

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated February 27, 2017, which denied the Appellant's request for a burial and cremation supplement. The Ministry found that the Appellant's request did not meet the requirements of section 65 of the Employment and Assistance Regulation (EAR), specifically that there was insufficient information to establish that the Appellant's estate did not have the resources to pay the costs, the costs were paid for by family, therefore the estate found the resources to deal with the costs, and there was no preapproval before the costs were incurred.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) section 65; Schedule F

PART E – Summary of Facts

Information before the minister at reconsideration included:

- A copy of a Ministry Funeral Services Information and Billing form, undated.
- A copy of a letter from Service Canada for the estate of the deceased dated December 28, 2016, stating that the deceased does not qualify for the Canada Pension Plan (CPP) Death Benefit.
- A copy of a Statement of Funeral Goods and Services purchase agreement dated October 15, 2016.
- A copy of a credit card receipt dated October 15, 2016 in the amount of \$2,955.45.
- A copy of a receipt from a funeral home dated October 15, 2016 in the amount of \$2,955.45.
- The Appellant's Request for Reconsideration, signed February 8, 2017.

At the hearing, the Appellant, the sister of the deceased who was a recipient of income assistance, stated that her sister was in hospital and it was expected that she would go into palliative care, however she died suddenly. She stated that the hospital told her to have her sister's remains removed within two days, and she had to act quickly. She stated that she contacted a funeral home and paid the funeral expenses with a credit card, with the expectation that her sister's CPP Death Benefit would reimburse her. The Appellant stated that she completed the CPP application, but she was advised later that her sister was not eligible for the death benefit.

In response to questions from the Panel, the Appellant stated that the date of death was October 14, 2016 and it occurred in British Columbia.

The Ministry responded by referring to the Reconsideration Decision and the applicable legislation, specifically that there must be preapproval for funeral expenses to be paid.

In response to questions from the Appellant, the Ministry stated that preapproval does not mean long before; that when such a request is made after death, the applicant is referred to a specialized ministry worker who deals with this supplement.

In response to questions from the Panel, the Ministry agreed that there was no responsible person as defined in section 65(1), EAR, however the Ministry stated that they did not have sufficient information about assets in the estate. The Ministry stated that they could not offer clarification about the wording of the legislation with respect to when preapproval is required. The Ministry agreed that the information included with the Appeal Record, a Funeral Services Information and Billing form and Section 2 of the Request for Reconsideration, "Decision to be Reconsidered" appear to state that the Ministry sent an inquiry to the bank of the deceased.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision which denied the Appellant's request for a burial and cremation supplement. The Ministry found that the Appellant's request did not meet the requirements of section 65 of the Employment and Assistance Regulation (EAR), specifically that there was insufficient information to establish that the Appellant's estate did not have the resources to pay the costs, the costs were paid for by family, therefore the estate found the resources to deal with the costs, and there was no preapproval before the costs were incurred.

Legislation

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.

Appendix F

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 Distance	Column 2 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's position is that her sister's death was sudden and unexpected and she had no time to obtain preapproval from the Ministry. She paid the funeral expenses by credit card expecting to be reimbursed by the CPP Death Benefit, but found that her sister was not eligible, and she is not able to pay the costs.

The Ministry's position is that the Appellant is not eligible for the Burial and Cremation Supplement because there was no preapproval for the expense and the Ministry did not have sufficient information to establish that the estate of the deceased did not have the resources to pay the funeral costs.

The Panel notes that section 65(2)(a), EAR allows the minister to pay necessary funeral costs if the person died in British Columbia and the funeral or cremation is to take place *or has taken place* in British Columbia. The requirement for prior approval is stated in subsection (b), which refers to necessary funeral costs and, with the prior approval of the minister, the necessary interprovincial transportation costs. As the death and funeral took place in British Columbia, the Panel finds the Ministry unreasonably determined that prior approval was required.

With respect to the Ministry's determination that there was insufficient information to establish that the estate did not have the resources to pay the funeral costs, the Panel notes that the information entered on the Ministry Funeral Services Information and Billing form completed by a Ministry worker which includes a Ministry Office Code, "SR Number" and "Case Number" and the name of a Ministry Funeral Supplements Worker, indicates that an inquiry was sent to the deceased's bank on January 18, 2017. The form indicates no home or property or other assets. The Request for Reconsideration form, Section 2 "Decision to be Reconsidered", which is completed by the Ministry, includes the information that a Ministry worker sent an enquiry to the deceased's bank. The Panel finds that the Ministry unreasonably determined that they did not have sufficient information to establish that the estate did not have the resources to pay the funeral expenses.

The Panel notes that there was no "responsible person" as defined in section 65, EAR to pay the funeral costs. As there is no requirement for preapproval for this supplement and the Ministry unreasonably determined that they did not have sufficient information to determine that the estate did not have the resources to pay the funeral or cremation costs, the Panel rescinds the Ministry decision as not a reasonable application of the applicable enactment.

The Appellant is successful on appeal.