

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

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Applicant

AND:

The Court Appointed Administrator

Respondent

COURT APPOINTED ARBITRATOR:

Reva Devins

APPEARANCES

For the Applicant:

Patrick Kelly, Counsel

For the Administrator:

Milena Protich, Plan Counsel

Kim MacDougall

AWARD

1. The Applicant, ***** , has submitted a Stage Two application for compensation under the Walkerton Compensation Plan. Ms. ***** is not a resident of Walkerton, however, she was admitted as a Class Member and has resolved her claim regarding illness arising from the consumption of contaminated water. Ms. ***** claim for compensation for the loss of care, guidance and companionship of her adult daughter, ***** , is the only issue that remains outstanding.

The Plan

2. 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. In the cases of serious injury or death, an assessment of damages by a judge of the Ontario Superior Court of Justice is also available.

...

The Walkerton Compensation Plan is to be interpreted broadly to accomplish its objectives.

3. Paragraph 2.2.4 of the Plan provides that family members can seek compensation for pecuniary losses resulting from the injury or death of a Class Member caused by Contamination including, as set out in subsection 61(2) of the *Family Law Act*:

(e) an amount to compensate for the loss of guidance, care and companionship that the Family Class Member might reasonably expect to receive from the Class Member if the injury or death had not occurred.

Facts

4. ***** ***** lives just outside of Walkerton where she resides with her husband, *****, and grand daughter, *****. ***** *****, her adult daughter and the mother of *****, lives in Hamilton. Prior to the contamination of Walkerton's water supply, ***** made regular visits every other weekend to see her daughter and parents. In May 2000, during one of her regular visits, the family went to dinner at a local restaurant in Walkerton and shortly thereafter, ***** became violently ill. ***** was hospitalised for a period of two weeks and she continues to suffer from the effects of her illness, including ongoing fatigue and irregular bowel habits.

5. The Applicant first learned that her daughter was ill when she received a call from the hospital in Hamilton. Initially, the medical staff were unable to confirm a diagnosis and there was some concern that ***** might require surgery. When the Walkerton authorities announced that e-coli had been found in the town's water supply, ***** immediately contacted the hospital where ***** was being treated and informed the nursing staff that ***** had consumed contaminated water.

6. Despite her worry and tremendous fear for her daughter's well being, ***** was not able to visit ***** while she was in the hospital. There was enormous anxiety in the local communities at this time and the Principal at ***** school did not want her in class if there was any risk that she might be infectious. To

ensure that ***** would be permitted to attend school, ***** promised that neither she nor ***** would be in physical contact with *****. ***** was eventually released from hospital, however, it was approximately two months before she resumed her visits to see ***** , ***** and ***** . During this time, ***** was the subject of a number of local newspaper articles that were very upsetting for ***** .

7. After ***** illness, there has been some increased tension in her relationship with her mother as they tend to argue over ***** dietary habits. ***** is often too tired to play with ***** and needs more rest than she did previously. In describing the impact of ***** illness, ***** identified the stress, worry and torment that she felt when ***** was hospitalised as the worst part of her experience. Like any mother, she was overwhelmed by her desire to go to ***** and provide comfort. This feeling was even more acute given her awareness that people were seriously ill and dying from the water contamination. She was torn between the needs of her daughter and her responsibility to care for her grand daughter. In the end, the Applicant made the best choice that she could, however, she paid an emotional cost as a result.

Submissions

8. The Administrator offered \$400.00 to compensate the Applicant for loss of care, guidance and companionship arising from ***** illness. It was the position of the Administrator that this amount was in accordance with damages awarded

under Ontario law and was consistent with the position taken with other similarly situated applicants.

9. On behalf of the Applicant, counsel conceded that there were no cases decided in accordance with Ontario law that would support the view that the Administrator's offer was unreasonable. Therefore, from a legal standpoint, counsel acknowledged that compensation in the amount of \$400.00 was appropriate. Nonetheless, from the Applicant's perspective, this seemed like an inadequate sum to compensate her for her traumatic experience.

Analysis

10. The Applicant has applied for compensation under the terms of the Walkerton Compensation Plan, as approved by Court Order of the Honourable Chief Justice Le Sage issued on March 19, 2001. The terms of the Plan provide that Class Members are entitled to receive full and complete compensation, in accordance with Ontario law, for losses sustained because of contaminated water in Walkerton.
11. In her Stage 2 application, the Applicant described her loss of guidance, care and companionship as follows: "Stress and worry about the death of my child because she was so ill and still is not well." Ms ***** was candid in giving her evidence and she did not suggest that she had incurred any out of pocket expenses related to her daughter's illness nor that she provided nursing, housekeeping or

other services for which she sought compensation. She confirmed that the hardest part of her experience was not being able to visit or comfort her daughter when she was hospitalised. The Applicant was forced to make a painful choice, and ultimately she agreed not to visit her daughter in order to ensure that her grand daughter could remain at school and maintain some aspects of her normal routine.

12. The Applicant also acknowledged that her daughter did recover from the acute period of illness and that the impact on their relationship was fairly short lived. She found it enormously difficult to cope with the period of ***** hospitalization, as did her grand daughter *****, however, fortunately, her daughter was able to visit again after two months.
13. Based on Ms. ***** evidence, it is clear that the most wrenching aspect of ***** illness was the stress and worry that it engendered. Regrettably, the anxiety that Ms. ***** suffered is not compensable under Ontario law. Ms. ***** did not seek nor require any medical treatment for her condition. She described a level of fear and concern that would be suffered by any parent in similar circumstances. I do not mean to minimise the extent of her mental anguish; Ms. ***** clearly suffered enormous anxiety, conflict and guilt as a consequence of her daughter's illness. Rather, my conclusion reflects the current law in Ontario: the courts are clear that losses of this kind are non-compensable¹.

¹ Reidy v. McLeod (1986), 54 O.R. (2d) 661 (C.A.).

14. What can be compensated, is the loss of care, guidance and companionship that results from an injury or death. The assessment of damages must be done “in as objective and unemotional a manner as possible”² and will depend on the particular facts and circumstances of each case. In this case, the Applicant described the impact of her daughter’s illness on their relationship as being relatively short lived. She was unable to see her daughter for two months, however, she has re-established her pre-existing level of contact. Fortunately, Ms. ***** did not suggest that there has been any sustained impairment of her relationship with her daughter. On her behalf, counsel acknowledged that compensation in the amount of \$400.00 was appropriate under Ontario law. In all the circumstances, I find no basis to alter that amount.

Order

15. I find that the Applicant, ***** is entitled to compensation in the amount of \$400.00 with respect to loss of care, guidance and companionship of her daughter ***** due to illness caused by contaminated water in Walkerton.

Dated June 20, 2005

Reva Devins, Referee

² Reidy v. McLeod, *supra*, at 662.