

APPEAL NUMBER

2020-00235

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision dated 25 September 2020 which denied an additional burial supplement for interment costs. The Ministry held that as interment was not required at the time of death, and not part of the original funeral services received and paid for, it is not satisfied that the new request, for an extra \$400, is a *necessary* funeral cost as required by section 65 and schedule F of the Employment and Assistance Regulation (EAR). As it was not a necessary funeral cost at the time of death, the Ministry denied this new request.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA) Section 1
Employment and Assistance Regulations (EAR) Section 65, Schedule F

PART E – SUMMARY OF FACTS

The appeal hearing was held by telephone where all parties were in separate locations due to requirements relating to an ongoing health pandemic – COVID-19.

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

On January 27, 2020, the Appellant (referred to by the Ministry as the next of kin (NOK)) contacted the Ministry advising that the Appellant is the executrix of the Will and cousin of the deceased, [REDACTED]

The Appellant had personally paid for some burial services by credit card with the understanding that reimbursement would be received from the Canada Pension Plan (CPP) death benefit; however, the Appellant was later advised by Service Canada that as the deceased had not made any contributions to CPP there was no eligibility for the death benefit. The Appellant had advised the Ministry that neither the estate, nor the Appellant personally had money to pay for these costs.

The Ministry requested the Appellant submit a copy of the Will and banking statements for the deceased. A review was completed and it was determined the remains had been cremated, the “family” (sic) is in receipt of the ashes, and that funeral bills in the amount of \$2 178.80 had been paid by the Appellant on 18 December 2019. At that time \$503.27 was in the deceased’s bank account. The funeral services did not include the cost of a cremation plot or grave opening or closing fees (interment) and were not sought in the application to the Ministry.

The Ministry noted the Appellant was not responsible for the costs personally and the Ministry was satisfied the estate did not have sufficient resources to pay necessary funeral costs when payable. Co-funding, where some fees are paid by the Ministry and some by the estate, may be considered when resources available to responsible persons or from the estate cannot pay the entire cost.

On January 30, 2020 the Ministry reviewed the request and determined eligibility for a burial/cremation supplement; but advised the Appellant there are things the Ministry cannot cover, and that they would determine the amount that may be provided.

On January 31, 2020 the Ministry received an adjusted invoice and approved a burial supplement of \$1710.99. The Ministry authorized payment direct to the burial & cremation centre. On February 4, 2020 the bill was received and then paid. The Appellant was to seek reimbursement from the funeral home.

When making the eligibility determination, the documents before the Ministry included;

- a) a letter from Service Canada, dated 20 January 2020, to the Appellant,
- b) a purchase authorization dated 31 January 2020 to the funeral centre for \$1710.99,
- c) an invoice dated 18 December 2020 from the funeral centre in the amount of \$1795.52,
- d) several of the deceased’s bank account statements,
- e) a copy of the death certificate, and
- f) several pages of the deceased’s Will.

On August 31, 2020, the Appellant contacted the Ministry for a supplement for the costs of interment of the deceased’s ashes – the request that is the subject of this appeal. The Ministry advised the Appellant that the Ministry assessed that application for eligibility in January and interment had not been requested at that time, and the original request was for direct cremation and urn. The Appellant advised the Ministry of being unaware that interment was an option, that the deceased’s parents are buried in the local cemetery, there is room for the deceased in the existing plot, and there is an open/closing charge of \$400. The reconsideration decision states the Appellant also indicated that due to the pandemic, the cemetery was not open for some time. The Appellant advised of being unable to afford this extra cost and requested a reconsideration. In the reconsideration decision the Ministry states that, “No new information was received”.

The panel notes that handwritten testimony, contained in the ‘request for reconsideration’, by the Appellant states the Appellant had been informed by the local civic cemetery about the option for interment, that everything was

closed, that the Appellant is ■ years old and was being told by health authorities to stay home because of the virus due to the Appellant's age.

At the telephone hearing the Appellant advised of not initially considering the interment due to the Christmas holidays, the winter season and her health. The Appellant was scheduled for knee surgery in April and in pre-screening was found to have a heart condition. As a result, the surgery has been cancelled and the Appellant has not been able to see a heart specialist due to the COVID pandemic. The Appellant was also told to stay at home due to the virus and as summer moved along it became more important to arrange the interment. The Appellant was not initially aware of the interment funding option available from the Ministry. The Appellant stated the Ministry then turned down the funding request due to the time delay, which the Appellant felt to be beyond the Appellant's control, and indeed the Appellant is still being told to isolate as much as possible.

In answer to questions, the Appellant advised that costs for the funeral only had been discussed with the burial and cremation centre and no mention was made of an interment. The costs had initially been paid by credit card as the expectation was that the CPP death benefit would reimburse any spending, and that it was the funeral centre who had completed the application form. Subsequently the grant was not paid by CPP, but a partial reimbursement was received later by the Appellant from the Province.

In response to several questions seeking clarification, the Appellant replied that cremation services were discussed with the funeral centre, but interment services were not, as the Appellant later came to understand 'that is done at the cemetery'. The Appellant advised that when contacted the cemetery office was not answering telephone calls and the Appellant's spouse ultimately went to the civic graveyard in August. In response to a question as to whether the cemetery was open the Appellant replied the graveyard was open at the time of visit in August and when asked what was closed the Appellant replied that it was the City Hall office when contacted earlier during the pandemic.

In answer to a question regarding the amount of \$503.27 that was in the deceased's account on 23 January, the Appellant stated that after paying expenses there were now no monies left in the account.

In response to questions regarding how the Appellant found out about the programs available the Appellant clarified that it was an attendant at the graveyard who advised of the interment cost provision option by the Ministry, and that the other services for cremation had been discussed at the funeral centre.

The Appellant stated that the visit to the Ministry office in January was as a result of being rejected for funding under the CPP option "as it was the wrong way", and that the Ministry ultimately paid for some of the services to the funeral centre who later reimbursed the Appellant.

When asked several times if the Ministry discussed the interment cost option at the time of the 27 January 2020 visit the Appellant declared it did not. The only time it was raised was by the cemetery worker at the time of the spouse's visit in August to the graveyard.

The Appellant believed the interment application was a new application as the Appellant was unaware of the opportunity for funding for interment earlier.

At the hearing, the Ministry relied on and reaffirmed its reconsideration decision.

The Ministry reiterated that the Appellant was eligible for the reimbursement of the original funeral costs but not the opening and closing costs for interment applied for, some six months (sic) later at the end of August 2020. The Ministry advised that the case file had been closed by that time.

The Ministry had looked at the basis for the request and the legislation and considered whether the requirement for the service was "necessary". The Ministry stated if the costs had been asked for at the time of the funeral it would have been paid however the question is now whether it is deemed "necessary". The Ministry provided a dictionary definition of the word necessary that included the terms;

- Required to be done,
- Essential,

- Needed, and
- Imperative at this time.

So, although the original funeral costs were deemed necessary at the time, opening and closing costs for interment are not necessary now, after six months.

The Ministry provided oral evidence that it had recently contacted the funeral centre and had been advised the cemetery had never been closed during the pandemic. The panel notes this information was not before the Ministry at reconsideration and is new evidence. The panel determined the additional oral evidence is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and is admissible under section 22(4) of the EAA as it provides context as to the Appellant's claim about the closure of services during the pandemic.

In response the Appellant declared never having stated the cemetery was closed but confirmed stating the office was closed.

The Ministry was asked to clarify the term 'necessary'. When asked if the grave opening and closing cost would have been necessary when the Appellant requested reimbursement at the end of January 2020, the Ministry stated it would think so. And when asked at what point it became unnecessary, the Ministry responded as to being unaware as the legislation does not give a timeframe. The Ministry reiterated that if the opening and closing cost had been requested at the time of death it would have been a necessary cost, however with the passage of time since the original services were provided, some eight (sic) months later it is a "grey area" whether it is *necessary* but for the Ministry it is deemed to be not '*necessary*'.

The Ministry clarified that the decision is not dependent on whether the file is closed, it was dependent on whether the services were requested at the time of the original request.

The Ministry, in response to a question, stated that it is not aware of any specific timeframe arrangements for potential billing for services in increments, such as where an estate is being settled.

In response to further questions, the Ministry reiterated that grave opening and closing interment services are often a *necessary* cost when the estate has no funds, but does not have an answer as to what happens to cremains if the estate is unable to inter them.

The Ministry agreed that the services to be provided for deceased persons in the legislation would be necessary. When asked to clarify the timeframe of necessity the Ministry was unable to provide an opinion on a specific time other than it is open to interpretation by the Ministry and the need for administrative fairness.

The Ministry wished to provide some clarification that when a client appears at the office, the Ministry worker does not have all of the information. The worker opens a service request and passes this to a specialist who reviews what needs to be done and discusses the next steps with the client.

The Appellant in a closing statement reiterated being unaware of the supplement for grave opening and closing fees for cremation interment, and when the estate became aware the Appellant made an application with the Ministry.

The panel finds that the rationale of the actions of the executrix in arranging for the cremation of the deceased in the week before Christmas, but not making final arrangements for disposition of the ashes until several months later to be both believable and appropriate given the expectation of the CPP death benefit, the stress of the situation, and the compounding complications of the COVID-19 global pandemic, the executrix's health and awaiting surgery, the government directives for people to stay home and the potentially lengthy requirements of settling the estate under the will.

The panel notes competing testimony regarding the term 'cemetery' and what was and what was not closed from the time of the original application in January and the subsequent application in August. The Ministry apparently spoke to the funeral centre and was advised the cemetery had not closed during the pandemic, but did not provide any evidence to suggest it spoke either to the civic cemetery regarding the city offices or the civic graveyard.

The panel finds the Appellant's testimony that having failed to reach the offices by telephone as the City Hall cemetery office was closed, and ultimately having to have the spouse attend the graveyard, to carry more weight with regards to a timeline for accessing interment services.

The panel found no evidence to suggest the Appellant was advised of the potential for a supplement for grave opening and closing during the visit to the funeral centre in December 2019 or the Ministry office on 27 January 2020. Indeed, the fees paid by the Ministry were to the funeral centre and it was the responsibility of the Appellant to contact the funeral home for reimbursement of personal costs. The panel finds the testimony of the Appellant under questioning to be credible in its explanation of when and from whom the Appellant received information regarding the potential for cremation supplements from the Ministry.

The panel therefore finds the Appellant was only first advised of a potential additional supplement for interment costs during a visit to the civic graveyard in late August 2020, a total of seven months from the visit to the Ministry office and eight months from the time of death.

The panel finds that any delay in applying for the additional supplement for interment was exacerbated by the medical condition of the Appellant, the requirement to stay home during the early stages of the pandemic and the partial closure of civic offices.

The panel notes that the Ministry states the original request was for "direct cremation and an urn". The documents submitted by the funeral centre and the notes in the reconsideration decision indicate that burial services invoiced included a basic service fee, cremation fee, and cremation tray. As the costs paid to the funeral centre did not include services paid by the estate of approximately \$467.81, and an urn is not listed on the invoice the panel finds the urn to be one of the items paid by the Appellant on behalf of the estate under the co-funding process described by the Ministry.

The panel notes that there are no monies, or minimal funds, remaining after paying for the co-funding funeral costs from December and no financial means to inter the ashes of the deceased.

PART F – REASONS FOR PANEL DECISION

The issue to be decided is whether the Ministry's decision was reasonably supported by the evidence or a reasonable application of the applicable legislation when it denied an additional burial supplement of an extra \$400 for interment based upon the Ministry considering it to not be a *necessary* funeral cost. The decision was made in the circumstances where interment was not requested as part of the original supplement applied for and received for cremation and funeral services.

The legislation provides;

EAA**PART 1 – Introductory Provisions****Interpretation**

1. (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for income assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

"family unit" means an applicant or a recipient and his or her dependants;

EAR Section 65

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, 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.

(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

(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
(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;*
- (d) *in respect of a cremation, an amount for the costs set out in section 5 of this Schedule.*

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.*

Arguments of the Parties

The Ministry argues that although it often approves interment costs at the time of death, that was not a service provided nor requested for the deceased. As it was not required or considered *necessary* by the applicant at the time of death, and not part of the original funeral services received and paid for, the Ministry is not satisfied the new request for an extra \$400 to place the deceased with her parents 8 months later is a *necessary* funeral cost.

The Ministry referenced to section 65 or Schedule F of the EAR however it does not reference a specific legislative clause or clauses to support denial of a further interment supplement in August 2020, or that it could have done so in increments. It confines its discussion, reconsideration decision and submissions at the appeal hearing to the two issues of *necessity* and time.

The Ministry provided four examples of the definition of '*necessary*' which included;

- Required to be done,
- Essential,
- Needed, and
- Imperative at this time.

The Ministry argues that cremation fees and an urn only were requested during the January meeting and that at the time of death funeral services were provided that did not include the cost of a cremation plot or grave opening or closing fees (interment). The panel found that cremation fees had been paid by the Ministry and an urn provided by the estate residual funds. This was defined by the Ministry in the reconsideration decision as co-funding.

The Appellant as executrix of the will argues that the interment is required, should have happened already and is an interment in the deceased parents' grave that requires an opening and closing fee for which the estate does not have monies. The Appellant argues the interment was simply postponed due to the season, and exacerbated by the illness of the executrix, inability to contact the cemetery staff, the requirements of distancing due to the Covid-19 pandemic, the lack of funds of the estate and not knowing of the ability of the Ministry to provide possible funding.

The legislation provides in section 65 (2) of the EAR that the Ministry may pay a supplement for necessary funeral costs if the estate cannot pay funeral costs *when payable* and the legislation provides in section 65 (3) that funeral costs are *necessary* if the Minister determines that the service requested is a *necessary* service, and the service is

or was appropriate. The panel notes this provision in the legislation provides the Minister with discretion whether an item is *necessary*, but it is clear that any decision must be reasonable, including not arbitrary. The Ministry makes no argument as to the appropriateness of the interment in the circumstances of the Appellant.

The panel notes that there is no legislative rule for an all-encompassing application. Or any prohibition on incremental application and payment. The panel also notes, as did the Ministry, no specific period of time that defines if a service is or is not *necessary*.

Section 5(1) of schedule F of the EAR provides that a supplement payable in respect of a cremation may include an amount for the following costs:

- cremation fees;
- the cost of a cremation plot in British Columbia;
- grave opening and closing fees;
- the cost of the grave liner if required by the cemetery; and
- the cost of an urn in an amount not to exceed \$200.

The panel notes that two of these items had already been approved by the Ministry in January 2020.

The panel notes no evidence to suggest that in January the Ministry advised the Appellant that any items in section 5(1) were not *necessary* or that it would not provide a supplement when payable under section 65 (2) for those items at a future time. It appears the Ministry did not determine if interment was *necessary* at the time of the original request for reimbursement, and then on the subsequent request in August denied *necessity* on the basis of the costs not being obtained in that first instance.

The panel finds that as a number of these items had already been approved or provided in the Ministry's first decision, and that there are no financial means available to the estate to inter the ashes of the deceased, an additional cost for grave opening and closing fees would normally have been paid in the first instance as '*necessary*'.

The Ministry appears to have assumed that if a cost is *necessary* it will be asked for immediately.

The panel has found the rationale of the actions of the executrix in not making final arrangements for disposition of the ashes until several months later to be both believable and appropriate. Further, the panel had noted the Appellant was only first advised of a potential additional supplement for interment costs during a visit to the civic graveyard in late August 2020 and that the subsequent period of time in applying for the additional supplement was exacerbated by the medical condition of the Appellant, the requirement to stay home during the early stages of the pandemic and the partial closure of civic offices.

The Ministry further argues that interment is not needed as the family is in possession of the ashes. The Appellant has confirmed being executrix, a cousin of the deceased, and to having provided a copy of the deceased's will.

The panel accepts that a general definition of family is difficult because it depends on the organization using the term and the purpose for which the term is used. Members of a person's immediate family may go as far as cousins, grandparents, great-grandparents, aunts, uncles, and even further. It depends on both the law in question and on the responsibilities that people have toward the other people in their lives.

The panel notes that section 1 of the EAA provides for a definition of family, which includes an applicant or recipient and his or her dependents. The panel puts little weight upon the Ministry's use of the terms NOK or family and finds for the purposes of this appeal and interpretation of legislation the Appellant and deceased are not a family unit and the ashes are in care of the executrix on behalf of the estate. Therefore, the panel finds the Ministry's decision that interment is not *necessary* as the ashes are in possession of the family to be not reasonably supported by the evidence nor a reasonable application of the applicable enactment.

The panel finds that costs for interment are *necessary* because:

- They would have been requested at time of first application if known,

- The appellant has a reasonable explanation for any delay in conducting the interment or requesting funding, and
- There is nothing provided in the legislation preventing a subsequent application dealing with the same funeral for other costs not previously applied for coverage.

Lastly the Ministry argues that a \$400 fee for additional funeral supplement is *unnecessary* as it was not requested at the time of death in December 2019 nor was it a cost paid by the Appellant and requested in January 2020. The Minister has not provided comment on the amount of the cost requested by the Appellant.

The Appellant advises that a cost of \$400 was provided for the grave opening and closing interment fees by the civic cemetery in August 2020.

The amount of supplement payable for a grave opening and closing service in this case is provided in section 3(1)(b)(ii) as the cost that is, in the opinion of the Minister, the lowest reasonable cost for that item or service

The panel had found that there are no monies, or minimal funds, remaining after paying for the co-funding funeral costs from December and no financial means to inter the ashes of the deceased.

The Panel makes no finding on the appropriateness of the amount.

CONCLUSION

In the circumstances of the Appellant, the panel has determined that the Ministry's decision was not supported by the evidence nor a reasonable application of the applicable enactment when it denied funding of a burial/cremation supplement for opening and closing costs in a supplemental application based upon the Ministry's determination that it was not *necessary* based upon interment costs not having been applied for in the first instance and the passage of time.

For the reasons stated above the panel finds the Ministry's decision to deny the burial/cremation supplement was not reasonably supported by the evidence nor a reasonable application of the applicable enactment in the circumstances of the Appellant. Therefore, the Ministry's reconsideration is rescinded and referred back to the Ministry for determination of amount.

The Appellant is successful on appeal.

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PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister
for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Donald M Stedeford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/11/3

PRINT NAME

Melissa McLean

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/11/3

PRINT NAME

Kent Ashby

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/11/3