

**SCHEME TO COMPENSATE CERTAIN PERSONS WHO HAVE  
CONTRACTED HEPATITIS C  
FROM THE USE OF  
HUMAN IMMUNOGLOBULIN - ANTI-D,  
WHOLE BLOOD OR OTHER BLOOD PRODUCTS**

**December, 1995**

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**The Purpose of the Scheme**

1. The purpose of the Scheme is to provide compensation
  - (a) to women who have been diagnosed positive for Hepatitis C antibodies or Hepatitis C virus resulting from the use of Human Immunoglobulin - Anti-D within the State;
  - (b) to any person who has been diagnosed positive for Hepatitis C antibodies or Hepatitis C virus as a result of receiving a blood transfusion or a blood product within the State. Such a person, where the context so requires, is hereinafter referred to as a "transfusee claimant"; and
  - (c) to children and partners of persons referred to at (a) and (b) above who have been diagnosed positive for Hepatitis C antibodies and/or Hepatitis C virus.

The Scheme shall continue indefinitely so as to give effect to the said purpose.

**The Basis on which Compensation will be paid**

2. Compensation under the Scheme will be paid by the State on an ex gratia basis.

## **The Administration of the Scheme**

3. The Scheme will be administered by a Tribunal, the members of which shall be appointed by the Minister for Health.

## **Persons who may make a claim to the Tribunal**

4. The following persons may make claims to the Tribunal:
  - (a) the persons referred to at Clause 1 above
  - (b) any person responsible for the maintenance of any of the persons referred to at Clause 1 above, and who has incurred financial loss, and/or incurred expenses, as a direct result of providing such maintenance arising from the condition diagnosed and referred to at Clause 1
  - (c) where any of the persons mentioned at Clause 1 above has died as the result of having contracted Hepatitis C, any dependant of such person.

## **Preservation of Right of Action**

5. (i) The making of a claim to the Tribunal under the Scheme will not involve a waiver of any right of action. If a claimant receives an award from the Tribunal, the claimant will have a period of one month from the date of receiving notice of the making of the award during which the claimant can decide either to accept or reject the award. If a claimant neither accepts nor rejects the award within that period, the claimant will be deemed to have rejected the award. Only if the claimant accepts the award will the claimant be required to agree to waive any right of action which the claimant may otherwise have had against any party arising out of the circumstances of the claimant's claim and to discontinue any other proceedings instituted by the claimant. The execution of such a written agreement will be a condition precedent to the payment of any award under the Scheme.

- (ii) In the case of an award to a claimant who is a minor, the acceptance of the award shall be subject to the approval of the High Court, which approval shall be sought within one month of the notification of the making of the award, and the claimant shall have one month from the date of such approval within which to accept such approved award.
- (iii) Where a claimant does not accept an award within the time and in the manner provided in this Scheme, and proceeds with any right of action he or she may have, the State will not in such proceedings to which it is a party rely for the purposes of the Statutes of Limitation upon the period between the date of the claimant's application to the Tribunal and the date upon which the claimant abandoned his or her claim, was adjudged not entitled compensation under the Scheme, or was last entitled to accept any award made by the Tribunal (whichever of such dates be the later) in bar of any right of recovery under such proceedings.

### **Proceedings before the Tribunal**

- 6. (a) The Tribunal will operate with maximum informality consistent with the terms of the Scheme.
- (b) The Tribunal will conduct its proceedings in private.
- (c) The claimant may be legally represented before the Tribunal.
- (d) Claimants will not be required to produce any evidence of negligence on the part of the Blood Transfusion Service Board or on the part of any other party.
- (e) (i) Claimants will be required to establish, on the balance of probabilities, that the Hepatitis C antibodies or Hepatitis C virus in respect of which they have been diagnosed positive resulted from the use of Human Immunoglobulin - Anti-D within the State, or was transmitted from their mother or partner following such use as the case may be;

- (ii) Transfusee claimants and their children and partners will be required to establish, on the balance of probabilities, that the Hepatitis C antibodies or Hepatitis C virus in respect of which they have been diagnosed positive resulted from a blood transfusion or a blood product received by the claimant (or the partner or parent of the claimant as the case may be) within the State.
- (f) Claimants will be entitled to adduce medical or other relevant expert evidence on their behalf.
- (g)
  - (i) In considering individual claims, the Tribunal will rely primarily on written medical reports. The claimant must no later than six weeks before the date fixed by the Tribunal for the hearing submit in writing reports prepared by doctors or other healthcare professionals who have treated or examined the claimant, and relevant reports prepared by other experts, on which the claimant intends to rely.
  - (ii) The Tribunal, having considered such reports as aforesaid, may notify the claimant that oral evidence of the contents of some or all of such reports will not be required. The claimant upon receipt of such notice may inform the Tribunal in writing of any reasons why the claimant considers such evidence should be heard orally, and the Tribunal having considered such reasons shall notify the claimant of its decision to receive such evidence orally or not as the Tribunal in its discretion decides.
- (h) In a case where the Tribunal deems it appropriate, it may at its discretion waive or relax the requirements of sub-clause 6 (g), provided however that in every case any person referred to therein who is permitted to give oral evidence shall have previously submitted a medical report.
- (i) Items of special damage which are claimed should be vouched to the Tribunal not later than 6 weeks before the date of the hearing. The Tribunal will inform the claimant in advance of the hearing of the claim what items of special damage will have to be formally proved by the claimant.

- (j) If a claimant fails to comply with sub-clauses (g), (h) or (i) above, or if in the opinion of the Tribunal a claimant's case is presented at excessive length, the Tribunal may reduce the amount in respect of costs which might otherwise be awarded to such claimant under Clause 18 below by such amount as the Tribunal, in its sole discretion, may decide.
  - (k) Counsel to the Tribunal may be appointed, and may call expert witnesses as the Tribunal requires.
  - (l) The Tribunal may appoint medical and/or other experts to advise it as it sees fit, and the Tribunal may take such other steps to inform itself as it considers appropriate. Written reports received from such medical or other experts or from witnesses referred to in Paragraph 6(k) which the Tribunal intends to consider shall be made available to claimants or their legal representatives, and in the absence of such reports the claimants or their legal representatives shall where practicable be notified of the nature of the evidence intended to be adduced and considered by the Tribunal.
  - (m) The claimants and any witnesses on behalf of claimants whom the Tribunal may require to hear may be asked questions by the Tribunal and/or by counsel for the Tribunal.
7. Subject to Clause 6 above, the Tribunal shall determine its own procedures.

### **Awards of the Tribunal**

8. The awards of the Tribunal will be calculated by reference to the principles which govern the measure of damages in the law of tort, provided that no award of compensation will be made on a basis which reflects the principle of exemplary or aggravated damages. In calculating an award, the Tribunal may take into account any statutory or non statutory benefits to which the claimant has or will become entitled or has received or will receive as a result of the condition which gives rise to the claimant's claim.

9. It will be a condition of the making of a claim by a claimant, and of the making of any award by the Tribunal, that the claimant shall not have received any award from any court or any payment in settlement of a claim in respect of the matters giving rise to the application for compensation.
10. No appeal will lie from any award of the Tribunal.

### **Types of Awards**

11. The Tribunal may make either single lump sum awards of compensation, or provisional awards of compensation, as described in Clauses 12 to 15 below. Each application to the Tribunal must specify whether the claimant is seeking a single lump sum award or a provisional award. The Tribunal may, in its discretion, in advance of hearing any particular claim, permit the claimant to alter her or his choice.

### **Single Lump Sum Awards**

12. In cases in which the claimant requests the Tribunal to approach the claim on the basis of a single lump sum award, the Tribunal, in the event that it decides to award compensation to the claimant, will make a single and final award of compensation calculated in accordance with the provisions of Clause 8 above.

### **Provisional Awards**

13. In cases in which the claimant requests the Tribunal to approach the claim on the basis of a provisional award, the Tribunal, in the event that it decides to award compensation to the claimant, may, in its discretion, treat the claim as a provisional compensation claim. The provisional compensation claim envisages the possibility of compensation being assessed in stages. Where the Tribunal is of the view that there is a possibility, but no more than a possibility, that the claimant, as a result of Hepatitis C antibodies/virus suffered by the claimant, may suffer a particular serious consequence or consequences in the future, the Tribunal may make an award of provisional compensation, calculated in accordance with Clause 8 above, but assessed on the assumption that such

serious consequence or consequences will not occur. In such cases, the award of provisional compensation will identify the serious consequence or consequences which may occur, and specify the time period within which the claimant may apply in the event of such consequence or consequences occurring. In the event that such consequence or consequences do occur, the claimant may apply for an award of further compensation in accordance with the terms of the award of provisional compensation.

14. If a claimant does not accept a provisional award of compensation, the claimant will not be entitled to apply for any further compensation.
15. It will be a condition of payment of a provisional award of compensation to a claimant that the claimant agrees to waive any right of action and to discontinue any other proceedings in accordance with the provisions of Clause 5.

#### **Methods of Payment of Awards**

16. If in any particular case a claimant does not wish to receive the entire amount of an award by means of a single payment, the Tribunal, having heard the claimant, may in its absolute discretion decide that the payment of the award to such claimant shall be effected by instalments.

#### **Timing of payments of Awards**

17. Subject to Clause 16 above, payment of the amount of an award will be made within 28 days of receipt by the Tribunal of notification of acceptance of the award.

#### **Legal Costs**

18. A claimant to whom an award is made shall be awarded the legal costs and expenses associated with the claim.

A claimant who has been awarded costs shall submit his or her Bill of Costs to the Chief State Solicitor, who shall have the power to agree the quantum of those costs. In default of agreement, the matter shall be re-



entered before the Tribunal to determine the quantum of costs and expenses.

The Tribunal in fixing legal costs and expenses associated with the claim shall have regard to:

- (a) the amount of the award;
- (b) the amount of work necessarily and properly undertaken by the claimant's lawyers referable to the application for compensation;
- (c) the informal nature of the Tribunal's proceedings;
- (d) the standard of proof required by the Tribunal;
- (e) the matters referred to at Paragraph 6 (j) herein;
- (f) any other factor which it considers relevant.

#### **The time within which Claimants must apply**

19. Claimants must apply to the Tribunal within 6 months of the date upon which they first became aware of the fact that they have been diagnosed positive for Hepatitis C antibodies or Hepatitis C virus or of the date of the establishment of the Tribunal, whichever date is the later. In exceptional cases the Tribunal may in its absolute discretion extend the time limit fixed by this clause, and shall do so in the case of any claimant whom it is satisfied was under a legal disability by reason of minority or unsoundness of mind at the time at which such claim should otherwise have been made and who applies to it within six months of the cesser of that legal disability.

#### **Reports of the Tribunal**

20. The Tribunal shall forward a report to the Minister for Health on the operation of the Scheme and shall forward particulars of its accounts, from time to time, as he or she may direct and the Minister shall cause copies of the report to be laid before each House of the Oireachtas. Such reports shall insofar as it is practicable not identify any claimant.

### **Amendments of the Scheme**

21. The Minister for Health, if he considers it appropriate, may amend the Scheme, but no such amendment shall operate to remove, restrict or diminish in any way rights or benefits conferred on persons entitled to claim under the Scheme in its unamended form.

### **Establishment**

22. The Tribunal shall be established on such day as the Minister for Health may determine.

### **Procedure for making an Application**

23. On the establishment of the Tribunal, an application to the Tribunal should be made on the application form which can be obtained from the Secretary to the Tribunal.