

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pre-1986/Post-1990 Hepatitis C Settlement
Agreement Claim #07-01482,*
2010 BCSC 462

Date: 20100407
Docket: C965349
Registry: Vancouver

**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*
Re Claim No. 07-01482**

Before: The Honourable Mr. Justice Pitfield

Reasons for Judgment

Counsel for the Applicant:

Self-Represented

Written Materials Received:

March 15, 2010

Place and Date of Judgment:

Vancouver, B.C.
April 7, 2010

[1] The Claimant was infected with the Hepatitis C virus during the Class Period through a blood transfusion received during open heart surgery in 1961. He submitted a claim to the Administrator seeking compensation under the Pre-1986/Post-1990 Hepatitis C Settlement Agreement and its Protocols (the “Pre/Post Settlement Agreement”). The Administrator reviewed information pertaining to the claim and eventually determined that the Claimant was entitled to compensation under the Pre/Post Settlement Agreement as a Disease Level 1 Claimant.

[2] As required by the Pre/Post Settlement Agreement, the Administrator reduced the amount of compensation to which the Claimant was otherwise entitled by a portion of the amount he had received under a related settlement commonly referred to as the “Canadian Red Cross Settlement” pertaining to members of the Pre-1986/Post-1990 Class. The result of the application of the formula set forth in the Pre/Post Settlement Agreement is that the Claimant was entitled to \$1,459.65.

[3] The Claimant requested a review by an Appeals Officer in the manner permitted by the Pre/Post Settlement Agreement claiming that the amount he had been awarded was inadequate, inappropriate, and unfair.

[4] The Appeals Officer appointed under the Pre/Post Settlement Agreement and acting in accordance with its terms delivered reasons dismissing the Claimant’s appeal. The reasons may be found at the Website: <http://pre86post90settlement.ca>.

[5] At this juncture, the Claimant appeals from the decision of the Appeals Officer. The Pre/Post Settlement Agreement permits an appeal to the court from a decision of an Appeals Officer on a matter of law, in circumstances where the Appeals Officer has exceeded his or her jurisdiction or where the decision of the Appeals Officer is patently unreasonable. The Claimant says that the Appeals Officer’s decision is unreasonable. He states his opposition in the following terms:

The parameter of this lawsuit states that amount of settlement will be the age of the person who has the disease and how long you’ve had the disease along with disease level. Although I am in Class 1, people who had the disease for one year get the same as those who had it 40 years plus. [sic]

[6] In substance, the Claimant disagrees with the formula by which compensation is to be quantified in accord with the Pre/Post Settlement Agreement. The claimant does not dispute the manner in which the Administrator applied the formula to his circumstances.

[7] The Pre/Post Settlement Agreement was the result of negotiation between plaintiffs who were representative of all Class members, and the defendant, which was the Government of Canada. The Pre/Post Settlement Agreement was submitted to the Courts of British Columbia, Ontario and Quebec for approval.

[8] In British Columbia, the court was afforded the benefit of the submissions of counsel for both the Class and the defendant with respect to the fairness of the settlement. The court also was provided with submissions of various members of the Class, some of whom opposed the settlement and some of whom supported it. At the conclusion of the hearing the court concluded that the settlement was fair and reasonable in all of the circumstances and ordered that it be approved.

[9] A settlement of this kind in question cannot be expected, nor is it intended, to produce a perfect result. It is intended to produce a result that is fair and reasonable having regard to the interests of the Class generally, the interests of the defendant, and all of the circumstances surrounding the issues in the litigation.

[10] It is not now open to the Administrator, the Appeals Officer or this court to depart from the terms of the Pre/Post Settlement Agreement which, as they pertain to this Claimant, have been accurately interpreted and applied by the Administrator.

[11] The Claimant's appeal from the decision of the Appeals Officer does not raise a question of law, does not challenge the jurisdiction of the appeals officer, and cannot allege that any finding of the Appeals Officer is patently unreasonable as the decision was made in conformity with the Pre/Post Settlement Agreement.

[12] The appeal from the Appeals Officer's decision must be and it is hereby dismissed.

“Mr. Justice Pitfield”