

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: 07-07327

REASONS FOR DECISION

INTRODUCTION

[1] The HCV Personal Representative has appealed a decision of the Administrator dated July 29, 2008, in which the claim for compensation made in relation to the deceased HCV Infected Class Member under the *Pre-1986/Post-1990 Hepatitis C Settlement Agreement* (“*Settlement Agreement*”) was denied. In its decision, the Administrator concluded that the HCV Infected Class Member had not attained Disease Level 4 or higher and that there was insufficient evidence to establish that his death, which occurred prior to 1999, was caused by the Hepatitis C virus.

FACTS

[2] On November 14, 2007, the HCV Personal Representative filed a claim for compensation under the *Settlement Agreement*, together with a letter dated November 7, 2007. He also submitted additional information in support of the claim up to and including January 24, 2008. In the claim, he stated that the HCV Infected Class Member, his deceased father, was a Primarily-Infected Person who was infected with the Hepatitis C virus through blood transfusions received in 1977 during coronary artery bypass surgery. A laboratory report confirmed the presence of the HCV Antibody in a sample of blood taken from the HCV Infected Class Member on October 5, 1993, and the Treating Physician Form, filed with the claim, confirmed that he was at Disease Level 1

at the time of his death. The Treating Physician also noted that the deceased HCV Infected Class Member was an “acquired hemophiliac (Factor VIII) and was treated with immunosuppressive therapy”. In the Section F- HCV Disease Verification part of the Form, the Treating Physician indicated, in paragraph 7, that it was unknown whether the infection with the Hepatitis C virus had materially contributed to the death of the HCV Infected Class Member, writing as follows: “unknown - died from metastatic cancer to the brain primary sit [sic] unknown”. Approximately two months later, on January 18, 2008, the Treating Physician made some changes to the Form and confirmed that the deceased HCV Infected Class Member had attained Disease Level 3 at the time of his death. In paragraph 7, beside his previous handwritten note, the Treating Physician checked the box “Yes” to indicate that the Hepatitis C virus had materially contributed to the death. In response to the subsequent question as to how it had materially contributed to the death, the Treating Physician added the following comment:

The [HCV Infected Class Member] died of metastatic brain cancer. Although the site of primary cancer was never identified, it is conceivable that it may have developed in the liver, secondary to his long standing Hepatitis C infection.

[3] The Claim Form also indicated that the HCV Infected Class Member had no known risk factors for the Hepatitis C virus.

[4] The evidence in the appeal file establishes that the HCV Infected Class Member began to experience heart problems in or about June 1975. In February 1977, he was admitted to the hospital for tests and was diagnosed with severe disease of the right coronary artery. In April 1977, he had coronary artery bypass surgery and was transfused with two units of blood during the surgery. He had three subsequent hospital admissions related to his heart problems: on April 17, 1978, he had a cardiac catheterization, on

May 3, 1982, surgery to correct a problem with the sternal closure wire used in his coronary artery bypass, and on January 7, 1985, treatment for pain that may have been cardiac related.

[5] On October 4, 1985, the HCV Infected Class Member was admitted to the hospital for a coagulation disorder and was discharged on October 25, 1985, following diagnosis and treatment for “an acquired Factor VIII deficiency due to an inhibitor”, an illness equivalent to severe hemophilia. He was admitted to the hospital again on November 2, 1985 for the same problem and was discharged five days later.

[6] On October 5, 1993, a laboratory report confirmed that that the HCV Infected Class Member had the Hepatitis C antibody in his blood.

[7] The HCV Infected Class Member died on April 13, 1998. The Medical Certificate of Death, dated April 14, 1998 and signed by the attending physician, stated that the immediate cause of death was “metastatic brain cancer - primary site unknown” and that the approximate interval between onset and death was six months.¹ The space on the form entitled “Morbid Conditions, if any, giving rise to immediate cause” was left blank.

[8] The HCV Personal Representative applied for compensation under a provincial compensation plan. By letter dated September 10, 2001, an official from the provincial plan requested the attending physician, among other things, to provide an opinion as to whether it was possible that the primary site of the metastatic brain cancer may have been a liver tumour. On October 4, 2001, he responded as follows:

In regards to his cause of death: he died with metastatic cancer of the brain. The family declined a brain biopsy in 1998 when the patient was critically ill,

¹ The attending physician in the hospital and the Treating Physician who completed the Treating Physician Form are the same person.

therefore an exact diagnosis is not possible. An abdominal u/s [ultrasound] prior to his death demonstrated a normal liver except for a cyst. Thus cancer of the liver is unlikely.

[9] In a handwritten fax dated November 30, 2001, the official wrote to the hematologist who treated the [HCV Infected Class Member] for his acquired Factor VIII deficiency and requested, in part, as follows:

In addition, could you let me know the extent of [his] liver disease and although the direct cause of death was a brain tumour, would you agree that [he] was suffering from his liver disease? Could this liver disease have contributed in any indirect way to the cause of death? Our policy requires that it be related.

By letter dated January 24, 2002, the hematologist responded, in a typewritten letter, as follows:

I had followed [him] as a patient with acquired haemophilia through the years 1985 to 1993. It was during this period of time, that he had received blood products, which presumably, was the cause of his subsequent Hepatitis C infection. [...]

In light of the fact that I have not seen [him] for 8 years, it is impossible for me to answer your questions concerning the potential contribution of his Hepatitis C infection to his subsequent death.

There is a second copy of the typed letter from the hematologist in the Appeal File, and it contains a handwritten sentence which is not initialled or dated. The sentence was not written by the hematologist whose distinctive handwriting appears in hospital notes made on a case history sheet dated October 8, 1985 when he treated the HCV Infected Class Member in the hospital for his Factor VIII inhibitor problem. The handwritten sentence was written by the official from the provincial settlement plan, whose handwriting appears in her fax to the hematologist dated November 30, 2001. I have therefore disregarded that sentence.

[10] The application made under the provincial plan was approved in a decision dated

March 5, 2002 that stated, in part, as follows:

Canadian Blood Services cannot complete a trace back on any of the units [of blood] administered. [The physician] notes no other known risk factors for HCV. The Medical Certificate of Death indicates the following as the cause of death: Metastatic Brain Cancer. However, it further indicates "primary site unknown". [A hepatologist] has confirmed that without an autopsy to prove distinctly where the primary source of the carcinoma came from, it is possible that it may have stemmed from the liver, especially noting the applicant was infected since 1977. Benefit of the doubt will be applied concerning the cause of death.

[11] By letter dated May 7, 2002, the provincial plan advised the Estate of the HCV Infected Class Member that compensation would be paid in the amount of \$25,000.00.

[12] In a letter to the Administrator dated March 20, 2008, the Canadian Blood Services confirmed that it was unable to initiate a Traceback.

DECISION OF THE ADMINISTRATOR

[13] In a decision dated July 29, 2008, the Administrator denied the claim for compensation for the following reasons:

Criteria for Class Membership

The Settlement Agreement provides compensation (with the exception of cases where the HCV Infected Hemophiliac was co-infected with HIV) for the Estate and certain Family Members of a HCV Infected Class Member who died prior to January 1, 1999 if there is proof that the death of the HCV Infected Class Member was caused by his or her infection with HCV **and** the deceased HCV Infected Class Member has attained Disease Level 4 or higher prior to death.

Reasons for Decision

The Settlement Agreement requires the Administrator to determine a person's eligibility for class membership.

The Administrator carefully reviewed all the material that you provided to support your claim. You have not provided sufficient evidence to support that HCV caused the death of the HCV Infected Class Member **and/or** had attained Disease Level 4 or higher prior to death.

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. [Emphasis was added by the Administrator]

In its decision, the Administrator made no reference to the evidence adduced in the Claim File.

REQUEST FOR REVIEW AND SUBMISSIONS ON APPEAL

[14] On August 29, 2008, the HCV Personal Representative filed a Request for Review and specified in detail his reasons for appeal.

[15] On September 9, 2008, the Administrator sent a letter to the HCV Personal Representative to acknowledge receipt of the Request for Review. In that letter, the Administrator noted, among other things, that the *Rules for Appeals* allowed a period of thirty (30) days following the date of mailing of the Appeal File to provide any supplementary evidence and/or submissions to Fund Counsel.

[16] In a letter dated January 23, 2009, the HCV Personal Representative expressed his frustration concerning the compensation process. He stated, in part, as follows:

My father received tainted blood in 1977 during open heart surgery. He also received other blood products in 1985 for a factor 8 problem. Later in 1993 he would find out that he had Hepatitis C. He passed away from cancer in 1998. His physician noted that his cancer could have been in his liver but was never found due to no autopsy. He died of brain cancer but the primary source was never found. Today knowing that the Federal Government would have compensated pre-1986 Hep C victims an autopsy would have automatically been asked for by the family. (A cyst was spotted but not tested). He suffered with Hep C for 21 years after contracting it. He had unexplained pain and suffered for years. The file I submitted explains all this.

Today, I question how many other Hep C victims have been denied payments for whatever reason. Should there not be a question of doubt and decency among the persons who put these poor judgement measures in place.
If a traceback cannot be done we penalize the victim.
If he died and no autopsy was done, we penalize the victim.
If you died before 1999 we penalize the victim.

If the family cannot provide more medical information we penalize the victim.

If I could find a specialist to confirm my father's death was a result of Hep C then he would be compensated. Has any one really taken the time to think about this. A specialist that did not have my dad as a patient would review his file after being dead for more than ten years and state what his doctor has already stated. Totally ridiculous.

If my father would have passed away after 1999 he would have been compensated. It would be ideal to choose the date and hour of our death.

[17] The HCV Personal Representative did not file any supplementary evidence on appeal.

ISSUE

[18] The issue to be determined is whether the Administrator erred in denying the claim for compensation.

ANALYSIS

i) Generic Reasons

[19] A review of the Reasons for Decision denying the claim for compensation confirms that the Administrator has used "generic" reasons that did not make specific reference to the circumstances of the Claimant's case. In the Reasons for Decision rendered on the appeal in Claim File 07-03416, I stated as follows in a case where the Administrator had used generic reasons:

[17] A decision-maker, such as the Administrator, who has the obligation to conduct an evidentiary assessment and to make a decision that affects the right of a claimant to obtain compensation has a corresponding obligation imposed by the duty of fairness to provide some reasons to explain the decision reached in each particular case. In the context of the framework established in the *Settlement Agreement*, the reasons do not have to be elaborate and, indeed, may even be very minimal in some cases. Furthermore, there is nothing to preclude the Administrator from using certain generic or standard paragraphs in a decision to explain the applicable provisions or definitions that apply to the claim. However, the decision must also contain sufficient detail to demonstrate that the Administrator understood and considered the specific circumstances of the case, as revealed in the evidence. In the decision, *R. v. Sheppard*, [2002] 1 S.C.R. 869,

Binnie J., writing for the Court, explained in paragraph 24 the practical function of reasons as follows:

“... reasons justify and explain the result. The losing party knows why he or she has lost. Informed consideration can be given to grounds for appeal. Interested members of the public can satisfy themselves that justice has been done, or not, as the case may be”.

[18] Both a claimant and the public at large have a significant interest in seeing that redress is provided under the *Settlement Agreement* in appropriate circumstances and in understanding why it is not provided in others. In the absence of reasons that explain succinctly the result in the particular case, there is no justification for the decision and no transparency in the decision-making process. In other words, reasons constitute a form of accountability and also assist a claimant in deciding whether to exercise the right of appeal. Indeed, a claimant may decide not to appeal in circumstances where the decision is properly explained.

[19] The Appeal File contained abundant evidence to justify the decision made by the Administrator. In the circumstances, I have decided that it would be simpler and more expeditious for me to prepare reasons that support the decision, rather than remitting the matter to the Administrator [See, by way of analogy, the approach taken by Rothstein J. in *Apotex v. Sanofi-Synthelabo Canada Inc.*, 2008 SCC 61 at paragraph 72]. I hasten to note that the Administrator could have satisfied the requirement to provide reasons by simply adding a few succinct sentences to its decision. [Emphasis Added]

[20] In applying the principles enunciated above, I have determined that there is sufficient evidence in the Appeal File to enable me to make the necessary factual findings and that it would be simpler and more expeditious for me to do so, rather than to remit the matter to the Administrator.

ii) Interpretation of Settlement Agreement

[21] In order to determine whether the claim for compensation can succeed, the provisions in Article Three of the *Settlement Agreement* must be interpreted and applied to the facts. In the Reasons for Decision rendered on the appeal in Claim file 08-14662, I explained the principles that must be followed in interpreting the *Settlement Agreement* and stated:

The interpretation must be conducted “... in a textual, contextual and purposive way” [See *Pelletier v. Canada*, [2008] 3 F.C.R. 40 (F.C.A.) at paragraph 47]. In

performing the interpretative exercise, two underlying principles of the *Settlement Agreement* must also be considered. Those two principles are expressly articulated in the concluding paragraph of the recitals, at page 7 of the *Settlement Agreement*, and in section 18.03. The concluding paragraph of the recitals establishes that the fundamental purpose of the *Settlement Agreement* is to settle "... the actions, liabilities, claims and demands whatsoever of the Class Members...". The full text states as follows:

THEREFORE, in consideration of the premises and the covenants and agreements herein contained, the Parties agree that, subject to the approval of this Agreement by the Courts, all actions, causes of actions, liabilities, claims and demands whatsoever of the Class Members, including Charter Claims, relating to or arising from the infection of persons with hepatitis C through the blood system during the Class Period, are to be settled on the terms set out in this Agreement.

In addition, section 18.03 confirms unequivocally that the *Settlement Agreement* constitutes the entire agreement between the Parties. Section 18.03 states as follows:

18.03 Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior or other understandings and agreements between the parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied or statutory between the Parties with respect to the subject matter hereof other than as expressly set forth or referred to in this Agreement.

The underlying principles of the *Settlement Agreement* therefore dictate that any claim for compensation must be made by a Class Member and must fall within the terms of the *Settlement Agreement*. [Emphasis Added]

In other words, a claim for compensation cannot succeed unless it meets the requirements mandated by the terms of the *Settlement Agreement*.

iii) Applicable Compensation Provisions in Settlement Agreement

[22] In my Reasons for Decision on the appeal in Claim File 07-00542, I analysed the provisions in Article Three of the *Settlement Agreement* concerning the payment of compensation for a deceased HCV Infected Class Member. Since those provisions also apply in the present appeal, I have reproduced my analysis from that decision in paragraphs 23 to 31 below for ease of reference.

[23] Article Three of the *Settlement Agreement* contains the framework governing the compensation process for HCV Infected Class Members who have died, including the eligibility requirements in section 3.01 and the provisions for the payment of compensation in sections 3.02, 3.03 and 3.04. The expression “HCV Infected Class Member” is defined, in part, in section 1.01 as meaning “... collectively Primarily-Infected Class Members and Secondarily-Infected Persons”.

[24] The eligibility requirements that must be met by an HCV Personal Representative for a claim to be approved are outlined in section 3.01 of the *Settlement Agreement*, which states 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:

(a) an original or notarial copy of the death certificate of the HCV Infected Class Member; and

(b) unless the required proof has already been previously delivered to the Administrator:

(i) if the deceased was a Primarily-Infected Class Member, the proof required by Sections 2.01 and 2.03; or

(ii) if the deceased was a Secondarily-Infected Person, the proof required by Sections 2.02 and 2.03;

(c) the original certificate of appointment of estate trustee, grant of probate or of letters of administration or notarial will (or a copy thereof certified to be a true copy by a lawyer or notary) or such other proof of the right of the claimant to act for the estate of the deceased as may be required by the Administrator;

and

(d) proof that the death of the HCV Infected Class Member was caused by his or her infection with HCV except as provided in Section 3.03(1)(ii). [Emphasis Added]

[25] In order to be eligible for compensation under either section 3.02 or 3.03, section 3.01(1) requires an HCV Personal Representative to deliver to the Administrator all of the elements of proof described in paragraphs (a) through (d), as reproduced above. For the purposes of the present appeal, it is important to emphasize that, by virtue of paragraph 3.01(1)(d), proof that the death of the HCV Infected Class Member was caused by an infection with HCV is mandatory to establish eligibility for compensation.

[26] In circumstances where the eligibility requirements specified in section 3.01 are met, the HCV Personal Representative becomes an “Approved HCV Personal Representative”, which is defined in section 1.01 in the following terms:

“Approved HCV Personal Representative” means an HCV Personal Representative whose claim made pursuant to Section 3.01 or Section 5.05 has been accepted by the Administrator.

[27] The compensation payable under Article Three for the claim of an HCV Infected Class Member who has died is governed either by section 3.02 or 3.03, depending upon the date of death. In particular, section 3.02 applies where the death occurred prior to January 1, 1999, and section 3.03 applies where the death occurred on or after January 1, 1999. In the present case, the HCV Infected Class Member died in 1998, and the provisions of section 3.02 therefore govern the compensation, if any, to be paid for the claim.

[28] As indicated in the preceding paragraph, section 3.02 of the *Settlement Agreement* dictates the compensation to be paid for an HCV Class Infected Member who died prior to January 1, 1999. Subsection 3.02(1) is the principal provision concerning such compensation and contains wording that must be considered for the purposes of the

present appeal. Subsection 3.02(2) simply provides an alternative choice for Dependants and Family Members concerning the method of compensation. None of the other parts of section 3.02 have any relevance in the circumstances of this case, save and except for subsection 3.02(5) which expressly prohibits the payment of compensation in the absence of proof that the death of the HCV Infected Class Member was caused by an infection with HCV. For the purposes of the present appeal, the relevant parts of section 3.02 state as follows:

3.02 Compensation if Deceased Prior to January 1, 1999

(1) If an HCV Infected Class Member died prior to January 1, 1999 and his or her HCV Personal Representative delivers to the Administrator the evidence required under Article Two, Section 3.01, 5.01 and 5.04 within the period set out in Section 3.01(1) or Section 5.01, the Approved HCV Personal Representative is entitled to be reimbursed for the uninsured funeral expenses incurred up to a maximum of 8/11ths of five thousand dollars (\$5,000.00) and, subject to the provisions of Section 3.02(2), the Approved HCV Personal Representative will be paid the amount of 8/11ths of forty five thousand dollars (\$45,000.00) in full satisfaction of any and all Claims that the HCV Infected Class Member would have had under this Agreement if he or she had been alive on or after January 1, 1999. This 8/11ths of forty five thousand dollars (\$45,000.00) payment to the Approved HCV Personal Representative is in addition to the Claims of Dependants and other Family Members pursuant to Article Four and will not affect the personal Claim of someone who is also an HCV Infected Class Member.

(2) Instead of the 8/11ths of forty five thousand dollars (\$45,000.00) payable pursuant to Section 3.01(1), and the payment of the Claims of Dependants and other Family Members pursuant to Article Four, the Approved HCV Personal Representative of an HCV Infected Class Member who died prior to January 1, 1999 and all the deceased HCV Infected Class Member's Dependants and other Family Members having Claims under this Agreement may agree to be paid 8/11ths of one hundred and eight thousand dollars (\$108,000.00) in full satisfaction of all their Claims pursuant to this Agreement (including all potential claims pursuant to Article Four), and such amount will be paid jointly to them, but such payment will not affect the personal Claim of someone who is also an HCV Infected Class Member.

[...]

(5) Notwithstanding any other provision in this Agreement, no compensation is payable to any Class Member under this Agreement with respect to an HCV Infected Class Member who died prior to January 1, 1999 unless there is proof

acceptable to the Administrator that the death of the HCV Infected Class Member was caused by his or her infection with HCV. [Emphasis Added]

[29] Subsection 3.02(1) repeats in its opening words the obligation of the HCV Personal Representative to deliver the evidence specified in certain sections of the *Settlement Agreement*, including section 3.01, and makes compensation conditional upon compliance with the requirement to produce such evidence. In other words, if any of the evidence required under section 3.01 is not delivered to the Administrator, compensation cannot be granted under section 3.02. As indicated in paragraphs 24 and 25 above, paragraph 3.01(1)(d) requires proof that the death of the HCV Infected Class Member was caused by an infection with HCV in order to establish eligibility for compensation. Furthermore, the explicit statement in subsection 3.02(5) that “no compensation is payable” for an HCV Infected Class Member who died prior to January 1, 1999, “...unless there is proof acceptable to the Administrator that the death of the HCV Infected Class Member was caused by his or her infection with HCV”, underscores the mandatory nature of the evidentiary requirement in paragraph 3.01(1)(d). The failure to produce evidence that the death of the HCV Infected Class Member was caused by an HCV infection must therefore necessarily result in the denial of the claim for compensation.

[30] In addition, section 3.04 of the *Settlement Agreement* is intended to provide greater certainty in interpreting and applying certain compensation provisions under the *Settlement Agreement*, including subsections 3.02(1) and (2), and contains an additional requirement that must be met to succeed in making such a claim. Section 3.04 provides as

follows:

3.04 When Compensation Payable

For greater certainty, compensation under Article Four, Section 3.02(1) and (2) and 3.03(1)(i) is only payable with respect to a deceased HCV Infected Class Member where the deceased HCV Infected Class Member had attained Disease Level 4 or higher prior to death. [Emphasis Added]

Section 3.04 clearly and unequivocally states that compensation is only payable under certain provisions, including subsections 3.02(1) and (2), where an HCV Infected Class Member had attained Disease Level 4 or higher prior to death.

[31] In the present appeal, the related provisions in subsections 3.01(1), 3.02(1), 3.02(5) and 3.04 of the *Settlement Agreement* must be read together. A textual reading of those sections in their context in the *Settlement Agreement* and in conjunction with one another confirms that no compensation can be paid under subsection 3.02(1) unless there is proof acceptable to the Administrator to demonstrate that the death of the HCV Infected Class Member was caused by an infection with HCV at Disease Level 4 or higher. Absent such proof, the claim must be denied.

iv) Application of Compensation Provisions in Present Appeal

[32] The evidence in the Treating Physician Form, as modified by the Treating Physician on January 18, 2008, confirms that the deceased HCV Infected Class Member had attained Disease Level 3 at the time of his death. In the circumstances, he had not attained Disease Level 4 or higher prior to his death and, by virtue of section 3.04 of the *Settlement Agreement*, no compensation can be paid under subsection 3.02(1). It is therefore unnecessary for me to determine whether his death was caused by his infection with HCV, within the meaning of paragraph 3.01(d). Even if I were to conclude that the death of the HCV Infected Class Member was caused by his infection with HCV, he has

failed to meet the mandatory requirement in section 3.04. The application for compensation therefore cannot succeed.

v) Compensation under another program

[26] As indicated previously, the HCV Personal Representative had applied for and received compensation in relation to the loss of his father under the terms of a provincial plan. In the Reasons for Decision rendered in Claim File 07-00464, I commented on the perception of inequity that may arise when compensation is awarded under one plan or agreement and denied under another. In particular, I stated as follows in paragraph 41 of that decision:

[41] I can appreciate the frustration and distress that this decision will cause to the Claimant, particularly given that the member of the provincial review committee found him to be eligible for a benefit under that program. It must be recognized that the framework governing eligibility for compensation under the terms of the *Settlement Agreement* is completely different from the one applied by the member of the review committee in the context of the provincial agreement.

Although I fully understand that it must be confusing and upsetting when compensation is granted under the auspices of one program or agreement and yet denied under another one, the terms of the *Settlement Agreement* govern the present claim and must be applied. It is also important to recognize that the terms of the *Settlement Agreement* are the result of an agreement between the Parties which was approved by the Courts; neither the Administrator nor the Appeals Officer has any power or discretion to alter those terms.

CONCLUSION

[27] Unfortunately, the evidence in the Appeal File does not satisfy the requirement in section 3.04 of the *Settlement Agreement*, and the Administrator did not err in denying the claim. Regrettably, the appeal must be dismissed.

[28] The appeal is dismissed.

"D. McGillis"

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

DATED March 23, 2009

TO: Claimant
Fund Counsel
Administrator