

Reimbursement discussions exclude surrogates, donors

A proposed guideline stipulating what surrogates as well as egg, sperm and embryo donors can claim as expenses is drawing criticism from experts who say the process was not inclusive or well publicized. Many also object to the government outsourcing its responsibility to make these rules. The final guideline is expected to be rolled out early in 2016.

The Assisted Human Reproduction Act (2004) states that although surrogacy and gamete donation is legal, paying for it outright is a crime; payment can only be made to reimburse expenses. However, Health Canada has never specified which expenses are acceptable. Typically, navigating that complex area has fallen to fertility lawyers (who draw up agreements about reimbursements), agencies (some of whom actively manage reimbursements on behalf of clients) and individual women, who sometimes act on their own behalf.

Interpretations have varied widely. Some lawyers say that only the most obvious things can be included, such as maternity clothes or transportation to medical appointments; others have argued that Internet services, spa visits and months of groceries can all be reimbursed. In the [only conviction under the law](#), in December 2013, the courts found that Leia Picard (now Swanberg) and her agency, Canadian Fertility Consultants, paid fees to donors and surrogates in the guise of reimbursements. The court ruled that expenses must be backed up by receipts and be relevant to the donation or surrogacy. Health Canada has failed to further clarify.

Earlier this year, however, Health Canada asked the Canadian Standards Association (CSA), a private, not-for-profit company better known for putting its stamp of approval on hockey helmets and baby seats, to look into the question and to develop “standards.” These will form an annex to existing standards on tissues for assisted reproduction, known as Z900.2.1. CSA standards are not mandatory, but Health



delgachov/istockPhoto

Groceries and cell phone packages are not included in proposed reimbursement standards for surrogates and donors of eggs, sperm or embryos.

Canada intends to make these standards law so that they will be.

The CSA’s proposed reimbursement standards stipulate that expenses must be “reasonable, receiptable and related” to the donation or surrogacy. Some specifics are given. For instance, only food consumed on the day of an appointment can be claimed, not regular groceries purchased during a nine-month contract pregnancy, and only long distance charges, not an entire cell phone package. But nothing is said about who would be managing the reimbursing or how the process will be scrutinized, notes Alana Cattapan, a postdoctoral fellow at Novel Tech Ethics in Dalhousie University’s faculty of medicine.

However, the chair of the CSA’s subcommittee on reimbursement, Art Leader, a physician at the Ottawa Fertility Centre, says he is pleased with the draft standards. “We wanted to do two things: respect the law and protect the women.”

Notably, the women whose protection is said to be paramount were not asked to participate. Not a single surrogate or egg donor — or anyone with first-hand experience of providing repro-

ductive tissue or gestation — was invited to sit on the committee, despite the CSA’s [stated commitment to “ensure all stakeholder interest categories are represented in reasonable proportion.”](#) When asked why, Leader explained that “these people are not easily found.”

Two of the eight committee members are fertility doctors, despite the fact that, in the absence of clear regulations, doctors have insisted that they always steer clear of the reimbursement process. The committee also includes the scientific director of a fertility lab, a fertility lawyer, a law professor, a psychologist, a CSA staff member and a Health Canada representative.

Consultants, lawyers and others are concerned not only about the lack of inclusiveness but also about how the process was made known to interested parties. Swanberg, at Canadian Fertility Consultants, only learned of it through a blog. Neither she nor any of the leading agencies were notified. “I’d like the sessions to be open, not behind closed doors,” she says. Sally Rhoads-Heinrich of Surrogacy in Canada Online, another

agency, says she would have been happy to participate or to recommend surrogates or egg donors to do so.

Toronto fertility lawyer Sara Cohen, who, like many fertility lawyers, only found out through word-of-mouth, says, “It’s not the most democratic way of doing this.” Only 27 people — Cattapan, Swanberg and Cohen among them — submitted comments during the three-month consultation period, which ended Sept. 15. Some critics feel these

recommendations should be drawn up by Health Canada, not by an outside organization. “Why are non-public agencies regulating these really important areas of health?” asks Cattapan.

“I’m still shaking my head at the waste of the taxpayers’ money,” says Haimant Bissessar, president of Can-Am Cryoservices, a sperm and egg donor company based in Hamilton, Ontario. He recalls participating in a two-day Health Canada workshop that

brought together more than two dozen interested parties to specifically address this issue, back in November 2004. According to a Health Canada publication following the meeting, “the normal regulatory process will unfold, including publication in *Gazette I* and *Gazette II*, with the aim of having the entire regulatory framework in place by 2007 or 2008.” — Alison Motluk, Toronto, Ont.

CMAJ 2016. DOI:10.1503/cmaj.109-5176