

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: 07-04418

REASONS FOR DECISION

INTRODUCTION

[1] The Claimant has appealed a decision of the Administrator dated September 17, 2008, 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] The Claimant is a Primarily-Infected Person who received blood transfusions in May 1971 during his hospitalization for injuries suffered in a car accident. He filed his claim for compensation on January 10, 2008, which included a laboratory report dated August 23, 2000 confirming the presence of HCV antibodies in his blood and a Treating Physician Form indicating that he was at Disease Level 1. On July 23, 2008, he filed a further laboratory report dated September 26, 2007 again confirming the presence of HCV antibodies in his blood and another Treating Physician Form indicating that he was at Disease Level 1. The Claimant was born in 1953.

[3] The Claimant received compensation under the *Canadian Red Cross Settlement Agreement in the Pre-1986/Post 1990 Hepatitis C Claims* (“*Red Cross Settlement*”) in the amount of \$10, 450.00.

DECISION OF THE ADMINISTRATOR

[4] In its decision dated September 17, 2008, the Administrator approved compensation at Disease Level 1 in the amount of \$8,453.00 and added \$170.92 for indexation. It also subtracted \$7,600.00 for the *Red Cross Settlement*, a pro-rated reduction required by the *Settlement Agreement*. The final amount of compensation approved for the Claimant was \$1,023.92.

CLAIMANT'S APPEAL

[5] The Claimant filed a Request for Review on October 23, 2008, in which he appealed the Administrator's decision on the basis that he was not given compensation for past loss of income. In support of his appeal, he filed a letter explaining that his Hepatitis C illness has caused devastating consequences in his life, including the loss of his fiancée, his employment and his property on which he was building a home.

ISSUE

[6] The issue to be determined is whether the Administrator erred in failing to award compensation for the loss of past income to the Claimant.

ANALYSIS

[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, as well as the provisions for the payment of compensation in section 2.04 and damages for past loss of income in section 2.05. The expression "HCV Class 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 Member in section 2.01 by establishing, among other things, that he was infected with Hepatitis C by Blood received in Canada during the Class Period. As a result, he became an “HCV Infected Class Member”, as defined in section 1.01. As soon as the Administrator made the decision to accept his claim, he became 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) continues by specifying the requirements for Disease Levels 2 to 6.

[9] 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.

[10] Section 2.05 of the *Settlement Agreement* contains the provisions governing the payment of compensation for past loss of income, which is included in the expression “Past Economic Losses” in Schedule C1. The requirements that must be met to make a successful claim for compensation for past loss of income are outlined in subsection 2.05(1) as follows:

2.05 Damages for Past Loss of Income

(1) An HCV Infected Class Member at Disease Level 4 or higher, or the HCV Personal representative of an HCV Infected Class member at Disease Level 4 or higher who died on or after January 1, 1999, who delivers to the Administrator proof satisfactory to the Administrator that the HCV Infected Class Member’s infection with HCV has caused Past Loss of Net Income (as defined below) will be paid compensation in an amount equal to 8/11ths of 70% of his or her Past Loss of Net Income for each year until he or she attained the age of 65 years, determined in accordance with the following provisions:
[Emphasis Added] [...]

[11] A review of subsection 2.05(1) of the *Settlement Agreement* confirms that an HCV Infected Class Member must be at Disease Level 4 or higher to make a claim for compensation for past loss of income. Since the Claimant was at Disease Level 1, he does not meet the threshold requirement in subsection 2.05(1) and regrettably cannot be awarded compensation for past loss of income. In the circumstances, the Administrator committed no error in approving and calculating compensation for the Claimant at Disease Level 1.

CONCLUSION

[12] The appeal is dismissed.

"D. McGillis"

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

DATED December 8, 2008

TO: Claimant
Fund Counsel
Administrator