

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the Ministry) reconsideration decision made under section 65 and Schedule F of the *Employment and Assistance Regulation* and dated November 16, 2016, that denied the appellant's request for a Burial or Cremation Supplement for her daughter's funeral expenses on the grounds that the Ministry was not satisfied that the daughter's estate did not have the resources to cover necessary funeral costs.

PART D – Relevant Legislation

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

PART E – Summary of Facts

Nature of the Appellant's Application

The Appellant, mother of a deceased adult, applied for funeral expenses for the cost of a funeral and burial of her daughter, which was denied. The Appellant applied for the denial to be reconsidered, and her request was denied at Reconsideration.

The Appellant originally requested an oral hearing and later changed so as to request a written hearing.

Evidence at the Time of Reconsideration

The evidence before the Ministry at time of Reconsideration consisted of:

1. The Reconsideration Decision dated November 16, 2016;
2. The Appellant's Request for reconsideration dated November 3, 2016, which stated:
 - (a) that the Appellant was the single mother of a 19-year-old who suddenly died in September 2016 and is the mother of two other children
 - (b) that the appellant was told by a funeral company and a cemetery that as the daughter was receiving persons with disability benefits, the daughter was entitled to financial assistance for funeral expenses;
 - (c) that the Appellant went to a Ministry office on two occasions, and subsequently received a telephone call. The Appellant told the Ministry worker that the daughter had \$7,776.68 in her bank account and she says that the Ministry worker told her that financial assistance was available for funeral expenses because the daughter had less than \$25,000 in her bank account, and upon the worker's request, faxed two month's worth of bank statements to the Ministry worker;
 - (d) after an exchange of telephone calls between the funeral company, the cemetery, and the Ministry, the appellant was told by a Ministry worker because her daughter had \$7000 in her bank account, there was no entitlement to financial assistance. The Appellant said that she and the ministry agreed that he Appellant would pay by credit card and hand in the receipts to the Ministry later
 - (e) the appellant said that the funeral cost \$6247.32 and the burial cost \$12,484.50, and provided receipts from both the funeral company and the cemetery for those amounts
 - (f) that at the daughter's death, she had \$7,776.68 in her bank account, from which the Appellant deducted \$3,555 rent as a lump-sum payment at the end of each year, which rent was payable to the Appellant as the daughter resided with the Appellant, and deducted a further \$4,348 as a caregiver expenses, which was paid to 4 individuals, one of whom was the deceased daughter's father. The Appellant provided copies of the cheques and various bank statements.

Evidence Provided on Appeal Appellant

The Appellant provided a written submission consisting of:

- An email from the Ministry to the Appellant asking for further banking information and advising the Appellant to "lean on" the funeral director concerning a Ministry funded burial

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- An email with a series of statements from the Ministry and from the Appellant to the effect that the Ministry was not satisfied that \$3,555.00 taken from the daughter's account was required to pay rent to the Appellant for the past nine months instead of using that money to pay for the funeral, that it was agreed by the Appellant and her daughter that when the daughter turned an adult she would start paying \$395.00 per month since she is receiving disability income, but there was no rent contract provided by the Appellant
 - The Ministry's response that there was not enough information to establish that \$4,048.00 paid for caregivers was an outstanding debt that the daughter was expected to recover from her own expenses
 - The Appellant's statement to the Ministry that the daughter had enough money of her own to pay for her own caregivers, was stable enough to be discharged from hospital but was at risk of complications and that the Appellant could not be caregiver for her daughter because she works and has obligations to other children, and that as the daughter was an adult and had disability income she was responsible for her own caregiver expenses
 - The Appellant's assertion that certain information was missing from the Ministry's summary of facts, that being a telephone call from the Ministry when the Appellant asked about financial assistance towards the funeral, told the Ministry of the \$7,776.68 in the daughter's account and was assured that because the bank account was less than \$25,000.00 there was an entitlement for financial assistance towards funeral expenses
 - the Appellant gave the funeral home and the cemetery contacts names and phone numbers for them to call but there was no call from the Ministry to the funeral home or cemetery
 - the Appellant called the Ministry again and spoke with the Ministry worker and was told that there was no entitlement to financial assistance, that the Ministry normally pays funeral providers directly based on a preapproved amount, that the Ministry agreed with the Appellant that the Appellant would pay via credit card and hand in all the receipts after, and they would be reviewed and the Appellant would be informed of the Ministry's decision and that this occurred less than 48 hours before the service the Appellant was told that if no payment was made by the end of that day that the memorial service would not happen. It is noted that there is no documentary evidence from the Ministry as to any agreement to have the Appellant pay via credit card and then review the receipts, nor was there any documentary evidence from the Ministry to the effect that the Ministry told the Appellant that if there was less than \$25,000.00 the Appellant's daughter's account there would be financial assistance.

Ministry

The Ministry relied on the reconsideration summary.

PART F – Reasons for Panel Decision

Issue

The issue is whether the Ministry of Social Development and Social Innovation's (the Ministry) reconsideration decision made under section 65 and Schedule F of the *Employment and Assistance Regulation (EAR)* and dated November 16, 2016, that denied the Appellant's request for funeral and burial expenses for her adult daughter was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

Relevant Legislation

Burial or cremation supplements

65 (1) In this section:

“**funeral costs**” means the costs of the following items, as set out in Schedule F:

- (a).....
- (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;
- (b).....
- (c).....
- (d).....

(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).....

(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

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).....

- (c) in respect of a burial, an amount for the costs set out in section 4 of this Schedule;
- (d).....

Funeral provider's fee for services

2 The services provided in respect of a funeral provider's fee for services must include:

- (a)
- (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.

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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).....

Costs of cremation

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General Scheme of the Legislation

The general scheme of Section 65 and Schedule F of the *EAR* is that by section 65(2) *EAR* the Minister may provide a supplement for necessary funeral costs, which include burial costs and the cost of a casket, if

- (a) the estate of the deceased has no resources with which to pay those costs , or
- (b) a "responsible person" has no resources with which to pay those costs, or
- (c) there is no "responsible person"

so long as the person died in British Columbia and the burial is to take place or has taken place in British Columbia.

Ministry's Position

The ministry's position was that as the appellant's deceased daughter was not a minor at the time of her death, the ministry must be satisfied that her state did not have resources to cover the necessary funeral costs. The ministry said that because the daughter had \$7,768.68 in her account at the time the funeral services bill was payable and because the ministry was not satisfied that the \$3,555 rent paid to the Appellant for her daughter's rent for the past nine months was justified, and that there is not enough information provided to establish that the \$4,048 paid for caregivers was an outstanding debt which the daughter was expected to cover from her own resources. The ministry also was not

satisfied that the approximately \$18,000 funeral service and burial costs were “*necessary funeral costs*”, and is not satisfied that amount was the lowest reasonable cost to meet the immediate need.

Appellant’s Position

The Appellant’s position was that her daughter owed her, the Appellant, nine months’ rent of \$3,555, and owed caregivers another \$4,048, and thus there was no money in her daughter’s account to pay for the funeral and burial. She also said a Ministry worker told her that her daughter could have up to \$25,000 in her account and if she had less than that there was an entitlement to funeral costs.

Analysis

***EAR* Section 65(2)(a)**

This sub-section provides that necessary funeral costs may be paid by the minister when the person died in British Columbia, the burial or cremation is to take place or has taken place in British Columbia, and neither the estate nor any responsible person has resources available to pay for those costs. “Funeral costs” are defined as funeral provider services and cremation or burial as a set out in Schedule “F” of the *EAR*.

Panel Finding

If the ministry is required to pay funeral costs, it must be under section 65(2)(a) of the *EAR*, which provides that the minister may provide a supplement for necessary funeral costs, if the person died and was buried or cremated in British Columbia and if neither the deceased’s estate nor any responsible person has resources available to pay. Section 65 *EAR* defines a “*responsible person*” as a spouse or in the case of a minor, that person’s parent. Whether or not there was a “*responsible person*” is not an issue because the Appellant’s daughter was not a minor as she was age 19 at the time of her death, and there was no evidence she had a spouse. The fact that the Appellant’s daughter died and was buried in British Columbia was not an issue. The issue is whether or not the daughter’s estate had resources available with which to pay her funeral costs.

The panel observes that there was no documentary evidence of any rental agreement between the daughter and her mother, the Appellant, there was no Will in evidence, that the daughter’s father signed some of the documents, and there was no documentary evidence of whether the daughter was in need of caregiver services, nor any evidence of whether the caregivers were professional caregivers, or were friends and family, except that one of the caregivers was the daughter’s father and that there was no written agreement as to the cost of caregiver services. The daughter died in September 2016, at which time she had \$7,768.68 in her account. The evidence presented by the appellant shows that one caregiver was paid by cheque September 21, 2016 and the other three were paid by cheque September 22, 2016, almost two weeks after the daughter’s death. The Appellant’s evidence showed that she withdrew the same amount as the rent, \$3,555, from her daughter’s account, a week after the daughter’s death.

The panel finds that at the time of death there was \$7,776.68 in the appellant’s daughter’s bank account and no evidence to show that the rent or caregiver expenses paid after the date of death took precedence over the obligation to pay for the funeral costs. The panel finds that the Ministry reasonably determined that at the time the Appellant’s daughter died, there were resources available from her estate with which to pay necessary funeral costs.

EAR Section 65(3.1)(a) & (b)

Section 65(3.1) (a) and (b) of the *EAR* requires that the funeral provider's service fees and the costs of various items set out in Schedule F be the lowest reasonable cost.

Panel Finding

The only evidence of cost were the bills submitted by the Appellant, which exceeded \$18,000. There was no evidence that the Appellant had obtained quotations for different types of funeral service, caskets, or burial services. The Appellant simply provided the bills she paid for the specific vault, memorial plaque, grave marker, and other items, which she chose without determining if there were different items or services available at different costs. The Appellant provided no evidence of what the cost would be, for example, of caskets, vaults, grave markers, or different funeral services, other than as she purchased.

At reconsideration the Ministry observed that a supplement is normally \$2,500-\$7,000 depending on various circumstances, and said that the money paid by the Appellant was far in excess of the cost of the most economical necessary burial costs.

The panel finds that the Ministry reasonably determined that the Appellant did not arrange the funeral and burial at the lowest reasonable cost.

Conclusion

The panel finds that the ministry was reasonable when it determined at reconsideration that it was not satisfied that the estate did not have the resources available to cover the necessary funeral costs, because the Appellant's daughter's account in fact had resources available with which to pay necessary funeral costs and that the Ministry was reasonable when it determined that the amount paid by the Appellant was not the lowest reasonable cost.

The panel confirms the ministry's decision and the Appellant is not successful in her appeal.