

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pre-1986/Post-1990 Hepatitis C Settlement
Agreement Claim #07-02773,*
2010 BCSC 1307

Date: 20100916
Docket: C965349
Registry: Vancouver

**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*
Re Claim No. 07-02773**

Before: The Honourable Chief Justice Bauman

Reasons for Judgment

Counsel for the Claimant:	Self-Represented
Written Materials Received:	26 August 2010
Place and Date of Judgment:	Vancouver, B.C. 16 September 2010

I. Introduction

[1] This is an appeal from a determination by the Appeals Officer dated 26 June 2009. The Appeals Officer denied the Claimant's appeal from the Administrator in which her claim for compensation under the *Pre-1986/Post-1990 Hepatitis C Settlement Agreement* (the "Settlement Agreement") was approved at Disease Level 3. The claimant appealed on the basis that she was not awarded compensation for past loss of income.

II. Facts

[2] The Claimant was approved by the Administrator on 2 October 2008 for compensation as a Primarily-Infected Person at Disease Level 3. In its approval letter, the Administrator offered the Claimant total compensation in the amount \$90,992.07.

[3] Shortly after she was approved, the Claimant requested additional compensation under the Settlement Agreement for past loss of income and she then followed up with the Administrator regarding this request on 27 February 2009.

[4] In April 2009, the Claimant requested an appeal of the Administrator's decision on the basis that the compensation offered by the Administrator did not include compensation for past loss of income.

[5] Before the appeal was forwarded to the Appeals Officer, Fund Counsel sent a letter to the Claimant's treating physician, Dr. Angus McDonald, at the Claimant's request, in which Fund Counsel asked whether the Claimant qualified for Disease Level 4. In response, Dr. McDonald apparently advised Fund Counsel, on 26 May 2009 in a voice mail message, that he had no evidence of cirrhosis and he confirmed that the Claimant was at Disease Level 3.

[6] In a decision dated 26 June 2009, the Appeals Officer denied the Claimant's claim on the basis that compensation for past loss of income is only available to Claimants who qualify for Disease Level 4 or higher. The Appeals Officer noted in

her decision that "supplementary evidence confirmed that the Claimant was at Disease Level 3."

[7] After the Appeals Officer released her decision, the Claimant was given the opportunity to meet the eligibility requirement by providing the opinion of a medical specialist indicating that a biopsy would likely show that the Claimant was at Disease Level 4, if a biopsy were to be performed. In response, the Claimant provided a letter from Gastroenterologist Justin Cheung, dated 8 January 2010, in which Dr. Cheung stated, "Unless [the Claimant's] pending abdominal liver ultrasound shows that she has cirrhosis, I am not able to say that she would be more than likely to have bridging portal fibrosis if a liver biopsy was to be performed". Nothing further has been provided by the Claimant in the intervening period.

[8] Although the Claimant has been unable to obtain any medical opinion to support a claim for Disease Level 4 compensation, she has asked that this appeal now be determined by the court.

II. Analysis

[9] Under section 2.05 of the Settlement Agreement, compensation for past loss of income is only available to Claimants who qualify for Disease Level 4 or higher.

[10] There is no evidence that the Claimant has undergone a biopsy. Accordingly, in order to qualify for Disease Level 4 compensation, the Claimant must provide the following medical evidence referred to in paragraph 4(d) of the Alternative to Biopsy Protocol:

... the opinion of a gastroenterologist, hepatologist, infectious disease specialist or internist based on non-invasive testing and diagnosis, complete details of which are provided, that if the HCV Infected Class Member were to undergo a liver biopsy, such biopsy would more likely than not demonstrate that he or she had developed fibrous tissue in the portal areas of the liver with fibrous band bridging to other portal areas or to central veins but without nodular formation or nodular regeneration (i.e. bridging fibrous).

[11] The Claimant has been unable to obtain such a medical opinion. Accordingly, her claim cannot succeed.

[12] The appeal is dismissed.

 C.J.C.

The Honourable Chief Justice Bauman