

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 28, 2014 which denied the appellant's request for a burial supplement to cover necessary funeral costs. The ministry held that all of the requirements of Section 65 of the *Employment and Assistance Regulation* (EAR) were not met as the ministry found that:

- There is insufficient evidence to establish that neither the estate nor any responsible person has the resources available to pay the costs when payable [Section 65(2) of the EAR]; and,
- The funeral costs were not limited to necessary funeral costs [Section 65(2) and (3) of the EAR].
- The funeral costs were not the lowest reasonable cost [Section 65(3.1) of the EAR].

PART D – Relevant Legislation

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

PART E – Summary of Facts

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

One of the panel members disclosed a distant professional association with the appellant from many years ago, which he had no reason to believe would affect his ability to be neutral and impartial. With the appellant's oral consent, the panel member remained on the panel.

The evidence before the Ministry at the time of the reconsideration decision included:

- 1) Invoice dated January 31, 2014 to the estate of the appellant's daughter, care of the appellant, for the sum paid by cheque of \$1,232 for the cost of a casket and cover;
- 2) Receipt dated February 3, 2014 in the appellant's name for the sum of \$812 paid as the cost of a cemetery plot donation;
- 3) Invoice dated February 5, 2014 in the appellant's name for the sum paid by cheque for \$2,949.35 as the cost of lunch for 153 guests and cemetery attendants;
- 4) Statement of Account dated February 6, 2014 from the funeral chapel in the appellant's name for the total sum of \$5,804.73 paid as the cost for services including professional and staff services, transfer services, funeral vehicles, facilities, memorial folders, cemetery equipment rental, administrative fees, death certificate and obituaries; and,
- 5) Request for Reconsideration- Reasons dated March 14, 2014.

In her Request for Reconsideration, the appellant wrote that:

- Her daughter, who passed in January 2014, had Persons With Disabilities (PWD) designation. Her daughter left no money to cover funeral expenses.
- When they were making funeral arrangements, the appellant was not informed that her daughter was eligible for monetary assistance with the funeral.
- She has had to extend her line of credit to cover funeral costs, which included the amount to the funeral chapel service for \$5,804, casket and cover for \$1,232, cemetery plot \$812 and lunch for \$2,949.35, for a total of \$10,797.35.
- There will also be a cost for the gravestone and other incidental costs (flowers, newspapers, etc.) which she understands the ministry does not cover.
- She would appreciate assistance with those costs that are included in the program.

In her Notice of Appeal dated April 5, 2014, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that:

- She was not informed that the ministry will assist with costs for a person with a disability.
- She should have been informed by either the funeral director or someone from the government.
- She did what she thought was right based on her knowledge.

At the hearing, the appellant's friend stated that:

- The appellant was in a very difficult situation when her daughter gave birth to a child in January 2014 and then her daughter committed suicide later that month. The appellant was not thinking through all the bureaucracy at the time.
- Even though there were many different professionals involved with the appellant and her daughter after the child was born, no one ever raised the issue of who was going to pay for the

daughter's funeral. There were probably at least a half a dozen people who could have given the appellant some advice about getting some of the costs paid.

- A proper funeral is extremely important in the appellant's culture. The appellant had to 'do right' by her daughter and give her a proper burial.
- The appellant's daughter was really a ward of the state because the government had more control over her life than the appellant.

At the hearing, the appellant stated that:

- Her daughter was over the age of 19 at the time of her death. Her daughter was an involuntary patient in a psychiatric facility and, prior to that, she lived with the appellant. Her daughter had schizophrenia and, as she had a disability, was the appellant's dependant.
- Her daughter was under enormous pressure as she gave birth in the facility in January 2014 and, although she had asked that the appellant be called when she went into labour, this was not done.
- Many demands were placed on her daughter after the child's birth. She was only permitted to see her child for short periods and threats were made that contact would be cut off if she did not cooperate. She was told she would be transferred to a facility in another community and it was more than her daughter could handle and she took her own life.
- Her daughter died in British Columbia.
- The father of the child has not acknowledged that he is the father and has not been involved at all in the child's care. The appellant's daughter was not married.
- An investigation of her daughter's circumstances is currently underway since there were questionable decisions made.
- She paid the funeral costs for her daughter by writing cheques on her line of credit. Her line of credit is currently at about \$40,000, but it is not at the maximum credit limit.
- She feels she is being penalized for being responsible and paying the amounts owing for the funeral costs when they were due. It was after the bills were all paid that someone suggested looking into the government contributing to the cost. She did not know the right questions to ask during the whole process.
- Her daughter was looking forward to being released from treatment in April 2014 and she planned to live with the appellant. The appellant had put in a kitchen suite so her daughter and grandchild could live in her house, and the appellant was prepared to help her.
- She is currently on medical leave from her employment and has taken a 40% reduction in her pay to look after her grand-child, and this has caused financial strain. She has begun the process to adopt her grandchild.
- She submitted the bills, which total approximately \$11,000, to the ministry but she is not expecting that the whole amount be paid; she just expects what is reasonable in the situation, she expects a reasonable contribution.
- There were other costs for the funeral that were not included in the request, such as \$640 for the hall rental and \$200 towards having an MC [master of ceremonies], as well as incidental costs, such as flowers, and a gravestone.
- Looking at the Statement of Account from the funeral chapel, she is surprised that \$590 was charged for "transfer services" and finds it incredible how much they charged.
- She contacted CPP, as recommended by the ministry, and they were no help because her daughter had not contributed to CPP. She had been a student and only had summer jobs.
- Her daughter had no money when she died and did not have a Will.

The oral testimony of the appellant and her friend provided further detail of the circumstances relating to the request for the burial supplement. Therefore, the panel admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

The Ministry relied on its reconsideration decision. The Ministry's evidence included:

- On February 27, 2014, the appellant requested financial assistance for the funeral costs paid on behalf of her daughter who passed away in January 2014.
- The appellant indicated that she had already paid the funeral costs but she did not realize until recently that she could have asked for assistance from the ministry.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the Ministry's decision, which denied the appellant's request for a burial supplement to cover necessary funeral costs because all of the requirements of Section 65 of the *Employment and Assistance Regulation* (EAR) were not met, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the appellant's circumstances.

Section 65 of the EAR sets out the eligibility requirements which are at issue on this appeal for providing the burial or cremation supplement, as follows:

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.

Ministry's Position

The ministry's position is that the provisions of Section 65 of the EAR allow for the ministry to provide a burial or cremation supplement for persons who die in British Columbia when no resources are available to the estate of the deceased person or from any of the responsible persons. The ministry argued that if there are sufficient resources available to either the responsible persons or the estate, the ministry will not pay the funeral supplement. The ministry argued that the appellant already paid for the services and, therefore, found the resources to meet the immediate need. The ministry argued that the funeral charges were more than just the necessary funeral costs, they were not the lowest reasonable costs in the ministry's opinion, and the appellant did not receive prior approval before incurring the costs.

The appellant's position is that her daughter, who passed in January 2014, had PWD designation and she had no money when she died to cover funeral expenses. The appellant argued that when she was making funeral arrangements, she was not informed that her daughter was eligible for monetary assistance with the funeral. The appellant argued that she was in a very difficult situation when her daughter gave birth to a child in January 2014 and then her daughter died later that month, and she

was not thinking through all the bureaucracy at the time. The appellant argued that her daughter was a ward of the state, in that she was being detained for psychiatric treatment, and the responsible person is the government, not her. The appellant argued that her daughter left no money to cover funeral expenses and the appellant had to extend her line of credit to cover the costs, which included the amount to the funeral chapel service for \$5,804, casket and cover for \$1,232, cemetery plot at \$812 and lunch for \$2,949.35, for a total of \$10,797.35. The appellant argued that a proper funeral is extremely important in her culture and she had to give her daughter a proper burial.

Panel decision

Section 65(2) of the EAR sets out that a burial supplement may be provided to pay for 'necessary funeral costs' if neither the estate of a deceased person nor any 'responsible person' has the resources available to pay any of the costs when payable. It is not disputed that the costs of the funeral for the appellant's daughter as submitted by the appellant, for a total of \$10,797.35, were paid when they were payable. The appellant stated that she was being responsible and paying the accounts when they were due, but she was not the 'responsible person' for her daughter. The panel concurs with the appellant that she does not meet the definition of a 'responsible person' with respect to her daughter, as set out in Section 65(1) of the EAR as, while she is a parent, her daughter was over the age of 19 at the time of her death, had reached the age of majority in British Columbia, and was not a 'minor.' The appellant stated that her daughter was not married, and there was no evidence presented of another 'responsible person,' according to the prescribed definition, who may have paid any of the costs. The appellant stated that her daughter had no money when she died and, in the absence of any evidence that the estate of the appellant's daughter had resources, the panel finds that the ministry was not reasonable in concluding that there were resources available to either a responsible person or the estate of the appellant's daughter.

Sections 65(1) of the EAR defines "funeral costs" as specified items further detailed in Schedule F of the EAR, namely: intra-provincial transportation costs, services of a funeral provider, and cremation or burial of a deceased person's body or remains, including the cost of a casket or urn. The panel finds that the ministry reasonably considered the definition of 'necessary' funeral costs to be further defined by Section 65(3) of the EAR to include those items or services that are both 'necessary' and 'appropriate.' The panel finds that the ministry reasonably determined that some of the items submitted to the ministry by the appellant are not included in this definition, in particular the invoice for the cost of a lunch for guests and cemetery attendants, while other of the costs, including the cost of a casket, may be covered to the extent permitted in Schedule F. The panel also finds that the ministry reasonably considered Section 65(3.1) as applying to the amount of the supplement payable under Section 65(2) and includes either the cost set out in Schedule F or, if there is no cost set out for the item or service in Schedule F, the cost that is the lowest reasonable cost in the ministry's opinion. While the ministry also pointed to the absence of prior approval before the appellant incurred the costs, the panel finds that the requirement for prior approval applies in situations where the person died outside of the province and, in this case, the appellant's daughter died in British Columbia and the provisions of Section 65(2)(b) and (c) of the EAR do not apply.

Conclusion

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a burial supplement for necessary funeral costs because the requirements of Section 65 of the EAR were not met, was not a reasonable application of the applicable enactment and the panel rescinds the ministry's decision. Therefore, the ministry decision is overturned and the panel decision is referred back to the ministry for a decision as to the amount.