

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision dated April 25, 2018, which denied the appellant’s (the estate of a deceased recipient) request for a burial supplement because not all of the necessary criteria in section 65(2) of the *Employment and Assistance Regulation* (EAR) were met. The ministry acknowledged that the appellant/estate may not have had sufficient resources to pay for all of the funeral costs that were incurred; however, since the deceased did not die in Canada and was not buried in British Columbia, the ministry determined his estate does not qualify for a burial supplement.

### **PART D – RELEVANT LEGISLATION**

*Employment and Assistance Regulation*, s. 65

## **PART E – SUMMARY OF FACTS**

### **Evidence at Reconsideration**

The evidence before the ministry at reconsideration consisted of the following:

- The deceased was a 35 year old Canadian citizen at the time of his death and was in receipt of disability assistance;
- The deceased died and was buried in a foreign country;
- A receipt from a funeral services company in the foreign country, dated March 3, 2018, in the amount of 60,000 pesos;
- A receipt from a funeral services company in the foreign country, dated March 1, 2018, in the amount of 20,000 pesos;
- Three pages of bank account statements, presumably of the deceased, dated March 14, 2018, showing transactions from January 2, 2018 to March 8, 2018 and indicating the deceased had \$693.78 in his account on February 28, 2018;
- A letter from the aunt of the deceased stating that she loaned the deceased's mother, on behalf of his estate, US\$2,000 when the deceased died of cardiac arrest on February 28, 2018 in the foreign country while he was there on vacation;
- A hand-written submission from the deceased's mother stating that the deceased was cared for by the government since he was a child; that her sister loaned her money to help her to have a small funeral for the deceased in the foreign country after he died there of cardiac arrest; and that she is a senior and a pensioner and could not afford to have his funeral in Canada.

The reconsideration officer also determined that 60,000 pesos equates to CND\$4818.40, and 20,000 pesos equates to CND\$1393.80.

### **Submissions on Appeal**

In the notice of appeal, the deceased's mother, representing his estate, states, "All I'm asking for is financial support to pay back my sister for the funeral expenses in [the other country] where he passed away. The government supported him all his life." At the hearing the appellant noted the deceased had never worked in his life as he could not talk, read or write, so he was not eligible for a CPP Death Benefits. The deceased's mother also confirmed that the deceased lived in BC, but was visiting the other country when he died. She asked to be compensated for the burial costs on compassionate grounds.

The ministry relied on its reconsideration decision and submitted there was no legislative basis to provide a death benefit in the circumstances described by the deceased's mother.

## PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision of April 25, 2018, in which the ministry found the appellant/estate was not eligible for a burial supplement for the deceased recipient because not all of the necessary requirements of section 65(2) of the *EAR* were met, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Section 65(2) provides 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.

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

### **Analysis**

The facts that the deceased died and was buried in a foreign country are not in dispute.

The appellant argues that the deceased was provided for by the state for his whole life, and that neither his estate nor his mother has the funds to pay for his funeral expenses incurred in the foreign country. The ministry argues that, because the deceased was not in Canada at the time of his death and because his burial was not in British Columbia, he does not qualify for the burial supplement under section 65 of the EAR.

Section 65(2) of the EAR sets out the circumstances under which the ministry may provide a burial supplement. Where a person in receipt of disability assistance dies outside Canada, section 65(2)(d) applies. Under that section, the minister may provide a burial supplement if all of the following conditions are met:

- “neither the estate of a deceased person nor any responsible person has the resources available to pay” (s. 65(2));
- “immediately before the death, the person was ordinarily resident in British Columbia” (s. 65(2)(d)(ii));
- and
- “the burial or cremation is to take place or has taken place in British Columbia” (s. 65(2)(d)(iii)).

Although the ministry acknowledges that that the first of these conditions may be met and that the deceased was ordinarily resident in British Columbia, both parties acknowledge that the burial took place in the foreign country, not in British Columbia. As such, the criterion in section 65(2)(d)(iii)—that the burial take place in British Columbia—has not been met. The regulation does not give the ministry any discretion to provide a benefit for funeral costs on compassionate grounds, only where the conditions of section 65(2) have been met.

Consequently, the panel concludes that the ministry reasonably determined that the appellant/estate did not qualify for a burial supplement on behalf of the deceased.

### **Conclusion**

The panel determines that the ministry's reconsideration decision, which determined the appellant/estate is not eligible for a burial supplement, was reasonably supported by the evidence and was a reasonable interpretation of the legislation in the circumstances of the appellant. The panel therefore confirms the decision and the appellant is not successful on this appeal.