 30, 2010 and did not fall within one of the exceptions provided in subsection 5.01(1).

FACTS

[2] On July 22, 2010, the Claimant delivered an application for compensation under the *Settlement Agreement*.

[3] In the General Information Form, the Claimant stated that he was a Primarily-Infected Person who was infected with the Hepatitis C virus through a blood transfusion received in Canada during the Class Period. In the part “Section G – Other Risk Factors”, he indicated tattoos from “July 2009” as a risk factor. He was born in 1978.

[4] In the Treating Physician Form, the treating physician indicated that the Claimant was at Disease Level 2. In “response to question 1 in “Section F – HCV Disease Verification”, he noted that body piercing, tattoos and a blood transfusion at the age of two were risk factors for Hepatitis C. In response to question 2, he indicated that the Claimant had received blood during the Class Period.

[5] In the Blood Transfusion History, the Claimant stated that he had received a blood transfusion in “1980-83” for a dog bite and in “1981-84” for a “dog mauling”.

DECISION OF THE ADMINISTRATOR

[6] In a decision dated September 15, 2010, the Administrator did not consider the application for compensation on the basis that it was made for the first time after the deadline of June 30, 2010 and did not fall within any of the exceptions provided in subsection 5.01(1) of the *Settlement Agreement*. In the decision, the Administrator stated as follows:

We are writing to advise you that your claim has been denied for compensation under the Pre-1986/Post-1990 Hepatitis C Settlement Agreement. The reasons for denial are set out below.

First Claim Deadline

In accordance with Section 5.01 of the Settlement Agreement, the deadline for an alive HCV Infected Class Member to file a claim is June 30, 2010. The Administrator cannot consider an application made after June 30, 2010, except in the following circumstances:

(1) Except as otherwise expressly provided in this Agreement, the Administrator shall not consider an application made for the first time after June 30, 2010 under this Agreement except:

(a) *where a Class Member was infected with Hepatitis C after July 1, 1990 and fails to submit an application by no fault of their own; or*

(b) *where an application is made by a Family Member or Dependant...*

(c) *where an application is made up to one year after the applicant attains his or her age of majority; or*

(d) *where an application is made within three years following the date upon which the HCV Infected Class Member first learned of his or her infection with HCV as a result of receiving Blood in the Class Period or being infected by a Class Member who received Blood in the Class Period, and the Court having jurisdiction over that person grants them leave to apply for compensation.*

Reasons for Decision

The Settlement Agreement permits the Administrator to consider an application for class membership after June 30, 2010, only if the claim meets one of the exceptions noted at section 5.01(1)(a), (b), (c), or (d) above.

Your Claim Form Application was delivered to the Administrator on July 22, 2010 which is after the First Claim Deadline.

The Administrator carefully reviewed all the material that you provided and determined that you do not meet one of the exceptions.

As you may already know, every claim for compensation is reviewed and approved based on our review of documentation confirming a series of different but related proven facts. As soon as a claim submission fails to meet one of several approval criteria as set out in the Settlement Agreement the claim must be denied. It is important to note that in some cases, the subsequent claim evaluation steps were not completed after determining the need to deny the claim. Should you opt to appeal our decision to deny your claim and should you succeed on appeal, any and all pending evaluation steps will have to be completed.

REQUEST FOR REVIEW

[7] On October 4, 2010, the Claimant delivered a Request for Review in

which the reasons for appealing were specified as follows:

[...] – the appellant – does not read – does not readily understand what is being read to him. When he received his letter for him to apply he left the letter untouched for a long time before a friend told him to go to the band office to check what the letter was for and by that time the deadline had passed.

[8] The Claimant did not deliver any supplementary evidence or submissions.

ISSUE

[9] The issue to be determined is whether the Administrator erred in not considering the application for compensation on the basis that it was not made for the first time after the deadline of June 30, 2010 prescribed in subsection 5.01(1) of the *Settlement Agreement* and did not fall within any of the permitted exceptions.

ANALYSIS

i) Subsection 5.01 of the Settlement Agreement

[10] Subsection 5.01 of the *Settlement Agreement* provides as follows:

5.01 First Claim Deadline

(1) Except as otherwise expressly provided in this Agreement, the Administrator shall not consider an application made for the first time after June 30, 2010 under this Agreement except:

(a) where a Class Member was infected with Hepatitis C after July 1, 1990 and fails to submit an application by no fault of their own; or

(b) where an application is made by a Family Member or Dependant within one year following the date on which the application submitted on behalf of the HCV Infected Class Member from whom the claim is derived was approved; or

(c) where an application is made up to one year after the applicant attains his or her age of majority; or

(d) where an application is made within three years following the date upon which the HCV Infected Class Member first learned of his or her infection with HCV as a result of receiving Blood in the Class Period or being infected by a Class Member who received Blood in the Class Period, and the Court having jurisdiction over that person grants them leave to apply for compensation.

[11] Subsection 5.01(1) of the *Settlement Agreement* is mandatory in nature and expressly prohibits the Administrator from considering any application for compensation that is made for the first time after June 30, 2010, unless it falls within one of the exceptions provided in paragraphs (a) to (d). In other words, there is a deadline requiring any application for compensation to be made by no later than June 30, 2010, and the only four exceptions that are permitted are set out in paragraphs 5.01(1)(a) to (d). If an application for compensation is not made for the first time before the expiry of the deadline and does not fall within one of the exceptions provided in subsection 5.01, the Administrator cannot consider it.

ii) *Did the Administrator err in not considering the application for compensation?*

[12] The evidence establishes that the Claimant delivered his application for compensation on July 22, 2010. Subsection 5.01(1) of the *Settlement Agreement* requires, in mandatory terms, an application for compensation to be delivered on or before June 30, 2010, unless one of exceptions in paragraphs (a) to (d) applies. Unfortunately, the Claimant did not comply with the deadline prescribed in subsection 5.01(1) of the *Settlement Agreement*, and the explanation given on his behalf does not fall within any one of the permitted exceptions. The Administrator therefore was required by subsection 5.01(1) not to consider the application for compensation and did not commit an error.

[13] 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

[14] The appeal is dismissed.

"D. McGillis"

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

DATED November 1, 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).

