

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: 07-10252

**REASONS FOR DECISION**

**INTRODUCTION**

[1] The Estate of the deceased Family Member has appealed a decision of the Administrator dated January 6, 2009, in which the claim for compensation under the *Pre-1986/Post-1990 Hepatitis C Settlement Agreement* (“*Settlement Agreement*”) was denied on the basis that it did not have status to bring an application as a “Family Member” under subsection 4.01(1).

**FACTS**

[2] On December 4, 2008, a claim for compensation was filed in the name of the deceased Family Member on the basis that he was a Child of a deceased HCV Infected Class Member. The Family Member died on August 31, 2007, and the Claim Form was signed on November 3, 2007 by his mother who noted that he had passed away “after the forms arrived”. She also wrote a letter dated November 20, 2007, in which she explained the tragic events leading to the death of her son.

**DECISION OF THE ADMINISTRATOR**

[3] In a decision dated January 6, 2009, the Administrator denied the claim for compensation on the basis that the Estate of the deceased Family Member did not have status under the *Settlement Agreement*. In its reasons, the Administrator reproduced subsection 4.01(1) of the *Settlement Agreement* which contains the eligibility

requirements for a Family Member claim. The Administrator denied the claim for the following reasons:

Since the evidence you have submitted fails to support your status as a “Family Member” as defined [in subsection 4.01(1)], your claim must be rejected.

You indicated you were applying for Family Member compensation on behalf of the Estate of your son. You confirmed your son was a child of an HCV Infected Class Member and he passed away on August 31, 2007. Please note the Estate of a Family Member is not included in [subsection 4.01(1)] above and the claim must be rejected.

### **REQUEST FOR REVIEW**

[4] On January 30, 2009, the mother of the deceased Family Member filed a Request for Review and sent a birth certificate “for proof of relationship”. In a letter dated February 23, 2009, she stated that her late son was on disability for years, lived at home with her, and died when the applications for compensation were already done. In a further letter dated February 24, 2009, she provided additional details concerning the filing of the claims and included a copy of the Letter of Acknowledgement dated December 12, 2007 from the Administrator to her son acknowledging receipt of his claim. This letter was sent in response to the Claim Form that his mother had prepared in his name and signed on November 3, 2007, approximately two months after his death.

### **ISSUE**

[5] The issue to be determined is whether the Administrator erred in concluding that the Estate of the Family Member did not have status to make a claim for compensation under subsection 4.01(1) of the *Settlement Agreement*.

### **ANALYSIS**

[6] In my Reasons for Decision on the appeal in Claim File 08-14662, I concluded that an estate of a deceased Family Member did not have status to make a claim for

compensation under subsection 4.01(1) of the *Settlement Agreement*. For ease of reference, I have reproduced my analysis from that decision in paragraphs 7 to 18 below.

[7] In order to determine whether an estate of a deceased Family Member may make a claim for compensation under subsection 4.01(1), various provisions of the *Settlement Agreement* must be considered and interpreted. 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. [Emphasis Added]

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*.

[8] In interpreting the relevant provisions of the *Settlement Agreement*, the definitions of “Class Members” and “Family Member” must first be considered. The term “Class Members” is defined in section 1.01 of the *Settlement Agreement* as follows:

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

The expression “Family Member” is defined as follows:

**“Family Member”** means:

- (a) the Spouse, Child, Grandchild, Parent, Grandparent or Sibling of an HCV Infected Class Member;
- (b) the Spouse of a Child, Grandchild, Parent or Grandparent of an HCV Infected Class Member;
- (c) a former Spouse of an HCV Infected Class Member;
- (d) a Child or other lineal descendant of a Grandchild of an HCV Infected Class Member;
- (e) a person who Cohabited with an HCV Infected Class Member for a period of at least one year with that HCV Infected Class Member immediately before his or her death;
- (f) a person who Cohabited with an HCV Infected Class Member at the date of the HCV Infected Class Member’s death and to whom that HCV Infected Class Member was providing support or was under a legal obligation to provide support on the date of the HCV Infected Class Member’s death; and
- (g) any other person to whom an HCV Infected Class Member was providing support for a period of at least three years immediately prior to the HCV Infected Class Member’s death;

unless any person described above opts out of the Class Action in which he or she would otherwise be a Class Member;

[9] A reading of the definitions of “Class Members” and “Family Member” in section 1.01 confirms that they are specific in nature and outline the categories of persons who fall within their meanings. Neither definition makes reference to an estate of a deceased Family Member. In addition, both definitions use the restrictive word “means”, rather than the inclusive word “includes”. These factors, although relevant and important, are not conclusive of the issue. The eligibility requirements in subsection 4.01(1) must next be considered.

[10] Subsection 4.01(1) of the judicially approved *Settlement Agreement* contains the eligibility requirements that must be met by a Family Member in order to make a successful claim for compensation. Subsection 4.01(1) provides as follows:

**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]

[11] A review of the eligibility requirements in subsection 4.01(1) confirms that the application must be brought by “... a person claiming to be [a Family Member]...”. The word “person” is not defined in the *Settlement Agreement*, but section 1.05 has provided for the extended meanings of certain words. Section 1.05 states as follows:

### **1.05 Extended Meanings**

In this Agreement, words importing the singular number include the plural and *vice versa*, words importing any gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term “including” means “including without limiting the generality of the foregoing”. [Emphasis Added]

Given that “words importing persons” may be given extended meanings, it must be determined whether the word “person”, as used in subsection 4.01(1) of the *Settlement Agreement*, may be interpreted to include an estate of a deceased Family Member. This interpretation requires a consideration of the wording in subsection 4.01(1) in the context of the compensation scheme in the *Settlement Agreement*.

[12] The provisions governing the compensation process for HCV Infected Class Members and Class Members are found in Articles Two, Three and Four of the *Settlement Agreement*. Article Two of the *Settlement Agreement* deals with the compensation payable to HCV Infected Class Members who are alive. The eligibility requirements in subsections 2.01(1) and 2.02(1) provide for the delivery of an application form, respectively, by “... a person claiming to be ...” a Primarily-Infected Class Member or a Secondarily-Infected Person. Article Three of the *Settlement Agreement* deals with circumstances where an HCV Infected Class Member has died, and subsection 3.01(1) permits “... a person claiming to be the HCV Personal Representative ...” to bring an application for compensation. Article Four of the *Settlement Agreement* provides the compensation process for Dependants and Family Members.

[13] The eligibility requirements in subsection 4.01(1) of Article Four use the same general introductory wording found in subsections 2.01(1), 2.02(1) and 3.01(1) of Articles Two and Three, requiring an application form to be delivered by “...a person

claiming to be [a Family Member...]”. As indicated in the preceding paragraph, Article Two provides a claim process for HCV Infected Class Members who are alive, and Article Three does the same for HCV Infected Class Members who have died. However, there is no provision in either Article Four or elsewhere in the *Settlement Agreement* permitting an application to be brought on behalf of a deceased Family Member. Furthermore, section 5.12 of the *Settlement Agreement*, entitled “Status of Alive or Deceased”, indicates that the status of an HCV Infected Class Member as alive or deceased will be determined on the date of the application for compensation. No similar provision exists for a Family Member.

[14] The absence of a specific compensation process for a deceased Family Member, analogous to the Article Three provisions in relation to a deceased HCV Infected Class Member, leads to the inference that the Parties did not intend to create a mechanism that would permit an estate of a deceased Family Member to apply for compensation. Furthermore, the fact that section 5.12 limits the determination of the status as “alive or deceased” to an HCV Infected Class Member confirms that the Parties to the *Settlement Agreement* did not intend to permit such a question to be raised in relation to a Family Member. In addition, although Schedules C1 and C2 outline the compensation payable, respectively, to “Alive HCV Infected Class Members” and “Estates of Deceased HCV Infected Class Members”, Schedule C3a relates only to compensation for “Family Members”; no reference is made in Schedule C3a or any other schedule to compensation for an estate of a deceased Family Member. The structure and wording of the compensation schedules therefore support the conclusion that the Parties to the *Settlement Agreement* did not intend to create a mechanism for the compensation of an estate of a

deceased Family Member. Finally, the expression “Class Members”, as reproduced in paragraph 7, is defined to mean, among other things, HCV Personal Representatives, who by definition represent only HCV Infected Class Members and not Family Members. The failure to include estates of deceased Family Members in the definition of “Class Members” is yet another indication of the intention of the Parties.

[15] The terms of the *Settlement Agreement* governing the compensation process therefore do not permit an estate of a deceased Family Member to make a claim for compensation. As a result, when considered in the overall context of the compensation scheme, the word “person”, as used in the eligibility requirements of subsection 4.01(1) of the *Settlement Agreement*, cannot be given an extended meaning under section 1.05 to include an estate of a deceased Family Member.

[16] The final provision of the *Settlement Agreement* to be considered in the interpretative analysis is section 18.04 which accords certain estate rights to the Parties. Section 18.04 states as follows:

**18.04 Benefit of the Agreement**

This Agreement will inure to the benefit of and be binding upon the respective heirs, assigns, executors, administrators and successors of the Parties. [Emphasis Added]

[17] A review of section 18.04 confirms that no rights are given to an executor of a deceased Family Member. Since the specific wording of section 18.04 does not give any rights to an executor of a deceased Family Member, its terms cannot be altered by extending the meaning of the word “Parties” to include “Class Members” or “Family Member”, expressions that are specifically defined under the terms of the *Settlement Agreement*. Furthermore, the limitation inherent in section 18.04 is indicative of the intention of the Parties and is also consistent with the terms of the *Settlement Agreement*,

when considered in its entirety. The express omission of the term “Family Member” from section 18.04 also constitutes an additional reason to support the conclusion in paragraph 14 that the word “person”, as used in subsection 4.01(1), cannot be given an extended meaning under section 1.05 to include an estate of a deceased Family Member.

[18] I have therefore concluded that the terms of the *Settlement Agreement*, when read together and considered in a textual, contextual and purposive manner, do not permit an estate of a deceased Family Member to bring an application for compensation under subsection 4.01(1).

[19] Unfortunately, the application for compensation was signed and filed by the mother of the deceased Family Member after his death. The Administrator therefore did not commit an error in denying the claim. Regrettably, the appeal must be dismissed.

#### **CONCLUSION**

[20] The appeal is dismissed.

"D. McGillis"

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

DATED March 24, 2009

TO: Claimant  
Fund Counsel  
Administrator