

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

[REDACTED] (minor)

Applicant

AND:

The Court Appointed Administrator

Respondent

APPEARANCES:

On behalf of the Applicant: No one attended on behalf of the Applicant

On behalf of the Administrator: Milena Protich, Plan Counsel
Kim MacDougall, Claims Evaluator
Heather Batchilder, Claims Evaluator

COURT APPOINTED ARBITRATOR:

Reva Devins

REPORT

1. [REDACTED] has submitted an application on behalf of her minor daughter, [REDACTED], (the "Applicant"), for compensation under the Walkerton Compensation Plan. The Applicant was born on September 6, 2000 and was a resident of Walkerton from the date of her birth. The Applicant claimed compensation for disturbance due to water disruption and for illness arising from contaminated water.

2. The Applicant was classified as a Class Member under section 1(a) of the Plan and she received \$2000.00 as an initial minimum payment. The Administrator subsequently made an Offer of Compensation for water disruption on a pro-rated

basis in the amount of \$1,327.04, for 88 days of disturbance. This offer was not disputed.

3. The Administrator also made a zero offer with respect to the Applicant's illness claim. The Applicant did not accept this offer and a Status Review Hearing was scheduled for May 11, 2005. Neither the Applicant nor her guardian attended the Hearing and this matter was set down for Arbitration.
4. Arbitration was convened on August 10, 2005 to determine the Applicant's claim for compensation for illness. [REDACTED] attended the hearing on behalf of the Applicant and acknowledged receiving the Administrator's Brief setting out its position that the Applicant had not established entitlement to further compensation under the Plan. [REDACTED] advised that she wished to retain counsel and the hearing was adjourned to allow her to seek legal advice. [REDACTED] agreed to advise the Administrator of the name of her lawyer by August 20, 2005 and that the Arbitration would resume on October 17, 2005 at 1:00 p.m.
5. A new Notice of Proceeding was sent to the Applicant's guardian on August 29, 2005. Kim MacDougall, Claims Evaluator with the Walkerton Compensation Plan, testified that [REDACTED] had not advised the Administrator that she had retained counsel, nor had she contacted the Administrator to advise that she was unable to attend this hearing or that she required a further adjournment. Ms. MacDougall also stated that she tried to reach [REDACTED] by phone 20 minutes after the hearing was scheduled to commence, however, no one answered her call.
6. The hearing was convened at 1:30 p.m. on October 17, 2005. On the basis of [REDACTED] previous attendance and consent to reconvene on this date and the evidence of Ms. MacDougall, I was satisfied that the Applicant's guardian was aware of these proceedings. The Applicant's guardian did not request a further adjournment nor did she indicate that she was unable to attend the hearing and I therefore determined that the matter should proceed.

The Plan

7. 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.

8. Under the terms of the Walkerton Compensation Plan, Class Members 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, in accordance with Ontario law, to address the losses of those who suffered through the Walkerton water emergency. The Plan is designed as a compensation scheme without the trappings of the traditional adversarial model.

Facts

9. The Applicant was born on September [REDACTED], 2000 and resided in Walkerton after water borne pathogens were first found to be in the system¹. The Applicant did not provide any details of her illness in her Stage 1 application for compensation.

10. In her Stage 2 application, it was claimed that [REDACTED] experienced symptoms as follows:

a. Diarrhea	Yes	From:	then	To:	Now
-------------	-----	-------	------	-----	-----

¹ The boil water advisory was issued in May 21, 2000: *The Report of the Walkerton Inquiry, Part One: The Events of May 2000 and Related Issues* released by Mr. Justice Dennis O'Connor in January 2002.

b. Bloody Diarrhea	Yes	From:	To:	?
c. Fever	Yes	From:	To:	
d. Vomiting	Yes	From:	To:	
e. Nervous Shock	Yes	From:	then	To: Now
f. Mental Distress	Yes	From:	then	To: Now

When asked to describe any symptoms not listed above, the response was "I suffered the same symptoms as my mother". The Applicant also claimed that she suffered a recurrence of her symptoms on "many" occasions and that she has "cramps and diarrhea often as everyone else in Walkerton does."

11. Heather Batchilder, Claims Evaluator with the Walkerton Compensation Plan, testified that she spoke to [REDACTED] by telephone at the end of November 2004. During this call, [REDACTED] clarified the basis of [REDACTED] application and explained that she believed that since she was sick while she was pregnant with [REDACTED] would have experienced symptoms of illness while she was "still in her tummy". She further advised that [REDACTED] did not experience any of the symptoms listed in the Stage 2 application and that she completed it by mistake. Ms. Batchilder confirmed this discussion by letter dated November 30, 2004. [REDACTED] then attended at the Plan office and Ms. Batchilder reviewed the letter with her. [REDACTED] repeated her assertion that [REDACTED] must have been sick because she was sick while she was pregnant.
12. Ms. Batchilder further testified that she reviewed the claims process with [REDACTED] including her right to seek mediation, arbitration and the availability of legal counsel to assist her in the presentation of [REDACTED] claim. [REDACTED] indicated that she wished to proceed to mediation and Ms. Batchilder provided her with a request to consent to the release of [REDACTED] medical files. [REDACTED] did not return the consent and did not file any further medical notes, records or opinions. Nor did [REDACTED] respond to the subsequent reminders requesting the return of a signed consent to obtain the relevant medical files.

Submissions

13. Plan Counsel submitted that the Applicant had failed to establish that she was ill as a result of exposure to contaminated water. Counsel relied on the testimony of Ms. Batchilder and the absence of any medical records to support its position that the Applicant had failed to establish that she experienced symptoms of illness or that she suffered a compensable loss as a result of contaminated water.

Decision on Compensation

14. 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. 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 being claimed arises, directly or indirectly, from the contamination of the water delivered by the Walkerton PUC².

15. The Applicant in this case was born more than three months after the boil water advisory was issued and there is no evidence to suggest that she consumed or was otherwise infected by another individual who consumed contaminated water. There are no medical records to confirm illness and there is no medical opinion to suggest that the Applicant was ill or suffered any symptoms that can be said to arise, directly or indirectly, as a result of the contamination of the water delivered by the Walkerton PUC.

16. The Applicant's representative declined to give her consent to the release of [REDACTED] medical records and she did not attend this Arbitration to provide evidence in support of [REDACTED] application. [REDACTED] was aware of this arbitration and was provided every opportunity to seek legal assistance and to attend these proceedings. She did not attend, did not advise that she had retained counsel or

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

indicate that she was unable to attend at the designated time and place for the Applicant's hearing.

17. It is always troubling to make a determination of an Applicant's rights when they have not attended to explain their position. It is even more troubling when the claim for compensation is made by a minor and it is her representative that fails to provide evidence in support of a minor's application. Nonetheless, I am obliged to make an assessment based solely on the evidence that is available.
18. I accept the testimony of Heather Batchilder that the Applicant's mother subsequently claimed that [REDACTED] did not actually suffer the symptoms listed on her Stage 2 application but that she believed that [REDACTED] must have been ill when she herself was ill in May 2000 and [REDACTED] was "in her tummy". It would appear that [REDACTED] believes that [REDACTED] suffered in utero and that she should receive compensation on that basis. I cannot, however, award damages on the basis of speculation or theoretical losses. I must be satisfied on a balance of probabilities that a claimant has actually suffered a loss that is compensable under the Plan. In this case, there is virtually no evidence to support such a finding.
19. The statements made in her Stage 2 application constitute the only evidence that is before me to support the Applicant's claim. Although there might be circumstances where the details provided in the application can provide a sufficient basis for an award of compensation, in this case, I have found that the application was completed in error and there is no medical evidence to back up the novel claim that is apparently being advanced. In these circumstances, I cannot conclude that the Applicant suffered an illness or that she suffered any loss that arises from the contamination of Walkerton's water supply.

Order

20. The Applicant, [REDACTED] has not established that she was ill as a result of contaminated water and she is therefore not entitled to receive compensation for illness under the Walkerton Compensation Plan.

Dated November 7, 2005

A handwritten signature in black ink, appearing to read "R. Devins", is written over a horizontal line.

Reva Devins,

Court Appointed Arbitrator/Referee