

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: 07-01482

**REASONS FOR DECISION**

**INTRODUCTION**

[1] The Claimant has appealed a decision of the Administrator dated April 22, 2009, in which his claim for compensation under the *Pre-1986/Post-1990 Hepatitis C Settlement Agreement* (“*Settlement Agreement*”) was approved at Disease Level 1.

**FACTS**

[2] On October 9, 2007, the Claimant delivered a claim for compensation under the *Settlement Agreement*. In the claim, he stated that he was a Primarily-Infected Person who was infected with the Hepatitis C virus during the Class Period through blood transfusions received during open heart surgery in 1961. In the Blood Transfusion History Form, he stated that he had received blood transfusions in May of 1961 and January 1998 during heart surgery. The Treating Physician Form indicated that he was at Disease Level 1.

[3] The Claimant received compensation under the *Canadian Red Cross Settlement* in the amount of \$10,150.00.

**DECISION OF THE ADMINISTRATOR**

[4] In a decision dated April 22, 2009, the Administrator approved compensation for the Claimant at Disease Level 1 in the amount of \$8,453.00 and added \$388.47 for

indexation. It also subtracted \$7,381.82 for the *Canadian Red Cross Settlement*, a pro-rated reduction required by the *Settlement Agreement*. The final amount of compensation approved for the Claimant was \$1,459.65.

### **REQUEST FOR REVIEW**

[5] The Claimant delivered a Request for Review on May 28, 2009, in which he appealed on the basis that the amount of compensation should be comparable to the \$25,000.00 amount paid by the provincial plan. He also wrote letters dated June 8 and August 11, 2009 expressing his frustration with the amount of the compensation approved.

### **ISSUE**

[6] The issue to be determined is whether the Administrator erred in approving compensation for the Claimant as a fixed payment for Disease Level 1.

### **ANALYSIS**

#### *i) Compensation provisions in Section 2.04 of the Settlement Agreement*

[7] In the Reasons for Decision on the appeal in Claim File 07-05086, I analysed the provisions governing the compensation payable to an HCV Infected Class Member, such as the Claimant, and stated as follows:

[7] Article Two of the *Settlement Agreement* contains the framework governing the compensation process for HCV Infected Class Members, including the eligibility requirements in section 2.01 and the provisions for the payment of compensation in section 2.04. The expression “HCV Infected Class Member” is defined in section 1.01 as meaning “... collectively Primarily-Infected Class Members and Secondarily-Infected Persons”.

[8] In the present case, the Claimant satisfied the eligibility requirements for a Primarily-Infected Class Member under section 2.01 of the *Settlement Agreement* by establishing, among other things, that she was infected with Hepatitis C by Blood received in Canada during the Class Period. As a result, she became an “HCV Infected Class Member”, as defined in section 1.01. As soon as the Administrator made the decision to accept her claim, she became an

“Approved HCV Class Member”, as defined in section 1.01, entitled to compensation in accordance with the provisions in section 2.04. For the purposes of the present appeal, the relevant parts of section 2.04 state as follows:

**2.04 Compensation to Approved HCV Infected Class Members**

- (1) Each Approved HCV Infected Class member who is alive will be paid compensation as set out in the compensation grid attached as Schedule C1 to this Agreement in accordance with the Approved HCV Member’s year of birth and Disease Level, subject to the deductions provided in this Agreement. [Emphasis Added]
- (2) Disease Level for the purposes of this Agreement will be determined as follows: [...]
  - (a) “Disease Level 1” means the HCV Infected Class Member has a positive HCV Antibody Test. [...]

Subsection 2.04(2) also specifies the requirements for Disease Levels 2 to 6.

[9] The deductions provided under the *Settlement Agreement* are specified in section 5.02. The deduction required for an Approved HCV Class Member who has received compensation under the *Red Cross Settlement* is outlined in subsection 5.02(1) in the following terms:

**5.02 Deductions**

- (1) 8/11ths of the amount that has been paid to or on behalf of an Approved HCV Infected Class Member pursuant to the Red Cross Settlement as compensation for being infected with HCV will be deducted from the compensation paid to or on behalf of that Approved HCV Class Infected Member under Articles Two and Three of this Agreement.

[10] By virtue of the wording of subsection 2.04(1), Schedule C1 is incorporated by reference and forms part of the *Settlement Agreement*. Schedule C1 is entitled “Compensation to Alive HCV Infected Class Members” and outlines a grid of lump sum compensation payments for Disease Levels 1 to 6 for the years of birth from 2016 to and including 1900 or earlier. The compensation grid in Schedule C1 is also prefaced by the following words:

These lump sum present values are to be reduced by 8/11ths of the compensation received from the Red Cross. In addition to these amounts, compensation for Past Economic Losses may be payable.

[11] A review of subsection 2.04(1) confirms that an Approved HCV Infected Class Member must be “... paid compensation as set out in the compensation grid attached in Schedule C1 ... in accordance with the Approved HCV Infected Class Member’s year of birth and Disease Level, subject to the deductions provided in [the *Settlement Agreement*]”. Furthermore, where the Approved HCV Infected Class member has received compensation under the Red Cross Settlement, subsection 5.02(1) requires the imposition of a deduction of 8/11ths of that amount. The provisions in subsections 2.04(1) and 5.02(1) are mandatory in

nature and give the Administrator no discretion to use any other method, means or criteria to decide the amount of compensation to be paid to an Approved HCV Infected Class Member. In other words, the Administrator can only approve compensation in the amount specified in Schedule C1, as determined by the year of birth and Disease Level of the Approved HCV Infected Class Member, and as reduced by 8/11ths of the amount of any monies paid under the Red Cross Settlement. [Emphasis Added]

[8] In the present appeal, the evidence confirms that the Claimant had a positive HCV Antibody Test. As a result, by virtue of paragraph 2.04(2)(a) of the *Settlement Agreement*, he must be categorized at Disease Level 1 for the purposes of the payment of compensation. The compensation grid in Schedule C1 provides that the lump sum payment for an Approved HCV Infected Class Member at Disease Level 1 who was born in 1951, such as the Claimant, is in the amount of \$8,453.00, plus indexation. However, the Administrator was required by subsection 5.02(1) to reduce the lump sum “by 8/11ths of the compensation received” from the *Canadian Red Cross Settlement*. The Administrator therefore did not commit an error in approving a lump sum payment of \$8,453.00, together with indexation in the amount of 388.47, and in reducing that amount by 8/11ths of the compensation received from the *Canadian Red Cross Settlement*, namely \$7,381.82, for a final total of \$1,459.65. Indeed, the Administrator was obliged by the terms of the *Settlement Agreement* to approve compensation for the Claimant in exactly that amount.

[9] Although I fully understand the frustration on the part of the Claimant concerning the amount of compensation to which he is entitled, it is important to recognize that the terms of the *Settlement Agreement* are the result of an agreement reached between the parties and approved by the Courts; neither the Administrator nor the Appeals Officer has

any power or discretion to alter those terms. Unfortunately, the appeal must therefore be dismissed.

**CONCLUSION**

[10] The appeal is dismissed.

"D. McGillis"

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

DATED August 28, 2009

TO: Claimant  
Fund Counsel  
Administrator