

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) Reconsideration Decision of April 16, 2014 in which the ministry denied the appellant's request for reimbursement of her son's funeral expenses because the ministry does not reimburse for funeral costs previously incurred.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) Section 65, Schedule F

PART E – Summary of Facts

The ministry was not represented at the hearing. After confirming that the ministry had been notified of the hearing the panel proceeded under Section 86(b) of the Employment and Assistance Regulation (EAR).

The evidence before the ministry at the time of reconsideration consisted of the following documents:

1. Request for Reconsideration dated April 1, 2014;
2. Death Certificate confirming death of the appellant's adult son in British Columbia in early March 2014;
3. Receipt from a funeral home in British Columbia issued to the appellant in the amount of \$2,786.40 indicating payment by credit card.

In the Reconsideration Decision the ministry states that on March 25, 2014 the appellant attended at her local ministry office to inform the ministry of the death in early March of her adult son. The ministry explained the death benefits to her. On March 27, 2014 the appellant asked the ministry for reimbursement of the funeral home expense of \$2,768.49 which she had already paid by credit card, and informed the ministry that she had applied for a CPP death benefit. The ministry denied the appellant's request on the basis that the ministry was not able to reimburse for funeral costs already incurred.

On April 1, 2014 the appellant requested reconsideration of the ministry's decision, arguing that her son should not have had his application for social assistance denied because he was not well, having suffered a brain injury as a result of contracting encephalitis at the age of 27.

In its Reconsideration Decision the ministry upheld the original decision to deny a funeral supplement for the following reasons:

- The ministry may pay a funeral supplement for necessary items or services for persons who die in British Columbia when there are no resources available from the estate of the deceased person or from a "responsible person" as defined in EAR Section 65 (1).
- The ministry will not pay a funeral supplement if the estate of the deceased or a responsible person has sufficient resources to pay for funeral costs.
- If the estate of the deceased or a responsible person is unable to pay the entire funeral costs the ministry may co-fund the expense which will be considered a debt due to the Province of British Columbia and which may in future be recovered by the ministry.
- When the ministry assists with funeral expenses the ministry determines the necessary costs as determined in Schedule F of the EAR, and pays the funeral home directly.
- The appellant did not receive prior ministry approval before incurring her son's funeral costs.
- Because the appellant had already paid the funeral costs and applied for a CPP death benefit she therefore found the resources to meet the immediate need.

In her Notice of Appeal the appellant stated that her son could not work and had applied for social assistance in late September 2013. He did receive a small CPP disability pension. The appellant added that the ministry's delay in processing her son's application for social assistance was unconscionable.

At the appeal hearing the appellant told the panel that her son had applied for social assistance in November 2013 (which differs from the date indicated in her Notice of Appeal) and had received a cheque from the ministry, but for reasons unknown to the appellant the ministry took back the cheque. The appellant added that her son was unable to work because of a brain injury suffered by him after developing encephalitis at age 27. His only asset was an old van which the appellant believed was worth between \$400 and \$500. The \$2,786.40 paid by the appellant to the funeral home was for the cost of cremation only. The appellant has not yet received a response from CPP regarding her application for a CPP death benefit.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry decision which denied the appellant's request for reimbursement of her son's funeral expenses because the ministry does not reimburse for funeral costs previously incurred.

The criteria for burial and cremation supplements are set out in Section 65 and Schedule F of the EAR:

Burial or cremation supplements

65 (1) In this section:

"extraprovincial transportation", with respect to a person who dies in Canada but outside British Columbia, means transporting the deceased person's body within the province or territory in which death occurred for the purposes of providing a service described in paragraph (b) or (c) of the definition of "funeral costs";

"funeral costs" means the costs of the following items, as set out in Schedule F:

- (a) intraprovincial transportation costs;
- (b) services of a funeral provider, as defined in the *Cremation, Interment and Funeral Services Act*;
- (c) cremation or burial of a deceased person's body or remains, including the cost of a casket or urn;

"interprovincial transportation" means preparing the deceased person's body for transport to British Columbia and transporting the body to British Columbia;

"intraprovincial transportation" means transporting a deceased person's body within British Columbia for the purposes of providing a service described in paragraph (b) or (c) of the definition of "funeral costs";

"responsible person", with respect to a deceased person, means,

- (a) a spouse of the person,
- (b) in the case of a minor, a parent of the person, or
- (c) in the case of a person sponsored to immigrate to Canada under the *Immigration Act* (Canada) or the *Immigration and Refugee Protection Act* (Canada), a sponsor or co-sponsor of the person, if the undertaking given or co-signed by the sponsor is still in effect.

(2) If neither the estate of a deceased person nor any responsible person has the resources available to pay any of the following costs when payable, the minister may provide a supplement for those costs in the circumstances specified:

- (a) necessary funeral costs, if
 - (i) the person died in British Columbia, and
 - (ii) the burial or cremation is to take place or has taken place in

British Columbia;

(b) necessary funeral costs and, with the prior approval of the minister, the necessary interprovincial transportation costs, if

- (i) the person died in Canada but outside British Columbia,
- (ii) immediately before the death, the deceased person was a recipient of income assistance, disability assistance or hardship assistance, and
- (iii) the burial or cremation is to take place or has taken place in British Columbia;

(c) with the prior approval of the minister, the necessary extraprovincial transportation costs and necessary funeral costs, if

- (i) the person died in Canada but outside British Columbia,
- (ii) immediately before the death, the deceased person was a recipient of income assistance, disability assistance or hardship assistance, and
- (iii) the burial or cremation is to take place in the province or territory in which the death occurred;

(d) necessary funeral costs, if

- (i) the person died outside British Columbia, or in the case of a recipient of income assistance, disability assistance or hardship assistance, died outside Canada,
- (ii) immediately before the death, the person was ordinarily resident in British Columbia, and
- (iii) the burial or cremation is to take place or has taken place in British Columbia.

(3) For the purposes of subsection (2), funeral costs, and interprovincial transportation and extraprovincial transportation costs are necessary if the minister determines that

- (a) the item or service in relation to which a supplement is requested is a necessary item or service, and
- (b) the item or service is or was appropriate.
- (c) Repealed. [B.C. Reg. 63/2010, s. 3 (c).]

(3.1) The amount of a supplement payable under subsection (2) is,

- (a) in respect of a funeral provider's fee for services, an amount that is, in the opinion of the minister, the lowest reasonable cost,
- (b) in respect of a particular item or service that is a funeral cost, other than a service included in a funeral provider's fee for services,
 - (i) the cost for the item or service set out in Schedule F, or
 - (ii) if there is no cost set out for the item or service in Schedule F, the cost that is, in the opinion of the minister, the lowest reasonable cost for that item or service, and

(c) in respect of interprovincial transportation or extraprovincial transportation, the cost that is, in the opinion of the minister, the lowest reasonable cost.

- (4) The amount of a supplement paid under this section is a debt due to the government and may be recovered by it from the deceased's estate.

Schedule F

[en. B.C. Reg. 63/2010, s. 5.]

Burial and Cremation Costs

(section 65)

Burial and cremation supplement

- 1 A supplement that is paid under section 65 of the regulation may include the following amounts:
- (a) an amount for a funeral provider's fee for services;
 - (b) an amount for the costs of intraprovincial transportation, if that transportation is for a distance greater than 32 kilometres;
 - (c) in respect of a burial, an amount for the costs set out in section 4 of this Schedule;
 - (d) in respect of a cremation, an amount for the costs set out in section 5 of this Schedule.

Funeral provider's fee for services

- 2 The services provided in respect of a funeral provider's fee for services must include:
- (a) intraprovincial transportation, if that transportation is for a distance of 32 kilometres or less;
 - (b) completion and filing of the registration of death;
 - (c) obtaining a burial or cremation permit;
 - (d) co-ordination with a crematorium and cemetery;
 - (e) all professional and staff services;
 - (f) preparation of a deceased person's body for burial or cremation, including basic sanitary care and casketing;
 - (g) use of the funeral provider's facilities and equipment, including a preparation room, refrigeration and parking and service areas;
 - (h) other items or services incidental to or provided as part of any of the services described in paragraphs (a) to (g), as agreed by the funeral services provider and the responsible person.

Rates for intraprovincial transportation

3 Mileage for intraprovincial transportation for a distance greater than 32 kilometres must not exceed the rate set out in Column 2 of the Table below opposite the distance set out in Column 1.

Item	Column 1	Column 2
	Distance	Rate
1	more than 32 km but less than or equal to 82 km	\$1/km
2	more than 82 km but less than or equal to 182 km	\$.90/km
3	over 182 km	\$.60/km

Costs of burial

4 (1) A supplement payable in respect of a burial may include an amount for the following costs:

- (a) the cost of a burial plot in British Columbia;
- (b) grave opening and closing fees;
- (c) if a grave liner, hermetically sealed rigid container, plastic body pouch or outer grave box or liner is required by the cemetery, the cost of the liner, container, pouch or box;
- (d) the cost of a casket, in an amount representing the sum of the following:
 - (i) the actual factory invoice price of a HP #2 cloth-covered casket or an equivalent or, in the case of over-sized remains, a casket for over-sized remains;
 - (ii) a merchandising mark-up of up to 20%;
 - (iii) the cost of freight to the funeral home.

(2) A lower cost casket may be used at the request of a responsible person.

(3) The minister may pay for the remains of a deceased person to be interred at a location within British Columbia other than the location at which the remains were prepared for burial in an amount not to exceed the amount that would be payable for the costs described in subsection (1) (a) to (c) and intraprovincial transportation costs.

Costs of cremation

5 (1) A supplement payable in respect of a cremation may include an amount for the following costs:

- (a) cremation fees;
- (b) the cost of a cremation plot in British Columbia;

- (c) grave opening and closing fees;
 - (d) if a concrete grave liner is required by the cemetery, the cost of the grave liner;
 - (e) the cost of an urn in an amount not to exceed \$200.
- (2) The minister may pay for the remains of a deceased person to be interred at a location within British Columbia other than the location at which the remains were cremated in an amount not to exceed the amount that would be payable for the costs described in subsection (1) (b) to (d).

The appellant argues that she should receive a funeral supplement because her son was unable to work due to a brain injury and should have received social assistance benefits upon his application to the ministry in the fall of 2013. She argues further that she has applied for but not yet received a CPP death benefit arising from the death of her son.

The ministry argues that a funeral supplement for necessary items or services may be paid for persons who die in British Columbia when there are no resources available from the estate of the deceased person or from a "responsible person" as defined in EAR Section 65 (1), but not if the estate of the deceased or a responsible person has sufficient resources to pay for funeral costs. If the estate of the deceased or a responsible person is unable to pay the entire funeral costs the ministry may co-fund the expense which will be considered a debt due to the Province of British Columbia and which may be recovered by the ministry.

The ministry also argues that when it assists with funeral expenses the ministry determines the necessary costs as set out in Schedule F of the EAR and pays the funeral home directly. Finally, the ministry argues that because the appellant did not receive prior ministry approval before incurring her son's funeral costs and because she had already paid the funeral costs and applied for the CPP death benefit she had found the resources to meet the immediate need associated with her son's death.

Panel Decision

In coming to its decision the panel reviewed the applicable legislation as it related to the circumstances of the appellant. The criteria for determining eligibility for a funeral supplement are set out in Section 65 of the EAR.

EAR Section 65(1)

Subsection 65 (1) defines a number of terms, two of which are applicable in this instance: "funeral costs" and "responsible person".

1. Funeral Costs

Funeral costs include services of a funeral provider and cremation or burial of a deceased person's remains, including the cost of a casket or urn. Therefore the cremation expenses paid by the appellant to the funeral home fall within this statutory definition.

2. Responsible Person

Section 65 (1) of the EAR defines a "responsible person" as a spouse of the deceased person, the parent of a minor deceased person, or a sponsor or co-sponsor of an immigrant to Canada. The appellant does not fit into any of these categories. She is therefore not a responsible person as defined by the EAR.

EAR Section 65(2)

Subsection 65 (2) sets out the circumstances under which the minister may provide a supplement if neither the estate of the deceased person nor a responsible person has the resources to pay. The appellant is not a responsible person, and there is no evidence that the deceased's estate had sufficient resources to pay his necessary funeral costs. Paragraphs (b), (c) and (d) of Section 65 (2) are not applicable because they relate to interprovincial, extra provincial and international deaths, but paragraph (a) gives the ministry the discretion to pay the necessary funeral costs of a person who died within British Columbia whose burial or cremation is to take place or has taken place in British Columbia (emphasis added).

EAR Section 65(3) and (3.1)

Subsection 65 (3) states that for the purposes of subsection (2) funeral costs are necessary if:

- (a) The item or service in relationship to which a supplement is requested is a necessary item or service,
- (b) the item or service is or was appropriate (emphasis added), and

(3.1) The amount of a supplement payable under subsection (2) is,

- (a) in respect of a funeral provider's fee for services, an amount that is, in the opinion of the minister, the lowest reasonable cost, and
- (b) in respect of an item other than a funeral service fee, the cost set out in Schedule F, or if not set out in Schedule F, the lowest reasonable cost for that item or service.

EAR Schedule F

A funeral provider's fee for services and cremation costs are eligible costs set out in Schedule F.

The panel finds that the ministry's reconsideration decision was not a reasonable application of the applicable legislation for the following reasons:

1. The decision is based in part on the incorrect assumption that the appellant is a "responsible person" as defined by the EAR. Because the appellant is not a responsible person her ability to pay is not a factor in determining her eligibility for a funeral supplement.
2. The estate of the deceased did not have the resources to pay his necessary funeral costs.
3. There is no evidence that there was any responsible person as defined by legislation who had the resources to pay the funeral costs.

4. The funeral supplement was also denied because the appellant did not receive prior approval from the ministry before paying the costs. Under the legislation prior approval is required only when a supplement to cover interprovincial or extraprovincial transportation costs to transport the body of the deceased is sought. Section 65 (2)(a) clearly states that the ministry may pay the necessary funeral costs of a person whose burial or cremation has taken place in British Columbia if the cost or service is or was appropriate. The legislation therefore does not prohibit reimbursement of funeral costs that have already been paid. While the ministry may have a policy that it pays a funeral supplement directly to the funeral service provider, the legislation does not require it. According to the ministry, its policy does provide for co-funding where the estate does not have the funds to pay and where there is no responsible person who has the funds.

In conclusion this panel finds that the ministry's decision to deny reimbursement of funeral costs to the appellant was not a reasonable application of the applicable enactments in the circumstances of the appellant, and rescinds the decision. Because the decision of the tribunal cannot be implemented without a further decision as to amount the matter is referred back to the minister for further decision.