

Federal Court



Cour fédérale

Date: 20220809

Docket: T-200-22

Citation: 2022 FC 1181

Ottawa, Ontario, August 9, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

DARCY PETKAU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT

UPON consideration of the parties' informal request for a consent judgment, in writing, dated June 24, 2022, pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106;

AND UPON considering Rule 3 of the *Federal Courts Rules* and the August 25, 2017 Notice to the Parties and the Profession: Informal Requests for Interlocutory Relief;

AND UPON reviewing the Notice of Settlement and Request for Judgment on Consent and the reasons for settlement identified therein;

AND UPON noting the parties' agreement that the Order-in-Council establishing the Canadian Thalidomide Survivors Support Program [CTSSP], PC 2019-0271 [the OIC] can be interpreted such that applicants who yield results of "unlikely" or "uncertain" provided from the "valiDATE" diagnostic algorithm utilized at Step 2 of the CTSSP can proceed to step 3 of the CTSSP and that a "probable" finding from the valiDATE diagnostic algorithm utilized at Step 2 of the CTSSP is not a precondition to eligibility to the CTSSP;

AND UPON noting the consent of the parties to the draft judgment; and

AND UPON being satisfied that it is in the interests of justice that the requested relief be granted;

THIS COURT'S JUDGMENT is that:

1. This motion and the application for judicial review are granted. The decision to deny Mr. Petkau's application under the CTSSP is set aside and the matter is referred back to the Administrator (Epiq Class Action Services Canada Inc) for redetermination consistent with the directions herein;
2. The Court directs that paragraph 3(5)(c) of Order in Council P.C. 2019-0271 is to be interpreted by the Administrator as allowing it to refer applicants with an "unlikely" or "uncertain" result from the valiDATE diagnostic algorithm utilized at Step 2 of the CTSSP, to the multi-disciplinary committee of medical and legal experts pursuant to step 3 of the CTSSP process, who shall make a recommendation to the Administrator on whether the person should be eligible under the CTSSP. For greater certainty, the OIC is to be interpreted in a manner that provides that a "probable" finding from the valiDATE diagnostic algorithm

utilized at Step 2 of the CTSSP is not a precondition to the eligibility to the CTSSP.

3. The Administrator shall apply the directions in paragraph 2 to all pending and future Step 2 applications. The Administrator is also entitled to and shall reconsider applications previously denied at Step 2 of the CTSSP in accordance with the directions in paragraph 2. In determining whether to refer applications to Step 3, the Administrator may require additional information and/or require consent from the applicant before the application can proceed.
4. The Applicant is granted costs in the amount of \$800, inclusive of taxes, payable by the Respondent within 30 days of the date of this Judgment.

"Russel W. Zinn"

Judge