

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: 10-20673

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 5, 2010, the Claimant delivered an application for compensation under the *Settlement Agreement*.

[3] In the General Information Form, the Claimant stated that she was a Primarily-Infected Person who was infected with the Hepatitis C virus through a blood transfusion received in Canada during the Class Period.

[4] In the Treating Physician Form, the treating physician indicated that the Claimant was at Disease Level 3. In response to question 1 in “Section F – HCV Disease Verification”, he noted that she had no risk factors for Hepatitis C. In response to question 2, he indicated that she had received blood during the Class Period.

[5] In the Blood Transfusion History, the Claimant stated that she had received a blood transfusion in October 1977 for a septic abortion.

[6] The treating physician signed the Treating Physician Form and the Blood Transfusion History Form on September 4, 2007. The signature page of the General Information Form was not included in the materials delivered to the Administrator. However, the Claimant made the declaration in the Statutory Declaration Form before a Notary Public on June 21, 2010.

DECISION OF THE ADMINISTRATOR

[7] 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 5, 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

[8] On October 1, 2010, the Claimant delivered a Request for Review, together with a Receipt for Registered Mail from the United States Postal Service.

She specified the reasons for appealing as follows:

In response to your letter, please note the attached receipt dated June 21st. This receipt shows payment for registered 1st Class Postal delivery, guaranteed delivery 3-5 days. The date stamp proves the forms left my control with ample time to reach the Claims office. Please reconsider my claim and not penalize myself and family over something beyond our control.

[9] The Receipt for Registered Mail from the United States Postal Service was dated June 21, 2010 for mail sent by the Claimant to the office of the Administrator. The receipt was on PS Form 3806.

SUPPLEMENTARY EVIDENCE

[10] By letter dated December 15, 2010, the Claimant made supplementary submissions and enclosed a pamphlet from the United States Postal Service concerning the shipping of international packages.

[11] In the letter dated December 15, 2010, the Claimant stated as follows:

I have enclosed a copy of the US postal services used to mail the forms in question. Following the letter notifying of the late arrival of my claim forms, I questioned the Postal Service as to what had occurred. Apparently there is a multi system issue that has taken place.

According to the "United States Postal Service" they are not responsible for delayed delivery once it crosses into Canada.

According to the "Canadian Postal Service" they are not responsible for delivery dates and times given by other countries.

Both postal services verbally informed me that a third issue effects [sic] all shipments between the two countries. That the change in levels for "Security Staus Warning" apparently can put "anything crossing the border" into a "delayed holding center" for further security checks.

None of the above shipping issues are stated when something is being sent.

As my shipping receipt shows, I in full faith sent the claim forms with ample time to arrive the short distance of 90 miles. This is to state my submissions are complete, and to reconsider as delivery issues were not within my control.

[12] The pamphlet from the United States Postal Service provided information concerning "Shipping Options" for sending an international package. The Claimant had highlighted the part entitled "Express Mail International" that indicated a "3-5 business day delivery". However, the "Form Needed" for Express Mail International was specified as "PS Form 2976 or PS Form 2976+". Other options included "Priority Mail International" and "First Class Mail International", each of which also required PS Form 2976. Priority Mail International specified "6-10 business day delivery", and First Class

Mail International gave no delivery time. As indicated in paragraph 8, the Receipt for Registered Mail was on PS Form 3806.

EVIDENCE FROM UNITED STATES POSTAL SERVICE WEBSITE

[13] The United States Postal Service Website states, in part, as follows with respect to Registered Mail:

You can use Registered Mail with:

- First-Class Mail® – Letters, envelopes, and small packages weighing 13 ounces or less.
- Priority Mail® - Cost effective delivery to most locations.

Note: Due to extraordinary security precautions, the delivery length for Registered Mail may be 10-14 days. Registered mail is not recommended if speed of delivery is important. [Emphasis Added]

ISSUE

[14] 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

[15] 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.

[16] 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?

[17] The evidence establishes that the Claimant sent the application for compensation by registered mail from the United States on June 21, 2010, seven business days before the expiry of the deadline in subsection 5.01(1) of the *Settlement Agreement*.

Furthermore, she honestly believed that she had mailed the application for compensation in sufficient time to comply with the deadline. In the circumstances, the application for compensation shall be deemed to have been made within the time period prescribed in subsection 5.01(1) of the *Settlement Agreement*.

CONCLUSION

[18] The appeal is allowed. The application for compensation delivered by the Claimant on July 12, 2010 shall be deemed to have been delivered within the time period prescribed in subsection 5.01(1) of the *Settlement Agreement*, and the Administrator shall consider the application on its merits.

"D. McGillis"

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

DATED February 4, 2011

TO: Claimant
Fund Counsel
Administrator