

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: 10-20510

**REASONS FOR DECISION**

**INTRODUCTION**

[1] The Claimant has appealed a decision of the Administrator dated September 22, 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 May 5, 2009, the primary application made by the HCV Infected Class Member was approved.

[3] On June 28, 2010, the Claimant’s application for compensation under the *Settlement Agreement* as a grandchild of an HCV Infected Class Member was delivered by his father, together with a letter to the Administrator dated June 19, 2010.

[4] In a letter to the Administrator dated June 19, 2010, the father of the Claimant wrote as follows:

I have enclosed the family member claim application forms for my son, [the Claimant] and my daughter [name deleted]. Please be advised that their relationship as grandchildren of [name deleted], the HCV Infected Class Member (deceased) can be substantiated by referring to my father’s will [...]. I have enclosed the long form birth certificates for [the Claimant and his sister] showing that I am their father. I am acting as the personal representative for [my daughter] who is 15 years old.

[5] The Statement of Live Birth dated December 13, 1990 confirmed that the Claimant was born on October 5, 1990.

### **DECISION OF THE ADMINISTRATOR**

[6] In a decision dated September 22, 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 the claimant attaining the age of majority, whichever event is the last to occur. The HCV Infected Class Member's claim was approved on May 5, 2009 and your application was delivered to the Administrator on June 28, 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.

### **REQUEST FOR REVIEW**

[7] On October 21, 2010, the Claimant delivered a Request for Review and specified the reasons for appealing as follows:

My father, who took care of submitting the claim for me, mistakenly thought that the age of majority was nineteen, not eighteen. This seems like an easy mistake to make as the age of majority is nineteen in 8 Canadian provinces/territories. Please do not penalize me for his honest mistake.

[8] In an e-mail dated January 13, 2011, the Claimant advised the Fund Counsel that the file was complete and requested her to forward it to the Appeals Officer.

## ISSUE

[9] The issue to be determined is whether the Administrator erred in denying the application for compensation on the basis that it was not delivered within the time period prescribed in subsection 4.01(1) of the *Settlement Agreement*.

## ANALYSIS

[10] 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.

[11] 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 stated, in part, 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]

[12] 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.

[13] For the reasons given in Claim File 10-19049, the appeal is dismissed on the basis that the Claimant did not deliver his application for compensation within the time period prescribed in subsection 4.01(1) of the *Settlement Agreement*.

[14] 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>1</sup>

#### CONCLUSION

[15] The appeal is dismissed.

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

DATED February 4, 2011

TO: Claimant  
Fund Counsel  
Administrator

---

<sup>1</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).