

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision, dated February 9, 2018 (the “Reconsideration Decision”), which determined that the Requestor (the “Requestor”), on behalf of the deceased recipient’s estate, did not qualify for a Funeral Supplement pursuant to Section 65 and Schedule F of the Employment Assistance Regulation (EAR) because the deceased recipient’s estate, by way of donations, had sufficient resources available to cover necessary funeral costs.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance Regulation EAR Section 65, Schedule F

## **PART E – SUMMARY OF FACTS**

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

A Request for Reconsideration (the “RFR”) signed and dated January 23, 2018 which included the following:

- a death certificate of the deceased income assistance recipient indicating a death in November of 2017 and that the deceased was an adult at the time of death
- a funeral home Service Agreement dated December 2, 2017 with a total amount and balance due of \$9,509.15 which required full payment by December 12, 2017
- a receipt from the funeral home showing that the Requestor paid \$4,000.00 on December 6, 2018
- a funeral home and cemetery agreement dated December 2, 2017 for an urn with a total payment of \$1,898.40 and zero balance. Attached to the agreement is a note dated December 29, 2017 stating the account is to be closed and \$1,184.62 is to be credited to the account of the customer
- a memorials company agreement dated December 15, 2017 for a tombstone totalling \$2,004.94 which is paid in full
- a cemetery agreement for cremated remains interment dated December 13, 2017 for a total of \$4,604.25 with a debit payment indicated on the same day for \$4,289.25
- an email from the Requestor to the Ministry dated December 16, 2017 stating she has received confirmation from the deceased person’s employer that they will help shoulder the cost; she still needs help with interment costs; she attached the receipts from the cemetery for the interment which happened earlier that day

In the RFR the Requestor stated:

- she want to give her daughter a proper final goodbye but did not have the financial means
- friends assisted her to attain quotes from funeral homes
- as advised by the social worker she tried to reach the Ministry first to seek assistance but did not get an answer at that time
- funeral home staff advised her that if she applies to the Ministry for assistance, they will not provide any service until they receive the decision from the Ministry
- her priority at the time was to have the funeral and burial the following week because guests from abroad were still present
- she arranged for the funeral home to transfer the bodily remains from the hospital to the funeral home that night after they assured her she need only pay a down payment of \$4,000.00 and the remaining balance after 15 days
- on December 2, 2017 at the funeral home with friends and family she decided against her original preference of burial and instead opted for cremation and ordered an urn which was paid for by the father of the deceased
- on December 6, 2017 the down payment of \$4,000.00 was paid by the deceased person’s co-worker which the Requestor agreed to pay back as soon as she was able
- after the viewing and funeral and on December 12, 2017 the Requestor contacted the Ministry to seek assistance for funeral expenses. She still needed to pay back the deceased person’s co-worker for the down payment and the remaining balance at the funeral home of \$5,509.15
- on December 13, 2017 she cancelled her order for the urn because it would take too long to arrive and she was refunded the money.
- she found a cemetery the most affordable for a final resting place for the deceased
- on December 15, 2017 she arranged for the interment at the funeral home for the next morning
- the Requestor summarized the accumulated costs, donation amount collected, donation amount disbursed and remaining balance due for funeral services with a final amount payable of \$4,219.79

A Notice of Appeal (NOA) signed and dated February 22, 2018 in which the Requestor stated:

- she received donations and was required to pay immediately for funeral services and now she has a remaining balance of \$4,219.79 owing for funeral costs
- she feels that since the amount is within the Ministry’s budget for funeral costs, she is asking the Ministry to reconsider her plea for financial assistance

At the hearing of the appeal the Witness provided the following evidence:

- she was the one that called funeral homes for quotes because the Requestor was too distraught to deal with such issues
- she received three quotes from funeral homes in three different cities and the range of prices were extreme
- they chose the cheapest quote even though that city was the furthest away
- she was trying to call the Ministry during this time but the office was closed and the weekend was ahead and they felt they had to make a decision because they wanted the funeral the upcoming week
- a group of family members and friends went to the funeral home where the director gave options and they made a decision.
- the funeral director told them that if they were planning to apply for funds from the Ministry then the director would have to wait until the money was approved but that was too much of a delay for them
- they set the funeral for Wednesday and a cremation for Thursday
- the Requestor was under extreme emotional pressure when she chose an urn and made a decision based on what she felt was reasonable for her daughters resting place
- they made the decision to cancel the urn because of the time delay of delivery and were credited the money which they planned to reuse for funeral expenses
- they made the choice of the final burial location based on the proximity to where the Requestor lived and the fact that it was the cheapest quote they received
- the information from the Ministry about a Go Fund Me account is inaccurate and came from the funeral director. They collected the donations from family, friends, co-workers and the deceased person's employer
- the Requestor did not contact the Ministry from Monday until after the cremation on Thursday because she was too distraught to focus on the service arrangements and, regardless, it was the Witness who was making the calls
- when she was able to reach a person at the Ministry she was forwarded to several people and then did not receive a call back
- they made the best choices they could arranging for the cheapest funeral and burial services considering they did not have experience with such matters and they could only go by what they were told and quoted by the directors and by the research she was able to do on her cell phone during those hectic days

At the hearing of the appeal the Requestor provided the following evidence:

- her daughter had an emergency and was taken to the hospital and was diagnosed with brain aneurysm
- she tried to call the Ministry but it was passed 4pm on a Friday and no one answered
- she did not want to keep the body of her daughter at the hospital morgue because she felt very uncomfortable with that so had it transferred to the funeral home
- She used donated money of \$4000.00 to pay the first bill from the funeral home because it was due immediately
- Even this money was from the deceased person's co-worker and had to be paid back
- The amount of money collected from donations was to help her bury her daughter the way she deserved to be put to rest and that the Requestor did not have money of her own to pay for a proper funeral, cremation and resting place
- Those that donated were all people close to her and the deceased and that she collected \$11,898.40
- She paid the bills from the two separate funeral service providers based purely on when the payments were demanded
- the total cost of the funeral and internment was \$16,118.34
- She understands that the Ministry will pay only for the least expensive and necessary funeral services
- she hopes the Ministry would consider that the balance owing to the service providers of \$4,219.79 can be considered by the Ministry to be costs of that portion of the services that are deemed necessary and not just view the outstanding bills and determine whether those services were necessary and lowest costing because the Requestor did not choose which bills were to be paid and unpaid

At the hearing the Ministry provided the following:

- the Ministry has determined the deceased does not have a 'responsible person'
- the Ministry, in accordance with the legislation, will pay only for funeral services deemed necessary
- the Ministry does not consider a tombstone as being necessary
- the Ministry considers a basic funeral cost to be between \$3000 and \$5000
- the Ministry has determined the deceased person's estate had an amount of \$11,898.40 by way of donations available to pay for the necessary funeral costs
- the Ministry considers the estate had sufficient funds available

## PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the Ministry's reconsideration decision that the Requestor, on behalf of the estate of the deceased, was not eligible for a Funeral Supplement because there were sufficient funds in the estate of the deceased by way of donations pursuant to Section 65, Schedule F of the EAR was a reasonable application of the legislation or was reasonably supported by the evidence.

### Relevant Legislation:

#### 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.

[en. B.C. Reg. 147/2007; am. B.C. Regs. 63/2010, ss. 1 to 4; 79/2010, s. 2.]

## **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 <b>Distance</b>	Column 2 <b>Rate</b>
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).

### *Requestor's Position*

The Requestor argues her unmarried, adult daughter died suddenly and neither the estate of the deceased nor the Requestor had funds available to pay for a funeral and needed services worthy of a final goodbye and resting place. In order to pay for the services the Requestor collected donations from family, friends, co-workers and the employer of the deceased. The Requestor feels she did her best under stressful circumstances and without experience in the matter to make the most cost-effective and wisest purchasing decisions. The outstanding amount owing to the funeral service providers is an amount within the Ministry's scope to pay and should be considered as payment towards that portion of the services that were necessary and the lowest costing and not the last service item not yet paid.

### *Ministry's Position*

The Ministry's position is that the deceased had no "responsible person" as defined by Section 65 of the Regulation and therefore the deceased person's estate would be expected to cover the necessary funeral costs. The Ministry found that the money was collected on behalf of the deceased person's estate and was sufficient to pay for necessary funeral costs.

### *Panel's Decision*

Section 65 of the EAR requires a deceased person's estate to pay for necessary funeral costs if there is no 'responsible person' as defined by the legislation. In this case the estate of the deceased is responsible to pay and therefore the Ministry must determine if funds were available in the estate of the deceased. The Ministry argues the funds collected by the mother of the deceased as donations towards the funeral costs constitute money of the estate.

The term 'estate' is not defined in legislation for the purposes of Section 65(2) EAR and therefore based on the proper approach to statutory interpretation, the words of a statute are to be given their grammatical and ordinary meaning and, thus, it is appropriate to consider dictionary definitions. Estate is defined in part as a person's holdings in real and personal property. For succession purposes, a person's estate is comprised of their assets and liabilities at the time of death.

It is important to note that the money was raised after the estate holder's death. The money was raised by a person who is not considered a 'responsible person' and by someone who raised the money for a funeral they wished to hold for the deceased. The panel interprets that the person collecting the money has the authority to direct the use of the money and it is not considered part of the estate of the deceased. The panel believes the Ministry erred in their interpretation of the donated money as money part of the deceased person's estate.

While the panel concludes the donated money does not constitute money of the estate, the panel notes Section 65(2)(a) EAR which states the Ministry may provide the *necessary* funeral costs and Section 65(3.1) which states that those qualifying fees would be, in the opinion of the Minister, the *lowest reasonable* cost. The panel also notes that Section 65(3.1) does not stipulate that the fee qualifying to be paid, in the opinion of the Minister, is the lowest cost – rather it refers to a fee being the lowest *reasonable* cost. What the lowest reasonable costs of necessary funeral costs are in this case is a decision to be made by the Ministry.

The panel finds that the Ministry's decision that the Requestor, on behalf of the deceased, is not eligible for a Funeral Supplement pursuant to Section 65, Schedule F of the EAR because the donated money constituted part of the estate of the deceased was not a reasonable application of the applicable enactment in the circumstances of the Requestor and rescinds the reconsideration decision. The Requestor is successful in this appeal.