

Part C - Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) Reconsideration Decision dated April 24, 2024, which determined that the appellant was ineligible for a burial supplement.

Specifically, the ministry determined that the appellant was not eligible to receive a burial supplement because the ministry was not satisfied that the appellant’s family unit did not have resources available to pay necessary funeral costs.

Part D - Relevant Legislation

Employment and Assistance Act section 4

Employment and Assistance for Persons with Disabilities Regulation (“Regulation”) section 65 and Schedule F.

Part E – Summary of Facts

The hearing took place on June 2, 2024, as an in person hearing. Aside from the appellant, a witness and also an interpreter were present. The ministry representative attended by telephone.

Evidence at the time of reconsideration

As part of the Request for Reconsideration, the appellant stated that she “had to pull all the money sources to cover funeral and burial costs, including borrowings from a friend in [another country] and my daughters, and I also had to get \$10,000 line of credit, all of which I have to pay back in the future”. The application also included the following:

- 1) The appellant’s husband’s death certificate, with the date of death recorded as January 14, 2024;
- 2) A purchase agreement dated January 15, 2024 with a cemetery for a burial plot, graveside committal, grave box, grave marker, granite base and use of a chapel for a total of \$13,382.25;
- 3) A cheque dated January 16, 2024 from the appellant to the cemetery for \$13,382.25;
- 4) An invoice dated January 18, 2024 from a funeral home for the services of funeral director and staff, administration documentation and registration, sanitary care, embalming, facilities and equipment, securing release and transfer, funeral coach, flowers, clergy honourarium, organist, death certificates and administrative fee for a total of \$5,753.50;
- 5) A visa card statement dated January 19, 2024 with an expense of \$1,811.25 to a memorial company which has been circled with the hand written word “casket”;
- 6) A receipt dated January 25, 2024 from the funeral home reporting payment of \$5,753.50 from the appellant;
- 7) A series of emails between the appellant’s advocate and the ministry discussing the ministry’s funeral assistance program;
- 8) A Line of Credit statement dated February 6, 2024 which included a transfer made of \$10,500.00;
- 9) A bank’s “Personal Assessment” of the appellant dated February 6, 2024, which included balances for the following:
 - a. Assets:
 - i. Savings Account \$830.00;
 - ii. Joint Savings Account \$122.94; and
 - iii. Chequing Account \$1,750.06.
 - b. Liabilities:
 - i. Line of Credit \$10,335.52; and
 - ii. Visa Card \$2,167.78.

10) A bank chequing account statement dated February 6, 2024 which included the following transactions:

- a. a balance on January 8, 2024 of \$1,530.87;
- b. a wire transfer on January 11, 2024 of \$2,982.50 for a balance of \$4,513.37 and a note stating "friend direct";
- c. a transfer on January 16, 2024 of \$10,500 with a note stating "line of credit"; and
- d. a deposit on January 17, 2024 of \$7,500 with a note stating "sold assets".

11) An email dated February 12, 2024 from the ministry to the appellant's advocate which states "the Ministry cannot assist... [as the appellant] did not obtain prior approval and she has authorized, paid and proceeded with final arrangements that far exceed what would be allowable under SDPR funeral assistance guidelines". The email also states that appellant "paid \$20,947.00 for funeral costs and funeral costs were paid by bank drafts and [a credit card]", and that the appellant "had the resources to pay for the funeral costs from her bank account". The policy was quoted as being the following:

"Necessary funeral costs may be paid for persons who die in BC when no resources are available from the estate of the deceased person or from any of the responsible persons (Spouse). If there are sufficient resources available to the responsible persons or from the estate, the ministry will not pay the funeral supplement."

12) An email dated February 13, 2024 from the appellant's advocate to the ministry which states that the appellant "could manage to pay all the costs, not because she had resources but because she had to pull out money desperately from anywhere, getting loans and borrowing from children and friend, and she has to pay them back", and that the appellant wanted to apply for a reconsideration of the decision.

According to the ministry's decision, the following is a chronology of events, which is not disputed by the appellant:

- 1) The ministry advised the appellant that she was not eligible for a burial supplement on February 12, 2024.
- 2) The appellant initiated a Request for Reconsideration on February 28, 2024.
- 3) The ministry completed its reconsideration on April 24, 2024.

In the Reconsideration Decision, the ministry found that:

- 1) Although prior approval is normally required, in this case “prior approval was not required by legislation” since the spouse “died in BC and the burial took place in BC; as such the legislation did not require prior approval from the ministry,”.
- 2) The appellant, as the spouse of the deceased, was the responsible party in respect to funeral and burial costs, and the ministry may only assist if they could determine that the appellant and the estate did not have resources available at the time to pay for necessary funeral costs. In this case, the ministry determined that the appellant had paid \$20,947.00 for funeral and burial costs. The ministry determined that, based on the existing regulations, the “maximum it could have assisted you with is \$7,900”.
- 3) The appellant had the following resources:
 - a. bank balance “at time of death was \$4513.37”; and
 - b. the appellant “sold assets in the amount of \$7500.00 on January 17, 2024”.
- 4) The ministry “did not consider a line of credit, or funds borrowed from friends to be a resource” and these amounts were not included when calculating available resources. Based on the bank balance and assets sold, the ministry determined that the appellant “had available resources of \$12,013.37 to pay necessary funeral costs”.
- 5) The ministry determined that the appellant “had the resources to pay necessary funeral costs, when payable; as such, are not eligible for the burial supplement”.

The appellant submitted a Notice of Appeal to the Tribunal on May 10, 2024.

Testimony at the hearing

The appellant’s witness spoke about the appellant’s situation.

She has known the appellant for six or seven years. She has known the appellant to be a hard working, independent person. The appellant suffered an eye injury at work and refused assistance and wants to continue working. The passing of the appellant’s spouse was sudden and there was no time to prepare financially. The appellant’s spouse was not capable of working and was approved for income assistance in December 2023 but passed away before receiving it. The appellant has limited financial resources and relies on her children and friends overseas to provide financial assistance.

The appellant spoke through an interpreter about her spouse’s medical history, including chronic pain and other issues. Her spouse had health issues with some organs and they were removed. After a hospital stay from August to November 2023 and no improvement,

her spouse decided to move back home. Prior to passing away, her spouse had requested full body burial. On January 1, 2024, her spouse's heart stopped and paramedics had to use CPR for resuscitation. Her spouse was on life support and passed away on January 14, 2024. She wanted to respect her spouse's final wish for burial. She was not prepared for the costs and found a cemetery that would provide a burial at a "better price". Her children were able to gather funds from friends and relatives. At the last minute, she was able to obtain a line of credit from a bank for some of the expenses.

After her spouse passed away, she found a safe in her house she was previously unaware of. She did not know the combination and they ended up destroying the safe trying to open it. She found some ID and cash in the safe. The cash was used for the funeral.

Her spouse was an intelligent, capable person who could have done a lot more if not for their health challenges. Her mind is at peace knowing her spouse is where they wanted to be. She visits the cemetery regularly with some of her children to lay flowers at her spouse's grave. She is grateful to her children.

The appellant stated that she thinks that a deposit into her account of January 11, 2024 in the amount of \$2,982.50 was money that came from her daughter and friends as a loan to pay for funeral expenses. It was not a "loan repayment from a friend" as described by the ministry.

Upon questioning by the ministry, the appellant confirmed that the cash found in the safe was "about \$10,000 cash" and it was deposited in her bank account and is recorded in the bank statements as a deposit of \$7,500 on January 17, 2024.

The ministry representative explained the criteria needed for receiving a burial supplement. The ministry confirmed the criteria included that no resources are available. In this case, the ministry determined that the appellant had resources available based on the amounts in the bank account at the time of death and the sale of assets.

Admissibility of Additional Information

The panel admitted the witness's oral testimony and the appellant's statements provided with the Notice of Appeal and her oral testimony about her health, the money in her account and locating funds in the safe in her home as evidence under section 22(4) of the *Employment and Assistance Act*, which allows for the admission of evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The ministry did not object to the admission of this evidence. At the hearing, the ministry did not provide additional information for the panel to consider admissible as evidence.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's Reconsideration Decision that determined the appellant was ineligible for a burial supplement was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, did the ministry reasonably determine that the appellant was ineligible for a burial supplement because she had other resources available?

Ministry position

In the decision, the ministry found that the maximum assistance available to the appellant was \$7,900. The ministry also found that the appellant had resources available: specifically \$7,500 from the sale of assets and \$4,513.37 available as a balance in the appellant's bank account on the day of the spouse's death. These two amounts total \$12,013.37 and would cover the burial costs permitted by the regulations in the circumstances of the appellant.

Appellant's position

The appellant does not have the resources available to pay for her spouse's burial. She has borrowed from friends and took out a line of credit from the bank to pay for the burial expenses which total \$20,947.00. The balance in her bank account of \$4,513.37 on January 14, 2024 includes a deposit of \$2,982.50 on January 11, 2024 which was a loan from her family and friends for funeral expenses.

Panel's reasons

The panel will review the amount of the burial supplement and the ministry's denial of the supplement based upon other resources being available.

Section 65(2)(a) of the Regulation outlines the requirements for a burial supplement. These include "necessary funeral costs" if the person died in BC and the burial will take place or has taken place in BC.

Section 65(3.1) of the Regulation states that 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,
 - a. the cost for the item or service set out in Schedule F,

- b. or 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.

Schedule F includes some of the allowable costs, including:

- 1) Burial and cremation supplement
 - a) Section 1(a) which states “an amount for a funeral provider’s fee for services”;
 - b) Section 1(c) which states “in respect to burial, an amount for the costs set out in section 5 of this Schedule”.
- 2) Funeral provider’s fee for services, which ministry policy currently states is “Up to \$1285”
- 3) Section 4 describes Costs of burial which may be payable in a supplement.
- 4) Other items or service fee which ministry policy currently states is “Up to \$815”

The appellant’s receipts total \$20,947.00 for burial costs. The ministry determined that the maximum permitted in the circumstances of the appellant is \$7,900. There is no indication in the evidence provided as to how the ministry reached this specific determination. Some costs, such as the funeral provider’s fee and “other items and service fee”, are not specified in the Regulation but are stated under current ministry policy. Other costs in the Regulation are simply listed as “allowable” but dollar amounts are not specified.

The Regulation specifies that the ministry can determine costs, that are, in the ministry’s opinion, “the lowest reasonable cost for that item or service”.

The panel would prefer that the ministry explain in detail how the maximum allowable costs were determined in the circumstances of the appellant. However, in this case, upon review of the appellant’s spouse’s burial costs and the regulation and respective schedule, the panel finds that the ministry acted reasonably in determining the maximum payable to the appellant.

The appellant states that she does not have funds available and had to borrow money from the bank and from friends, which would have to be returned, while the ministry determined that the appellant had resources available.

In the Reconsideration Decision, the ministry stated that they did not consider “a line of credit, or funds borrowed from friends to be a resource and therefore they are not considered in the calculation of your available resources”.

The ministry determined that the appellant had resources available – specifically in the form of a bank balance of \$4513.37 and assets sold in the amount of \$7500 on January 17, 2024.

Section 65 (2) of the regulation states: “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...”.

During the hearing, the appellant stated that a safe belonging to her spouse was found in her residence and upon opening was found to hold approximately \$10,000 in cash. This amount was subsequently deposited in her account and made up the deposit of \$7,500 recorded on January 17, 2024. Upon questioning by the panel, the appellant confirmed that assets were actually not sold to make the deposit on January 17, 2024, and that the deposit was comprised of cash from the safe found in her home.

The panel finds that this additional evidence about the safe and its contents supports the ministry’s finding that resources were available.

The bank statement at the time of the appellant’s death confirms that \$4513.37 was in the bank account. The appellant has given evidence that of that amount, \$2,982.50 was a loan and therefore should not be included as a resource available to pay for funeral expenses. The balance in the account at the date of death of the appellant’s spouse after this deduction is taken into account is \$1,530.87. Together with the \$7500 deposited on January 17, this would take the total resources available to \$9,030.87.

In view of this revised calculation, which differs from the figures provided in the ministry’s Reconsideration Decision, the panel finds the ministry’s decision that resources were available reasonable.

The panel is sympathetic to the appellant’s situation, but in this case, finds that resources were available to the appellant. The panel acknowledges the challenges that the appellant has encountered and does not want to minimize the financial constraints faced by the appellant upon the death of her spouse. The panel’s role is to review the actions of the ministry and to confirm or rescind their decisions. In the case, and in light of the additional evidence about the safe and its contents, the panel finds that the ministry was reasonable

in determining that the appellant had resources available and that the criteria relating to the burial supplement were not met.

Conclusion

The Regulation provides that a burial supplement may be provided to an applicant should all eligibility criteria be met. In this case, the panel finds that the ministry's Reconsideration Decision is reasonably supported by the evidence and is a reasonable application of the regulation.

The panel confirms the ministry's decision. The appellant is not successful in the appeal.

Schedule of Legislation

Employment and Assistance Regulation

Section 65

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;

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.

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.

Schedule F

Burial and Cremation Costs

APPEAL NUMBER 2024-0188

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)

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

Part H - Signatures

Print Name

Robert McDowell

Signature of Chair

Date (Year/Month/Day)

2024/06/07

Print Name

Katherine Wellburn

Signature of Member

Date (Year/Month/Day)

2024/06/ 07

Print Name

Daniel Chow

Signature of Member

Date (Year/Month/Day)

2024/06/07