

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: 09-16013

REASONS FOR DECISION

INTRODUCTION

[1] The Claimant has appealed a decision of the Administrator dated June 1, 2009, in which her claim for compensation under the *Pre-1986/Post-1990 Hepatitis C Settlement Agreement* (“*Settlement Agreement*”) was denied on the basis that she did not have status as a “Family Member”.

FACTS

[2] The Claimant delivered a claim for compensation under the *Settlement Agreement* on April 20, 2009 as a daughter-in-law of an HCV Infected Class Member. Her claim was made on the basis that she was a “Spouse of a child of an HCV Infected Class Member”.

DECISION OF THE ADMINISTRATOR

[3] In a decision dated June 1, 2009, the Administrator denied the claim for compensation on the basis that the Claimant was not a Family Member, as defined in the *Settlement Agreement*. In its reasons, the Administrator reproduced subsection 4.01(1) of the *Settlement Agreement* and stated, among other things, that a “daughter-in-law does not fall within the definition of Family Member”.

REQUEST FOR REVIEW

[4] On June 26, 2009, the Claimant delivered a Request for Review in which she stated as follows:

The definition of Family Member includes:

... b) the Spouse of a child, Grandchild, Parent or grandparent of an HCV Infected Class Member.

The Infected member is my mother-in-law; I am the spouse of her child. Thus I fall into the definition of Family Member.

ISSUE

[5] The issue to be determined is whether the Administrator erred in denying the claim on the basis that the Claimant was not a Family Member under the terms of the *Settlement Agreement*.

ANALYSIS

i) Interpretation of section 4.01 of the Settlement Agreement

[6] In order to determine whether the claim for compensation can succeed, section 4.01 of the *Settlement Agreement*, as well as the definitions of the terms “Spouse” and “Family Member” in section 1.01, must be considered and applied to the facts. Those provisions “... must be interpreted in a textual, contextual and purposive way” [See *Pelletier v. Canada*, [2008] 3 F.C.R. 40 (F.C.A.) at paragraph 47].

[7] In the Reasons for Decision on the appeal in Claim File 07-10239, I analysed the provisions in Article Four of the *Settlement Agreement* governing the payment of compensation for Dependents and Family Members and stated, in part, as follows:

iii) Eligibility Requirements in section 4.01 for Compensation as a Family Member

[10] Under the terms of the judicially approved *Settlement Agreement*, a person claiming to be a Family Member must satisfy the eligibility requirements in section 4.01 in order to make a successful claim for compensation. Section 4.01 provides as follows:

Article Four

Compensation to Dependants and Family Members

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] In order to determine whether the Claimant meets the eligibility criteria in subsection 4.01(1), the definitions of the term “Spouse” and “Family Member” in section 1.01 must be considered. For the purposes of the *Settlement Agreement*, the terms “Spouse” and “Family Member” are defined as follows:

“Spouse” means:

- (a) either of two persons who,
 - (i) are married to each other;
 - (ii) have together entered into a marriage that is voidable or void, in good faith on the part of a person asserting a right under this Plan;
 - (iii) have Cohabited for at least two years; or
 - (iv) have Cohabited in a relationship of some permanence if they are Parents of a Child.

“Family Member” means:

- (a) the Spouse, Child, Grandchild, parent, grandchild or sibling of an HCV Infected Class Member; [...]

ii) *Did the Administrator err in denying the claim?*

[8] The evidence establishes that the Claimant is the daughter-in-law of the HCV Infected Class Member. She is therefore not a “[...] Spouse, Child, Grandchild, Parent, Grandparent or Sibling [...]” of the HCV Infected Class Member, as required by subsection 4.01(1) of the *Settlement Agreement*. Furthermore, subsection 4.01(1) does not provide that a “Spouse of a Child” is eligible for compensation, as stated by the Claimant in her Request for Review. The Claimant is therefore not eligible for compensation as a Family Member under section 4.01 of the *Settlement Agreement*, and the Administrator did not err in denying the claim for compensation.

CONCLUSION

[9] The appeal is dismissed.

"D. McGillis"

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

DATED October 28, 2009

TO: Claimant
Fund Counsel
Administrator