

**IN THE MATTER OF AN ARBITRATION PURSUANT TO
THE WALKERTON COMPENSATION PLAN**

S (minor)

Applicant

AND:

The Court Appointed Administrator

Respondent

Submissions:

On behalf of the Applicant: Patrick Kelly, Applicant counsel
BS parent
SS parent

On behalf of the Administrator: Milena Protich, Plan counsel
Kimberly Chalmers, Plan Administrator

COURT APPOINTED ARBITRATOR:

Reva Devins

REPORT

1. Ms. BS and Mr. SS have submitted an application on behalf of their minor daughter, S, (the “Applicant”), for compensation under the Walkerton Compensation Plan.
2. The Applicant claimed compensation for illness arising from contaminated water. Although she was not a resident, she consumed water in Walkerton during a visit in May 2000. At the end of August, 2000, the Applicant was diagnosed with *Naegleria fowleri* (“*N. fowleri*”), a parasitic bowel infection, for which she now claims compensation. The Administrator determined that S was not ill due to the consumption of contaminated water and she therefore did not meet the criteria for Class Membership. The Administrator relied upon an expert opinion that *N. fowleri* was not part of the Walkerton outbreak and therefore the Applicant’s infection was not related to the consumption of water delivered by the Walkerton PUC.
3. S parents did not seek to overturn the Administrator’s decision; however, they wanted an opportunity to place the details of S illness and current state of health on the record.

The Plan

4. The Overview to the Walkerton Compensation Plan provides, in part, as follows:

The Government of Ontario is committed to providing financial support and compensation to any individual who became sick or lost loved ones or otherwise incurred certain out-of-pocket expenses or losses, because of contaminated water in Walkerton. ...

The purpose of this Walkerton Compensation Plan is to pay to the Applicants full and complete compensation, without regard to fault, in accordance with Ontario law and with the terms and conditions herein, provided, however that no amount shall be paid for aggravated, exemplary or punitive damages.

Individuals will have access to fair compensation through an efficient, timely, and impartial process. Applications will be individually evaluated and, if necessary, resolved through a mediation process, and where unsuccessful, independent arbitration.

5. Under the terms of the Walkerton Compensation Plan, non residents of Walkerton are admitted as Class Members if they “consumed or used water delivered by the Walkerton PUC at any time in the period April 1, 2000 to June 27, 2000” and they “became ill or died as a result thereof.”¹.
6. In accordance with section 3.2.2 of the Plan, the Administrator will only offer compensation when it is satisfied, on a balance of probabilities, that:
 - a. The Applicant is an eligible person under the Plan;
 - b. The physical injury or loss was caused by the contamination of Walkerton’s water supply between April 1 and December 5, 2000;
 - c. The damages claimed were suffered; and
 - d. The damages are payable in accordance with Ontario law.

Facts

7. The Applicant lives with her parents in Kitchener, Ontario and has relatives who reside in Walkerton. S and her family were in Walkerton the weekend of May, 22, 2000 when S consumed water delivered by the PUC. Over the course of the summer, S experienced intermittent problems with abdominal cramping and severe diarrhea.
8. There was a positive test for d. frag. at the end of August, 2000 and S began a series of antibiotic treatments. S would show some initial improvements but would then develop the same symptoms and yield further positive stool samples. S was eventually referred to a pediatric gastroenterologist and was diagnosed with probable post-infectious irritable bowel syndrome.

¹ Section 1(b) of the Walkerton Compensation Plan.

9. S had also visited her grand parents' cottage in Port Elgin during the summer in 2000. Her parents candidly admitted that two neighboring young girls at the lake experienced symptoms similar to S and also tested positive for the same parasite.
10. The Applicant's mom described the many changes in S diet that she has made to try to relieve S symptoms. Some of these changes were without any effect, such as the elimination of dairy and wheat products, whereas others have led to modest improvements. Despite all of their efforts, however, S still experiences ongoing bouts of diarrhea and stomach cramps. She is now twelve years old and also suffers from the embarrassment when she makes urgent trips to the washroom and explanations of her condition are provided to her teachers and sports coaches.
11. In the Health Practitioner's Information Form prepared on December 5, 2001 by the Applicant's physician, Dr. ***** indicates that S was diagnosed with d. frag., a parasitic bowel infection. Dr. ***** lists treatment that S received in September, 2000, August, 2001 and October 2001. She also confirms that she ordered eight stool sample investigations between September, 2000 and November 23, and obtained five negative results and three positive results for d. frag. The Applicant was referred to Dr. *****, a specialist in February 2002. When asked whether the Applicant was ill because of the consumption of water delivered by the Walkerton P.U.C. between April 1, 2000 and December 5, 2000, Dr. ***** checked the "yes" box; however, she did not indicate the basis on which she arrived at this conclusion.
12. The Report of Dr. ***** a Resident dictating for Dr. ***** was dated December 12, 2001 and noted that S was currently experiencing abdominal pain and loose stools but without weight loss. The Applicant had previously had numerous positive tests for d. frag. and she had been treated for the parasite a number of times. Despite treatment, her symptoms persisted and resolved only transiently. Dr. ***** ultimately expressed the view that S probably had post-infectious irritable bowel syndrome without a clear connection between the Dientamoeba fragilis and her current symptoms. He recommended dietary changes including increased fiber intake.
13. The Plan Administrator submitted the Applicant's medical to Dr. *** ***** microbiologist, for his expert opinion. Dr. *** was the expert microbiologist at the Walkerton Inquiry and is the director of the division of infectious diseases at the Toronto General Hospital. Dr. ***** provided the following opinion: "This girl had symptoms which are completely compatible with Dientamoeba fragilis infection in a child. Dientamoeba fragilis was not part of the Walkerton outbreak and therefore the infection and the symptoms are not related to the Walkerton outbreak at all."

Submissions

14. Applicant's counsel confirmed that the Applicant's parents do not presently maintain that S qualifies as a class member. When they originally applied for compensation, they believed that S was ill due to water she consumed in Walkerton. As the medical information has evolved, they accept that S illness was similar in nature to that caused by the pathogens in the Walkerton water but that S illness was not caused by the outbreak. As concerned parents, they nonetheless felt that it was important to bring her situation forward.
15. Plan Counsel submitted that the Applicant had not established that she was ill as a result of contaminated water. All of the medical evidence supports a conclusion that she was infected with *d. frag.* and her symptoms were consistent with that parasite. Dr. *****, an expert micro-biologist, concluded that *d. frag.* was not part of the Walkerton outbreak and that the Applicant was not ill as a result of consuming water in Walkerton. There is no evidence to establish a link between S consumption of water in May 2000, in Walkerton and her subsequent illness.

Decision on Compensation

16. The Walkerton Compensation Plan was intended to be a simple, expeditious means to obtain compensation for those who have suffered a loss as a result of the contamination of Walkerton's water supply. Entitlement to compensation is defined in the Plan approved by the Court and requires that the loss or injury claimed arises, directly or indirectly, from the contamination of the water delivered by the Walkerton PUC².
17. The hearing process has also been an important forum for members of the community to describe their experiences arising from the Walkerton outbreak. Parents of minor children have felt their responsibilities most acutely: they want to protect their children's interests and ensure that they are fairly compensated. The Applicant's parents felt strongly that it was important that her story be recorded. They have provided details of S illness and staunchly represented her throughout this process. In the end, they did not dispute the medical evidence or challenge the Administrator's decision. They have simply tried to do what they could to look out for their daughter.
18. Having reviewed all of the evidence presented to me, I am satisfied that S was infected with *Dientamoeba fragilis* and that it is that parasite that caused her illness. I also accept the evidence of Dr. ***** that *Dientamoeba fragilis* was not one of the water borne pathogens found in the Walkerton water supply in April and May 2000. There is no other evidence to establish that S was ill as a result of her consumption of water in Walkerton in May 2000 and she therefore does not qualify as a Class Member under the Walkerton Compensation Plan.

² Definition of Class Member as set out in Schedule A of the Walkerton Compensation Plan.

Order

19. The Applicant, S has not established that she became ill as a result of consumption of water delivered by the Walkerton PUC in the period April 1, 2000 to June 27, 2000. Therefore, the Applicant does not qualify as a Class Member under the Walkerton Settlement Plan.

Dated April 24, 2006

Reva Devins,
Court Appointed Arbitrator/Referee