

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

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FILE: B-184946

DATE: MAR 10 1978

MATTER OF: Barry A. Smith - Temporary Duty - Per
Diem in Lieu of Actual Subsistence

DIGEST: Employee may not be paid maximum per diem under lodging-plus method based on receipt for \$19 per night for lodgings provided in mother-in-law's private home, although that amount equals cost of least expensive commercial facilities available, since payment of lodging costs to relatives based on commercial rates is not reasonable. Also, while lodging-plus method may be inappropriate when noncommercial lodgings are provided by friends or relatives, agency may not establish specific per diem rate therefor since such rate was not established in advance as required by Federal Travel Regulations (FPMR 101-7) para. 1-7.3c(b)(3) (May 1975).

This decision responds to a request dated August 29, 1975, for advance decision submitted by William Harten, an authorized certifying officer at the Idaho Operations Office, U. S. Energy Research and Development Administration, concerning certain travel expenses incurred by Mr. Barry A. Smith incident to a temporary duty assignment. During part of the assignment Mr. Smith stayed with his mother-in-law. The specific question is whether the full amount paid to Mr. Smith's mother-in-law may be used in determining the amount of per diem in lieu of subsistence.

Mr. Smith, an employee of the Idaho Operations Office, was authorized to travel from Idaho Falls, Idaho, to Oak Ridge, Tennessee, to Germantown, Maryland, and return to Idaho Falls, from July 3 to July 17, 1975. He was authorized per diem of \$14 plus lodging, not to exceed \$33 a day. Administrative exception has been taken to reimbursement in three respects. However, only one has been submitted for our decision: an exception involving payment to Shirley H. Graves, the employee's mother-in-law, for 5 nights' lodging at \$19 per night, totaling \$95. The addition of this lodging expense to the \$14 for meals and miscellaneous expenses results in a claim of \$33 per day, the maximum authorized Mr. Smith, for the 5 days that he stayed at his mother-in-law's residence. In view of this we are asked whether the rationale contained in 52 Comp. Gen. 78 (1972) should be

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applied to temporary duty assignments. That decision dealt with payments for lodging to relatives incident to an employee's transfer of station and involved the temporary quarters subsistence allowance.

Section 5702 of title 5, United States Code, as amended by Public Law 94-22, May 19, 1975, 89 Stat. 84, provides that, under regulations prescribed by the Administrator of General Services, employees traveling on official business are entitled to a per diem allowance inside the continental United States at a rate not to exceed \$35. Implementing regulations appear in the Federal Travel Regulations (FPMR 101-7) (1973), as amended. FTR para. 1-7.3, as amended effective May 19, 1975, provides in pertinent part as follows:

"a. General. It is the responsibility of each * * * agency to authorize only such per diem allowances as are justified by the circumstances affecting the travel. Care should be exercised to prevent fixing per diem rates in excess of those required to meet the necessary authorized subsistence expenses. * * * Consideration should be given to factors which reduce the expenses of the employee such as: Known arrangements at temporary duty locations where lodging and meals may be obtained without cost or at prices advantageous to the traveler * * *.

* * * * *

"c. When lodgings are required. (1) For travel in the conterminous United States when lodging away from the official duty station is required, the per diem rate shall be established on the basis of the average amount the traveler pays for lodging, plus an allowance of \$14 for meals and miscellaneous subsistence expenses. Calculation shall be as follows:

"(a) To determine the average cost of lodging divide the total amount paid for lodgings during the period covered by the voucher by the number of nights for which lodgings were or would have been required while away from the official station. * * *

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"(b) To the average cost of lodging add the allowance for meals and miscellaneous expenses. The resulting amount rounded to the next whole dollar, subject to the maximum prescribed in 1-7.2a [\$33], is the rate to be applied to the traveler's reimbursement voucher."

FTR para. 1-1.3 (May 1973) provides as follows:

"a. Employee's obligation. An employee traveling on official business is expected to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business.

"b. Reimbursable expenses. Traveling expenses which will be reimbursed are confined to those expenses essential to the transacting of the official business."

As stated by the Court of Claims in Bornhoff v. United States, 137 Ct. Cl. 134, 136 (1956). "A subsistence allowance is intended to reimburse a traveler for having to eat in hotels and restaurants, and for having to rent a room * * * while still maintaining * * * his own permanent place of abode. It is supposed to cover the extra expenses incident to traveling." Cf., also, B-174933, March 31, 1972, wherein we held that it was reasonable to ascribe a "no cost" contribution for nights spent by an employee at a residence owned by him, for purposes of computing average housing expense for per diem for lodging, since additional expenses there would be inconsequential.

We are of the view that the present regulations may permit an employee to include the reasonable lodging costs incurred in his per diem computation, notwithstanding that he lodged at the home of a relative. However, reimbursement is founded on lodging expenses necessarily incurred on official travel. It is based upon those lodging expenses which the employee was properly required to pay. 52 Comp. Gen. 730 (1973); cf. B-168384, February 19, 1975.

As indicated above, under applicable regulations a Government employee while traveling on official business is expected to use the same care in incurring expenses that would be exercised by a reasonably prudent person traveling on personal business under like circumstances. Also, expenses are reimbursable only if they are essential

to the transaction of official business. Thus, it follows that a per diem lodging allowance does not accurately reflect average lodging expenses incurred by the traveler unless it appears that the expenses upon which it is based (1) were reasonable in amount, (2) were necessarily incurred, and (3) consequently, reflect the reasonable cost to the employee or reimbursement by him for the reasonable cost to another of lodging used by the employee while on official business.

Although payment of the established rate for services provided commercially ordinarily creates an inference that the amount of the payment was reasonable, no such presumption arises if the attendant circumstances suggest that the character of the transaction is other than at arms length. Moreover, a receipt signed by a relative does not necessarily establish (1) that the employee incurred any legal obligation to make the payment for which the receipt was given, or (2) that a reasonably prudent person on private business would have done so under like circumstances.

We held in 52 Comp. Gen. 78 (1972) that the cost of temporary quarters obtained from close relatives and apparently fixed in an attempt to recover maximum reimbursable expenses was unreasonable. Pointing out that the applicable regulations, now contained at Federal Travel Regulations (FFMR 101-7) para. 2-5.4 (May 1973), authorized payment of a temporary quarters allowance based, in part, on receipts for lodging expenses actually incurred, we stated:

"* * * that in the past we have allowed reimbursement for charges for temporary quarters and subsistence supplied by relatives when the charges have appeared reasonable; that is, where they have been considerably less than motel or restaurant charges. It does not seem reasonable or necessary to us for employees to agree to pay relatives the same amounts they would have to pay for lodging in motels or meals in restaurants or to base such payments to relatives upon maximum amounts which are reimbursable under the regulations. Of course, what is reasonable depends on the circumstances of each case. The number of individuals involved, whether the relative had to hire extra help to provide lodging and meals, the extra work performed by the relative and possibly other factors would be for consideration. In the claims here involved as well as similar claims we

believe the employees should be required to support their claims by furnishing such information in order to permit determinations of reasonableness."

Mr. Smith suggests that our holding in 52 Comp. Gen. 78, supra, insofar as it involved temporary quarters subsistence expenses, does not govern the question of his entitlement to a per diem allowance in connection with a temporary duty assignment. He states in addition that the \$19 amount which he paid to his mother-in-law for each night's lodging was determined on the basis of his own survey of local motel costs. Specifically, he states that there was only one motel in the vicinity of his temporary duty station whose rates were such as to permit him to recover his out-of-pocket expenses for lodgings and further that there was no assurance that he could have secured accommodations at that motel. Moreover, Mr. Smith asserts that a homeowner who rents a part of his home incurs the same type of expenses that a commercial facility incurs.

As with the provision of FTR para. 2-5.4 (May 1978) for payment of a temporary quarters allowance, the language of FTR para. 1-7.3c, quoted above, requires that the per diem allowance payable under the lodging-plus system be determined on the basis of expenses actually incurred for lodgings. In our opinion the principles for determining the actual cost of lodgings at noncommercial facilities expressed in 52 Comp. Gen. 78, supra, are equally applicable regardless of whether the allowance in question is for temporary quarters or per diem. Both regulations provide for reimbursement on an actual expense basis with the purpose, in part, of assuring that the ultimate cost of the Government represents only those expenses necessarily incurred by the employee for lodgings.

Regardless of whether noncommercial lodgings with a friend or relative are secured in connection with a permanent change of station or a temporary duty assignment, we do not consider it necessary for an employee to pay the same amount for those lodgings that he would be required to pay for accommodations at a motel or other commercial establishment. In this regard, we are unable to agree with Mr. Smith's argument that the types of expenses incurred by one who provides lodgings in his private home to a friend or relative are the same as those incurred by a commercial establishment. In general, the expenses incurred by an individual in accommodating a friend or relative in his private home are similar to those he incurs in maintaining that home for his and his family's use. The presence of a guest would

increase his use of utilities and household furnishings. However, the host would not incur certain expenses that a commercial establishment would incur, such as license fees, salaries of reservation personnel, advertising, etc. Therefore, while we recognize that a private host is put to some inconvenience in furnishing lodgings to a friend or relative and incurs some additional expenses, we are unable to agree with Mr. Smith's view that the cost of commercial lodgings reflects a fair standard of compensation.

We recognize that adoption of the rule in 52 Comp. Gen. 78, supra, for per diem purposes may place the traveler in a somewhat difficult position with respect to his determination of a reasonable amount to reimburse a relative or friend for the use of private accommodations. Also, the host, who is not engaged in the lodging business and does not maintain a bookkeeping operation would find it difficult to determine the additional cost attributable to the guest's lodgings. However, paragraph 1-7.3c(b)(3) of the Federal Travel Regulations (May 1975) provides:

"(3) An agency may determine that the lodging-plus method as prescribed herein is not appropriate in circumstances such as when quarters or meals, or both, are provided at no cost or at a nominal cost by the Government or when for some other reason the subsistence costs to be incurred by the employee can be determined in advance. In such instances a specific per diem rate may be established and reductions made in accordance with this part, provided the exception from the lodging-plus method is authorized in writing by an appropriate official of the agency involved."

These provisions expressly recognize that there are circumstances in which the lodging-plus method of determining per diem entitlement is not appropriate. In circumstances where it is administratively determined in advance that the lodging-plus method is inappropriate, the agency is authorized to establish a specific per diem rate. In the past we have recognized the appropriateness of the use of this authority for establishing a specific per diem rate payable in connection with an employee's use of his mobile home while on temporary duty. B-175322, April 28, 1972, and B-178310, June 6, 1973. We feel that it may likewise prove the most appropriate means of determining per diem entitlement for those nights on which an employee

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stays in the private home of a friend or relative when it is administratively determined in advance that the lodging-plus method is not appropriate.

Accordingly, Mr. Smith's claim for a per diem allowance for the period of temporary duty assignment determined, in part, on the basis of payments to his mother-in-law for 5 days lodging at the rate of \$19 per day, may not be paid as submitted. The amount paid his mother-in-law was not reasonable under the criteria in 52 Comp. Gen. 78. Also, no advance authorization of a specific per diem rate for the period in question was made as required under FTR para. 1-7.3c(b)(3) (May 1975).

In view of the above Mr. Smith should be paid on the basis of per diem computed on the basis of the lodging costs at commercial establishments and no costs for the nights he lodged with his mother-in-law. He should also be requested to obtain information which will permit his agency to determine lodging costs in accordance with 52 Comp. Gen. 78 for the nights he lodged with his mother-in-law. When such costs are determined a supplemental payment should be made to Mr. Smith. The voucher is returned for processing in accordance with this decision.

R. F. BROWN

Deputy

Comptroller General
of the United States