

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: 07-08809

REASONS FOR DECISION

INTRODUCTION

[1] The HCV Personal Representative has appealed a decision of the Administrator dated November 2, 2008, in which the claim for compensation under the *Pre-1986/Post-1990 Hepatitis C Settlement Agreement* (“*present Settlement Agreement*”) was denied on the basis that the HCV Infected Class Member was a Class Member of the *1986-1990 Hepatitis C Settlement Agreement*.

FACTS

[2] The HCV Personal Representative filed a claim for compensation under the *present Settlement Agreement* on September 16, 2008. The claim was made on the basis that her deceased brother was a Primarily-Infected Hemophiliac who was infected with the Hepatitis C virus through blood transfusions received in Canada during the Class Period. The evidence in the record confirmed that her deceased brother had received numerous blood transfusions during the Class Period and that he had Hepatitis C at Disease Level 6. On September 30, 1989, he died at the age of 36.

[3] The HCV Personal Representative had applied for and received compensation in the amount of approximately \$129,000.00 under the *1986-1990 Hepatitis C Settlement Agreement*.

DECISION OF THE ADMINISTRATOR

[4] In a decision dated November 2, 2008, the Administrator denied the claim for compensation on the basis that the HCV Personal Representative or the HCV Infected Class Member was a Class Member of the *1986-1990 Hepatitis C Settlement Agreement* and therefore did not meet the criteria for class membership under the *present Settlement Agreement*. In support of its decision, the Administrator reproduced the definition of “HCV Infected Class Member”, as well as subsection 5.04(3) of the *present Settlement Agreement*.

[5] The HCV Personal Representative filed a Request for Review on November 25, 2008. She also filed a letter dated November 10, 2008 in which she specified her reasons for appealing the decision of the Administrator.

ISSUE

[6] The issue to be determined is whether the Administrator committed any error in denying the claim for compensation on the basis that the criteria for class membership under the *present Settlement Agreement* were not met.

ANALYSIS

[7] In order to be eligible for compensation under the *present Settlement Agreement*, a person must be a Class Member, which is defined in section 1.01 as follows:

“**Class Member**” means all Primarily-Infected Class Members, all Secondarily-Infected Persons, all HCV Personal Representatives and all Family Members and Dependents, but excludes all persons who opt out, or are deemed to have opted-out of a Class Action; [Emphasis Added]

A Primarily-Infected Class Member is defined in section 1.01 as follows:

“Primarily-Infected Class Member” means collectively “Primarily-Infected Person” and “Primarily-Infected Hemophiliac”. No person is a Primarily-Infected Class Member for the purposes of this Agreement if he or she is a Primarily-Infected Person or a Primarily-Infected Hemophiliac or Secondarily-Infected Person under the 1986-1990 Hepatitis C Settlement. [Emphasis Added]

The definition of “Primarily-Infected Class Member” therefore excludes from its meaning a person, such as the deceased brother of the HCV Personal Representative, who was a Primarily-Infected Hemophiliac under the *1986-1990 Hepatitis C Settlement Agreement*. That exclusion also appears in the definition of “HCV Class Member” in section 1.01, which provides as follows:

“HCV Infected Class Member” means collectively Primarily-Infected Class Members and Secondarily-Infected Persons. No person is an HCV Infected Class Member for the purposes of this Agreement if he or she is a Primarily-Infected Person, Primarily-Infected Hemophiliac, or Secondarily-Infected Person under the 1986-1990 Hepatitis C Settlement Agreement. [Emphasis Added]

The definitions of “Primarily-Infected Class Member” and “HCV Infected Class Member” in section 1.01 therefore clearly indicate that a Primarily-Infected Hemophiliac who received compensation under the *1986-1990 Hepatitis C Settlement Agreement* is not included in the class membership under the *present Settlement Agreement*.

[8] Subsection 3.01(1) of the *present Settlement Agreement* contains the eligibility requirements that must be met by a person claiming compensation as the HCV Personal Representative of a deceased HCV Infected Class Member. For the purposes of the appeal, the relevant parts of subsection 3.01(1) state as follows:

3.01 Eligibility- HCV Infected Class Members Who Have Died

(1) A person claiming to be the HCV Personal Representative of an HCV Infected Class Member who has died must deliver to the Administrator, within three years after the death of such HCV Infected Class Member or within two years after the Implementation Date, whichever event is the last to occur, an

application form prescribed by the Administrator together with: [Emphasis Added] [...]

[9] The usage of the expression “HCV Infected Class Member” in subsection 3.01(1) of the *present Settlement Agreement* incorporates by reference the full definition of that term from section 1.01, as reproduced in paragraph 7 above. As a result, an HCV Infected Class Member who was a Primarily-Infected Hemophiliac under the *1986-1990 Hepatitis C Settlement Agreement* is specifically excluded from eligibility for compensation under the *present Settlement Agreement*.

[10] The HCV Personal Representative made a claim for compensation on behalf of her deceased brother’s estate under the *1986-1990 Hepatitis C Settlement Agreement*, and compensation was paid in the amount of approximately \$129,000.00. In the circumstances, her deceased brother is not an “HCV Infected Class Member”, as that term is defined in section 1.01 and used in subsection 3.01(1) of the *present Settlement Agreement*. As a result, the HCV Personal Representative cannot meet the threshold eligibility requirement in subsection 3.01(1) of the *present Settlement Agreement* and, regrettably, her claim for compensation cannot succeed.

[11] The Administrator therefore committed no error in denying the claim for compensation on the basis that the HCV Personal Representative or the HCV Infected Class Member did not meet the requirements for class membership under the *present Settlement Agreement*. I note in passing that the Administrator referred to subsection 5.04(3) in support of its decision. Subsection 5.04(3) is an evidentiary provision that has no relevance in circumstances where an HCV Personal Representative claimant has failed to meet the threshold eligibility requirement in subsection 3.01(1).

[12] The HCV Personal Representative was also unsuccessful on her appeal in Claim File 07-08808 in relation to the denial of her claim for compensation for another of her brothers, a haemophiliac who also contracted Hepatitis C from blood transfusions. The circumstances involving the loss of two of her brothers are tragic. Unfortunately, compensation cannot be awarded under the terms of the *present Settlement Agreement*.

CONCLUSION

[13] The appeal is dismissed.

"D. McGillis"

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

DATED February 16, 2009

TO: HCV Personal Representative
Fund Counsel
Administrator