

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

JG

Applicant

AND:

The Court Appointed Administrator

Respondent

Appearances:

On behalf of the Applicant: Patrick Kelly, Applicant counsel
JG
GG

On behalf of the Administrator: Milena Protich, Plan counsel
Kim MacDougall, Claims Evaluator
John Gilbert, Claims Evaluator

COURT APPOINTED ARBITRATOR:

Reva Devins

REPORT

1. The Applicant, Mr. JG, submitted an application for compensation under the Walkerton Compensation Plan. Mr. JG was a resident of Walkerton in May 2000 and he believes that he developed a number of medical conditions related to his eyes as a consequence of bathing his eyes with heavily chlorinated water.
2. The Administrator determined that Mr. JG's eye problems were unrelated to the consumption or use of Walkerton water and did not offer any compensation for this aspect of his claim. The Administrator did make an offer for minor illness to compensate the Applicant for a brief period of gastrointestinal illness in May

2000. That offer was not in dispute, nor did the Applicant pursue a claim for any other illness or medical condition.¹

3. The sole issue to be arbitrated is whether Mr. JG's eye and vision problems can be compensated under the Walkerton Compensation Plan.

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, 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, directly or indirectly, 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.

¹ The Applicant had initially claimed that he suffered heart ailments as a result of consumption of contaminated water. At the Arbitration, this part of his claim was expressly abandoned.

Facts

6. The Applicant was a resident of Walkerton and was briefly ill with minor gastrointestinal symptoms in May 2000. The Applicant was very frank in admitting that these events took place several years ago and his memory of this period is not entirely clear.
7. Nonetheless, Mr. JG recalls that he experienced a few days of diarrhea in May of 2000 and that immediately after that he began to have problems with his vision. The town's water supply had been heavily chlorinated to respond to the presence of E. coli and other water borne pathogens and the Applicant remembers his eye doctor, Dr. C, advising him that the chlorinated water was the source of his eye problems. When he first went to see him, Dr. C told him that he had a detached retina in his right eye and asked him what he had put in his eyes. The Applicant replied that he had bathed his eyes using town water and he remembers that Dr. C then said that "the chlorine in the water must have burned your eyes".
8. Since his initial diagnosis, Mr. JG has suffered a litany of problems: he has had surgery to repair a detached retina, he underwent further surgery to correct ongoing problems with tearing, and he has had cataract surgery. Mr. JG continues to experience ongoing difficulties including impaired vision, burning, irritation, and excessive tearing that requires daily eye drops.
9. After Mr. JG provided his testimony, Dr. C was contacted by Applicant's counsel to confirm the Applicant's recollection. Dr. C was informed of Mr. JG's evidence and he submitted a letter, dated May 17, 2006, stating as follows:

Mr. JG has had a right retinal detachment, cataracts in both eyes, and eyelid problems in the last few years. These conditions were not caused by E. coli or water chlorination.
I hope that this clears up any questions regarding this matter.
10. Health Practitioner's Information Forms (HPIF) were submitted by the three physicians who treated Mr. JG's eye conditions: Dr. Cr, his family physician,

form dated September 17, 2003; Dr. H, ophthalmologist, dated October 27, 2003; and Dr. C, optometrist, dated September 19, 2005. All of Mr. JG's treating physicians advised that the Applicant was not ill because of the consumption or use of water delivered by the Walkerton P.U.C. between April 1, 2000 and December 5, 2000.

11. With respect to the timing of Mr. JG's eye conditions, he testified that his vision was affected immediately after the initial water crisis in May 2000. Dr. Cr's records indicate that Mr. JG first attended at his office with evidence of a detached retina on May 25, 2001. He was seen by Dr. C in June 2001 and referred to Dr. H by letter dated June 8, 2001. On June 28, 2001 Dr. H operated on Mr. JG to repair a detached retina in his right eye. There is no evidence in the Applicant's medical records to indicate that he experienced difficulty with his eyes or vision in May of 2000.
12. Mr. John Gilbert, Claims Evaluator with the Walkerton Compensation Plan, testified that he had met with the Applicant to discuss his claim. Mr. JG had asked why there was no offer of compensation with respect to his vision problems and Mr. Gilbert advised that the Applicant's eye condition was not noted on the claim for compensation that was submitted to the Plan. Mr. JG explained to Mr. Gilbert that his eye problems began in 2001 after he had submitted his original claim for compensation.

Submissions

13. Applicant's counsel submitted that Mr. JG's claim rests solely on his personal recollection of events. He remembers his eye problems appearing in May 2000 and that he went to see Dr. C at that time. Dr. C asked him what he had put in his eye, and when Mr. JG told him that he had bathed his eyes in town water, he understood Dr. C to advise him that his detached retina was directly caused by bathing his eyes in heavily chlorinated Walkerton water. Although the Applicant

is aware of the evidence to the contrary, he remains firm in his belief that bathing his eyes in Walkerton water caused his subsequent eye problems.

14. Plan Counsel submitted that none of the available medical evidence supports the Applicant's position. Despite the Applicant's belief to the contrary, it was submitted that the Applicant has not established on a balance of probabilities that his eye and vision problems were a direct or indirect result of his use or consumption of water delivered by the Walkerton PUC.

Decision on Compensation

15. 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. Once admitted as Class Members, claimants are entitled to receive full and complete compensation, in accordance with Ontario law, for losses sustained because of contaminated water in Walkerton. The Administrator is obliged to assess individual claims and to offer compensation to address the losses of those who suffered through the Walkerton water emergency.
16. The Plan is designed as a compensation scheme without the trappings of the traditional adversarial model. The administration of the Plan should not rely on unduly technical or onerous requirements to establish eligibility. Nonetheless, there are minimum criteria that must be met when monetary compensation is being sought. Entitlement 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. I recognize the Applicant's firm conviction that his eye and vision problems were caused by Walkerton water and I accept the sincerity of his views. I have no doubt

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

that the Applicant genuinely believes that his doctor once told him that his problems were as a result of bathing his eyes in the chlorinated water supply.

18. Mr. JG was also frank in admitting that these events took place many years ago and that his memory has faded. I appreciate his honesty and commend him for the sincere and forthright manner in which he gave his evidence. The last several years have not been easy for Mr. JG or his wife GG. He has suffered a series of problems with his eyes and vision without satisfactory relief.
19. In assessing Mr. JG's claim I must look at all of the evidence that has been presented to me and then determine whether it is more likely than not that his health concerns were as a result of Walkerton water.
20. When I consider the evidence as a whole, I do not find that Mr. JG's honest belief is supported by the other evidence in this Arbitration. All of the medical records indicate that he first experienced symptoms related to a detached retina in May 2001, a full year after the water crisis. More importantly, his treating physician, Dr. C, stated that Mr. JG's belief was wrong: the Applicant's condition was not related to the consumption or use of Walkerton water.
21. Mr. Gilbert also testified that Mr. JG had previously advised him that his vision problems began in 2001. All of the evidence suggests that Mr. JG's recollection of events has indeed faded. This is not surprising as a number of years have passed since his eye problems arose. Moreover, he has been struggling with his health and certainly is not to be faulted for an imperfect memory of events.
22. Ultimately, the conclusion as to the cause of the Applicant's eye problem is a medical one and I prefer the evidence provided by Dr. C that these conditions were not caused by E. coli or water chlorination. In light of the overwhelming weight of the medical records and opinions, I find that the Applicant's vision and

eye problems did not arise until 2001 and were not, directly or indirectly, a result of the Walkerton water crisis.

Order

23. The Applicant, JG, has not established that his eye problems were related to the consumption or use of Walkerton water and he is therefore not eligible for compensation for those conditions. As agreed by the parties, and approved by the Court³, the Administrator's offer of \$500.00 for short term gastrointestinal illness is appropriate.

Dated June 16, 2006

Reva Devins,
Court Appointed Arbitrator/Referee

³ In order to facilitate the fair and expeditious resolution of similar cases, a mediation effort requested by Mr. Justice Winkler, conducted on June 11 and 12, 2001, resulted in an understanding that fair and reasonable compensation for illness if the primary symptoms of diarrhea, vomiting and cramps lasted less than 72 hours, was \$500.00.