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: 07-04384

REASONS FOR DECISION

INTRODUCTION

[1] The Claimant has appealed a decision of the Administrator dated March 26, 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 receive blood during the Class Period.

FACTS

[2] On January 9, 2008, the Claimant delivered a Treating Physician Form and various records in support of an application for compensation under the *Settlement Agreement*; she did not submit any of the other required forms at that time.

[3] In the Treating Physician Form, the treating physician indicated that the Claimant was at Disease Level 3. In the Section F – HCV Disease Verification part of the form, he noted in question 1 that the Claimant had the following risk factors: prison incarceration, non-prescription intravenous drug use and tattoos. In response to question 3, he wrote that the Claimant had admitted the use of "[...] IV drugs in past – "ice" "speed"." The treating physician had treated the Claimant for 10 years.

[4] The records that were sent to the Administrator at the same time as the Treating Physician Form included a letter dated March 21, 2005 from a specialist in hepatology

Received January 7, 2010

who stated, among other things, that the Claimant had never received a blood transfusion. The letter stated, in part, as follows:

> With respect to risk factors for chronic liver disease she admits to heavy drinking in the past but claims to have been abstinent completely for the last 4 ½ years. She has never been transfused, but was tattooed in her teens. She has used street drugs from age 16 until about 2 months ago and this includes something with the street label of ice, and speed.
>
> […]
>
> **ASSESSMENT:**
>
> I am not sure why this woman isn't terminally ill from chronic acetaminophen hepatotoxicity. She may well have chronic hepatitis C but she might have cleared this virus. In any case, it is going to be impossible to treat her hepatitis C until she is off her multiple street drugs and not taking toxic doses of acetaminophen. [Emphasis Added]

[5] On July 8, 2008, the Claimant delivered, among other things, a General Information Form and a Blood Transfusion History Form. In the General Information Form, she indicated that she was a Primarily-Infected Hemophiliac. In the Section E – Blood Transfusion Information part of the form, she indicated that she had never received a blood transfusion in Canada. The Blood Transfusion History Form was blank. On November 24, 2008, she delivered a further Blood Transfusion History Form, but the page of the form entitled "Blood Transfusion History" was blank.

[6] On March 20, 2009, the Claimant delivered a handwritten letter signed by both her and the treating physician who wrote the date "20/3/09" beside his signature and affixed a stamp bearing his name and address. The letter written by the Claimant stated as follows:

> I [the Claimant] having this killer disease of Hep. C, I wrote I was the secondarily infected person, but I'm not, I am the primary carrier of Hep. C. I believe I received it either, in jail during one of my many incarcerations or by my many tatoos [sic] or one of my 5 ear holes. Sorry for the mistake. I take & hope you will dismiss any other names marks on the forms, no spouse, I am a primarily infected person. My memory is now turned into mental illness. [Emphasis Added]

Received January 7, 2010

DECISION OF THE ADMINISTRATOR

[7] In a decision dated March 26, 2009, the Administrator denied the claim for compensation. In the Reasons for Decision, the Administrator stated, in part, as follows:

> In your original application it was unclear if you were applying as a Primarily-Infected Person or a Secondarily-Infected Person. You submitted consultation letters that stated you advised doctors you never received a transfusion. On March 20, 2009 the Administrator received a Fax from you signed by both you and Dr. Doyle. You advised that Administrator that you were mistaken and you were in fact a Primarily-Infected Person. You further wrote that you believe you were infected with Hepatitis C in jail, from your "many tattoos" or from your ear piercings. Based on this the Administrator must reject your claim as there is no evidence to support you received a transfusion of Blood during the class period. [Emphasis Added]

REQUEST FOR REVIEW

[8] On April 15, 2009, the Claimant delivered a Request for Review. On October 13, 2009, a lawyer who had previously acted for the Claimant sent a letter to the Fund Counsel.

ISSUE

[9] The issue to be determined is whether the Administrator committed an error in denying the claim for compensation.

ANALYSIS

i) Eligibility Requirements in Section 2.01 of the Settlement Agreement

[10] In the Reasons for Decision delivered on the appeal in Claim File 08-12409, I dealt with the interpretation of the eligibility requirements in section 2.01 of the *Settlement Agreement*; on April 7, 2009, a further appeal to the Court was dismissed by Chief Justice Winkler. In interpreting the meaning of the expression "received Blood in Canada" in section 2.01 of the *Settlement Agreement*, I stated as follows:

Received January 7, 2010

[7] Under the terms of the *Settlement Agreement*, a person claiming to be a Primarily-Infected Class Member, such as the Claimant, must satisfy the eligibility requirements in section 2.01 in order to make a successful claim for compensation. In the circumstances of the present claim, the relevant provisions are subsections 2.01(1) and (2) which state as follows:

> **2.01 Eligibility – Primarily-Infected Class Member**
>
> (1) A person claiming to be a Primarily-Infected Class Member must deliver to the Administrator an application form prescribed by the Administrator together with:
>
> > a) medical, clinical, laboratory, hospital, The Canadian Red Cross Society, Canadian Blood Services or Hema-Quebec records demonstrating that the claimant received Blood in Canada during the Class Period; [...]
>
> (2) Notwithstanding the provisions of Section 2.01(1)(a), if a claimant cannot comply with the provisions of Section 2.01(1)(a), the claimant must deliver to the Administrator corroborating evidence independent of the personal recollection of the claimant or any person who is a Family Member of the claimant establishing on a balance of probabilities that he or she received Blood in Canada during the Class Period.

Subsections 2.01(1) and (2) require that a claimant must have "received Blood in Canada" in order to be eligible for compensation under the *Settlement Agreement*.

[8] In the Reasons for Decision rendered on the appeal in Claim File 07-03416, I also interpreted the meaning to be accorded to the phrase "received Blood in Canada", as it appears in the eligibility requirements in subsections 2.01(1) and (2) of the *Settlement Agreement*, by stating as follows in paragraphs 21 to 23:

> [21] Given the position of the Claimant that she received Blood by means of HCV-infected tools or equipment used during her surgery in 1991, it is necessary to interpret the meaning of the expression "received Blood in Canada", as used in paragraph 2.01(1)(a) of the *Settlement Agreement*, in order to determine the question of her eligibility for compensation. In that regard, the words used in the enabling instrument "[...] must be interpreted in a textual, contextual and purposive way" [See *Canada Trustco Mortgage Co. v. Canada*, [2005] S.C.R. 601, at paragraphs 10 and 11]. In other words, the purpose of the *Settlement Agreement* must be considered, as well as the usage of the expression "received Blood in Canada" in the proper context in which it appears in the text.
>
> [22] The purpose of the *Settlement Agreement*, as expressed in the opening and concluding paragraphs of its recitals, is "[...] to settle all outstanding claims against Canada [...] relating to or arising from the infection of persons with Hepatitis C through the blood system during the

Received January 7, 2010

> Class Period [...]". That phrase is repeated in various sections of the *Settlement Agreement*, including the definition of "Compensation Plan" and the Release provision in section 1.09, as well as in the Release at Schedule "A" that must be signed by a successful claimant prior to the receipt of any compensation. The clear purpose and intent of the *Settlement Agreement* is therefore to compensate only those persons who were infected with Hepatitis C through the blood system in Canada.
>
> [23] As indicated previously, the expression "received Blood in Canada", as used in the eligibility requirements in paragraph 2.01(1)(a), subsection 2.01(2) and elsewhere, must be interpreted in a manner consistent with the fundamental purpose of the *Settlement Agreement*, having also regard to its context and usage in the text. When considered in that manner, the phrase "received Blood in Canada" can only be interpreted as meaning that a claimant must have received Blood that came from the blood system in Canada in order to satisfy the eligibility requirements under the *Settlement Agreement*.

> I should also note that the Certification Orders and Judgments issued by the supervising judges in the superior courts of Ontario, Quebec, Alberta and British Columbia confirm that the settlement of the class action on the terms agreed to in the *Settlement Agreement* relates solely to Hepatitis C infections caused by Blood provided through the blood system in Canada during the Class Period. [Emphasis Added]

ii) Did the Administrator commit an error in denying the claim for compensation?

[11] The records delivered by the Claimant do not demonstrate that she has ever had a blood transfusion. As a result, she has not received blood and cannot satisfy a fundamental eligibility requirement in paragraph 2.01(1)(a) of the *Settlement Agreement*. She has also not delivered corroborating evidence, as permitted under subsection 2.01(2), to establish that she received blood. In the circumstances, the Claimant has not satisfied the eligibility requirements in section 2.01 and the Administrator did not commit an error in denying the claim for compensation. Unfortunately, a Hepatitis C infection caused by means other than a blood transfusion cannot give rise to compensation under the terms of the *Settlement Agreement*.

Received January 7, 2010

CONCLUSION

[12] The appeal is dismissed.

"D. McGillis"

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

DATED January 7, 2010

TO: Claimant
Fund Counsel
Administrator

Received January 7, 2010