

### PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated 27 March 2014 determined the appellant was not eligible for partial funeral costs in the amount of \$750.00 because at the time of the request the estate of the deceased person had the resources to pay those partial costs, thus not meeting one of the conditions of s. 65(2)(a) of the Employment and Assistance Regulation.

### PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 65 and Schedule F.

## PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- On late November 2014, the appellant's aunt passed away.
- On 3 December 2013, the appellant requested the assistance of the ministry for the funeral costs for her aunt's cremation and burial. The ministry approved the request with the provision that the appellant would pay \$750.00 to the funeral home that was available in the joint bank account she held with her aunt and that was part of the deceased's estate.
- On 8 January 2014, the appellant indicated to the ministry she had spent the \$750.00 on other items and she requested the ministry to pay that amount that was outstanding with the funeral home.
- An undated letter, stamped by the ministry on 29 January 2014, by the appellant indicating that when she went to the ministry she was not aware her aunt would get death benefit of \$2,500.00. She had talked with a few ministry workers but was given conflicting advice. She had a joint bank account with the deceased and was doing all her banking and taking care of her daily expenses. There was never enough money to cover all the costs as her aunt was receiving \$1,400.00 per month and her rent was \$1,200.00 and thus, she needed the appellant's help. As a trustee for her aunt, she had to file an annual report indicating how her money was spent and showing that she had nothing to live on. She indicated that the last 2 months of her aunt's life were expensive for her family, as they had to use their own funds to pay for clothes alterations given her health condition and for medications that were not covered by BC PharmaCare. So, after her aunt passed away, she used that money to pay their own bills because they were behind in their own payments. She also indicated that she received a copy of the invoice for her aunt's cremation and indicated that there were items there that should not have been charged as those services were not provided and because she was buried in a family plot that had been paid years ago. She stated she thought the costs should have been around \$700.00 and invited the ministry to review the costs charged by the funeral home that was selected. She also indicated having obtained a quote from another funeral home that was much lower.
- An undated and unnamed quote stamped by the ministry on 29 January 2014 indicating a total estimate for funeral costs of just over \$2,200.00.
- In her Request for Reconsideration dated 25 February 2014, the appellant indicated that she should have been told about a death benefit of \$2,500.00 because she could have checked other funeral homes to get a better price so she could have had enough funds to pay what her aunt still owed for clothing alterations and medications. At the time when her aunt passed, she was not aware of her death benefits and she was not in a good state of mind as she grieved her aunt that she loved dearly.
- The ministry indicated that the total funeral service billing was \$3,330.60, less \$750.00 paid by the appellant, resulting in \$2,580.60 paid by the ministry. Death benefits amounted to \$2,500.00 and there was just over \$800.00 in the deceased bank account when the request was made.

In her Notice of Appeal undated but received by the Tribunal on 10 April 2014, the appellant indicated that "the \$750.00 left in the joint [bank] account was used for bills that were put on hold in order to help my aunt out in the last 2 months of her life. We are in bankruptcy and I am on disability, so we needed to cover some of our costs."

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant was not eligible for partial funeral costs in the amount of \$750.00 because at the time of the request the estate of the deceased had the resources to pay those partial costs, thus not meeting one of the conditions of s. 65(2)(a) of the EAR, was a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation is s. 65 of the EAR that states:

**65 (1)** In this section:...

“**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;

...

“**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;

...

(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,
- (b) the item or service is or was appropriate, 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,
- (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, ...

The relevant sections in Schedule F of the EAR applying to cremation are:

**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.

- 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 ministry argues that if the estate of a deceased person or a responsible person do not have the resources available to pay for funeral costs, the minister may provide a supplement for those costs. At the time the request was made, there was over \$750.00 in the deceased bank account that the appellant then agreed to be used to pay part of the funeral costs, the ministry paying the other part out of the deceased death benefit of \$2,500.00. Thus, at the time there were resources available from the deceased's estate to meet that need. The ministry further argues that the fact the appellant later chose to apply those funds for other purposes does not alter the fact that at the time of the request, those funds were available and the appellant had agreed to use them accordingly. Further, the ministry argues that even though the appellant may suggest that the services could have been done at a lower cost elsewhere does not establish that the services provided were not the lowest reasonable costs since this is at the minister's opinion under s. 3.1(a) of the EAR.

The appellant argues that if she had known that a death benefit of \$2,500.00 was forthcoming at her aunt's death, she would have acted differently and would have looked for a less expensive funeral home. At the time she argues she was distraught by her aunt's death and was not thinking clearly. She argues she had to apply those funds to pay her own debts as her family had been paying extra costs for her aunt's clothes alterations and for her medication. Alternatively, she argues that the funeral costs were much too high and could have been obtained at a lower price, according to a quote she provided, which would have allowed her to apply the extra money to pay her own bills that had accumulated while they were paying the extra costs for her aunt during the 2 months before her death. Thus, the ministry unreasonably declined paying that extra \$750.00.

From the evidence presented, there was just over \$800.00 in the deceased person's bank account at the time she passed away and the appellant who managed that bank account had access that money. The appellant claims that she had to use her own money to support the deceased but she did not provide any evidence as to why she had not used the deceased's money to pay her bills at the time of her death or shortly before. Thus the panel finds that there were some resources in the deceased's estate when she passed away and that the ministry reasonably requested the appellant to pay \$750.00 out of those funds for funeral services. That the appellant decided after the fact to change her mind and use the deceased's funds to cover her own expenses does not alter the fact that at the time of the agreement she made with the ministry, those resources were available to the estate.

While the appellant argues that the funeral costs should have been lower and provided a quote in support, the panel finds it cannot assist her in this appeal as s. 65(3.1)(a) of the EAR clearly leaves the determination of the lower reasonable cost for specific services to the minister's opinion. Finally, the panel notes that s. 65(2) of the EAR states that the minister 'may' provide a supplement, which leaves the discretion to provide the supplement to the minister, and the panel finds no error in the minister exercising its discretion reasonably.

Therefore, the panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.