

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: 09-16685

REASONS FOR DECISION

INTRODUCTION

[1] The Claimant has appealed a decision of the Administrator dated August 20, 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 her application was not made within the time period specified in subsection 4.01(1).

FACTS

[2] On July 6, 2009, the Claimant delivered an application for compensation under the *Settlement Agreement* as a Sibling of an HCV Infected Class Member; the application was signed on June 25, 2009. She included with her application a long-form birth certificate issued on June 18, 2009.

DECISION OF THE ADMINISTRATOR

[3] In a decision dated August 20, 2009, the Administrator denied the claim on the basis that the Claimant had not delivered her application for compensation within the one year time period specified in subsection 4.01(1) of the *Settlement Agreement*. In its decision, the Administrator stated, in part, as follows:

You applied for Family Member compensation as a Sibling of an HCV Infected-Class Member. As noted previously, in order to be eligible for compensation you must deliver your application within one year after the date of approval of the HCV Infected Class Member’s application or within one year of the claimant attaining the age of majority, whichever is the last event to occur. The HCV Infected Class Members [sic] claim was approved in December 2007 and your

application was delivered to the Administrator on July 6, 2009, which is more than one year after the date of approval. Based on this the Administrator must reject your claim as the eligibility deadline has passed. [Emphasis Added]

REQUEST FOR REVIEW

[4] On September 21, 2009, the Claimant delivered a Request for Review, signed on September 11, 2009, in which she stated as follows:

My original claim was submitted well within the specified time frame. This claim was returned to me because there, allegedly was missing information. My health, at the time, did not allow me to follow the steps required to acquire the additional information. The time period at which you received my re-submitted claim was out of my control and since you received and returned my original claim you were well aware of the claim.

SUPPLEMENTARY EVIDENCE ON APPEAL

[5] By letter dated September 28, 2009, the Fund Counsel reviewed the facts and noted the statement by the Claimant in the Request for Review that the original claim was submitted within the specified time frame, but was returned due to missing information. She asked the Claimant to provide any evidence to support the statement made in the Request for Review.

[6] By e-mail dated October 13, 2009, the Claimant forwarded a letter to the Fund Counsel in which she stated as follows:

Firstly, I must apologize for an error in my appeals statement. The document submission I was referring to is the application for the long form birth certificate, required as part of the claim application. As the attached documents show, my case is very unique in that the original documents do not match the names I presently use. Since I applied for this birth certificate well within the required time period, and had I received the required documentation when it was originally applied for, my application would have reached you within the required [sic] time. The document was actually applied for much earlier, but because of the name discrepancies, I was directed and re-directed by registries to resolve this.

I was not overly concerned at the time because the documentation / application which I received from my infected sibling did not indicate anywhere that there was a one year time limit for application.

Please be aware that had my health in 2008 allowed (I was suffering from early stage Vertigo), I would have submitted this original application promptly and completely as required.

ISSUE

[7] The issue to be determined is whether the Administrator erred in denying the claim on the basis that the application for compensation was not delivered within the time period specified in subsection 4.01(1) of the *Settlement Agreement*.

ANALYSIS

i) Interpretation of section 4.01 of the Settlement Agreement

[8] 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 Dependants 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]

ii) Did the Administrator err in denying the claim?

[9] The evidence establishes that the application for compensation of the HCV Infected Class Member was approved in December 2007. Approximately a year and a half later, on July 6, 2009, the Claimant delivered her application for compensation to the Administrator. Subsection 4.01(1) of the *Settlement Agreement* requires, in mandatory terms, a Family Member application for compensation to be filed within one year after the date of approval of the HCV Infected Class Member's application. Unfortunately, the Claimant did not comply with the deadline specified in subsection 4.01(1) of the *Settlement Agreement*. As a result, she is 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.

[10] Although I fully understand the frustration and distress that this decision will cause to the Claimant, the terms of the *Settlement Agreement* are the result of an agreement between the Parties that was approved by the Courts; neither the Administrator nor the Appeals Officer has any power or discretion to alter those terms.

CONCLUSION

[11] The appeal is dismissed.

"D. McGillis"

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

DATED December 11, 2009

TO: Claimant
Fund Counsel
Administrator