



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Smoking Cessation Program for Federal Employees

File: B-231543

Date: February 3, 1989

DIGEST

Under 5 U.S.C. § 7901, Federal agencies have authority to establish smoking cessation programs for their employees and to use appropriated funds to pay the costs incurred by employees participating in these programs. However, before such programs can be implemented, the Office of Personnel Management would have to amend the Federal Personnel Manual to add smoking cessation as a prevention activity that agencies can include as part of the health services program they provide their employees. 64 Comp. Gen. 789 (1985) is modified accordingly.

DECISION

This decision is in response to a request from the Department of the Treasury, dated May 17, 1988, regarding the availability of appropriated funds "to pay for employees of the Internal Revenue Service (IRS) to attend smoking cessation programs." As recognized by the Treasury Department in its submission, we concluded in 64 Comp. 789 (1985) that any expenditures incurred on account of the participation by federal employees in a smokers rehabilitation program would constitute a personal medical expense of the employees involved that could not be paid with appropriated funds. As requested by the Treasury Department, we have reconsidered our position on this issue, and conclude that 5 U.S.C. § 7901 authorizes agencies to use appropriated funds to pay the costs incurred by employees participating in smoking cessation programs. However, before the IRS may incur such costs, the Office of Personnel Management (OPM) should modify its regulations to include smoking cessation as a type of health service that agencies can provide their employees. 64 Comp. Gen. 789 (1985) is modified accordingly.

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BACKGROUND

In 64 Comp. Gen. 789 (1985), we addressed the question whether appropriated funds could be used "to pay for a smokers' rehabilitation program for all smoking employees who desire to 'kick the habit'." The submission characterized the proposed smoking cessation program as "medical treatment for smokers."^{1/} Viewing the question from that perspective, we responded as follows:

". . . We have consistently held that medical care and treatment are personal expenses of an employee and their payment may not come from appropriated funds unless specifically authorized under a contract of employment or by statute or regulation. 63 Comp. Gen. 96, 97 (1983). See also 57 Comp. Gen. 62 (1977), 53 Comp. Gen. 230, 231 (1973) and cases cited therein.

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"Accordingly, there is no legal basis for using appropriated funds to pay the personal medical expenses of Federal employees that would be incurred as a result of their participation in a smokers' rehabilitation program. It is important to note, however, that this conclusion does not impair the authority of agencies to conduct programs designed to promote and maintain employee mental and physical health short of treatment and rehabilitation. See 5 U.S.C. § 7901"

The IRS contends that 5 U.S.C. § 7901 "is sufficiently broad to include a smoking cessation program." That provision authorizes federal agencies to establish, within the limits of available appropriations, a health service program to promote and maintain the physical and mental fitness of their employees. 5 U.S.C. 7901(a).

For purposes of section 7901, a health service program is limited to the following:

"(1) treatment of on-the-job illness and dental conditions requiring emergency attention;

"(2) preemployment and other examinations;

^{1/} In fact, the only use of appropriated funds at issue was a proposed expenditure to reimburse employees for the cost of nicotine gum prescribed by a doctor.

"(3) referral of employees to private physicians and dentists; and

"(4) preventive programs relating to health."
5 U.S.C. 7901(c) (emphasis added).

IRS maintains that its proposed smoking cessation programs are clearly "preventive" in nature. IRS reasons that "smoking" is not a disease per se; rather, as medical research has shown, smoking is a major contributing cause of such illnesses as cancer, coronary disease, and emphysema. Since smoking cessation programs address the cause of significant adverse health effects, such programs, by definition, are "preventive programs" authorized by 5 U.S.C. § 7901(c)(4). We agree.

ANALYSIS

As we held in 64 Comp. Gen 789, the costs of medical care or treatment for civilian government employees are personal to the employees, and appropriated funds may not be used to pay them unless provided for by statute or in the contract of employment. See also B-226569, November 30, 1987. However, our decision in 64 Comp. Gen. 787 concerning smoking cessation programs accepted without question the characterization of such programs as medical care. Little, if any, consideration was given to viewing such programs as "preventive programs relating to health" authorized by 5 U.S.C. § 7901(c)(4).^{2/}

Overwhelming medical evidence exists that demonstrates the adverse health effects smoking has on smokers as well as non-smokers exposed to "passive" tobacco smoke in their environment. Although a lengthy discussion of the extensive medical research and numerous studies concerning the health effects of smoking is unnecessary, the following excerpt from the preface to a recent report of the Surgeon

^{2/} Even if an employee's participation in a smoking cessation program is viewed as personal medical care or treatment, the use of appropriated funds to provide such medical treatment to an employee would not be prohibited if authorized by statute. Thus, the issue to be resolved would remain the same--does smoking cessation qualify as a preventive program relating to health that would be authorized by 5 U.S.C. § 7901(c)(4)?

General of the United States^{3/} effectively summarizes the results of such research:

"Previous reports have reviewed the medical and scientific evidence establishing the health effects of cigarette smoking and other forms of tobacco use. Tens of thousands of studies have documented that smoking causes lung cancer, other cancers, chronic obstructive lung disease, heart disease, complications of pregnancy, and several other adverse health effects.

"Epidemiologic studies have shown that cigarette smoking is responsible for more than 300,000 deaths each year in the United States. As I stated in the Preface to the 1982 Surgeon General's Report, smoking is the chief avoidable cause of death in our society." (Emphasis added.)

In our view, programs designed to help employees avoid "the chief avoidable cause of death in our society" qualify as "preventive programs relating to health" as that phrase is used in 5 U.S.C. § 7901(c)(4). In addition, smoking cessation programs would have a beneficial impact on maintaining the health of non-smoking employees exposed to tobacco smoke in the workplace. The adverse effect of such passive smoking on the health of non-smokers has received considerable attention in recent years.^{4/} In December 1986, the General Services Administration (GSA) adopted regulations governing smoking in GSA-controlled buildings which recognized that "smoking adversely affects the health of those persons passively exposed to tobacco smoke." 51 Fed. Reg. 44259 (1986). The regulations adopted by GSA limit smoking "to an absolute minimum in areas where there are non-smokers." See 41 C.F.R. § 101-20.109-10(a)(1) (1987). Thus, apart from the direct benefit to smokers, the establishment of smoking cessation programs would help

^{3/} The Health Consequences of Smoking: NICOTINE ADDICTION, report of the Surgeon General for 1987, p. iii.

^{4/} For example, the 1986 report of the Surgeon General on the health consequences of smoking dealt specifically with the issue of passive or "involuntary smoking".

reduce the amount of tobacco smoke in the federal workplace and its adverse effect on the health of non-smokers.^{5/}

Our interpretation of 5 U.S.C. § 7901(c)(4) is consistent with our prior interpretation of that provision. In 64 Comp. Gen. 835 (1985), a National Park Service certifying officer asked whether he could certify for payment several billings arising from the operation of a physical fitness program by the Park Service Alaska Regional Office. Relying on 5 U.S.C. § 7901(c)(2) and (4) and implementing regulations, we approved payment for the cost of comprehensive physical fitness evaluations and blood tests for employees. While we would not approve payment of bills from a private health club for employees' use of the club's exercise facilities, our conclusion was based on the restrictive nature of the regulations, not on the lack of statutory authority. We said that the statutory language was "sufficiently broad to encompass the physical fitness program operated by the Alaska Regional Office". While our holding in 64 Comp. Gen. 835 supports our position here, that decision highlights the need for OPM to revise its regulations to include smoking cessation as a health service agencies can provide their employees.^{6/}

Although OPM's regulations presently do not include smoking cessation as a permissible component of a disease prevention program, the Department of the Treasury provided us with a copy of a letter, dated February 5, 1988, from OPM to the Department, indicating OPM's willingness to amend the regulations based on a favorable opinion from our Office. That letter reads as follows:

"We are in the process of reviewing FPM Chapter 792 and its supplements and agree that our guidance on smoking cessation programs should be

^{5/} We have previously approved the use of appropriated funds to purchase and install air purifiers where they will provide a benefit to all employees in a general area. 64 Comp. Gen. 789 (1985); 62 Comp. Gen. 653 (1983); B-215108, July 23, 1984.

^{6/} In response to our decision, OPM revised its regulations to include the establishment and operation of "physical fitness programs and facilities designed to promote and maintain employee health" in its list of appropriate preventive health services. See Federal Personnel Manual (FPM), ch. 792 (Inst. 261, Dec. 31, 1980), as amended by FPM letter 792-15 (April 14, 1986).

reexamined in light of recent developments in the employee health field. In addition, we are hopeful that your request to GAO to revisit the earlier opinion on smoking cessation programs will help clarify whether programs such as the one you are planning can be paid for with appropriated funds. In this regard, OPM will make appropriate amendments to the FPM to reflect a revised GAO opinion. (Emphasis added.)

Accordingly, it is our view that 5 U.S.C. § 7901(c)(4) authorizes the establishment of smoking cessation programs for federal employees. Therefore, if OPM amends the Federal Personnel Manual by adding smoking cessation to the list of disease prevention activities that agencies can provide their employees as part of their health service programs, we would not object to the IRS's use of its appropriated funds to pay the costs incurred by its employees who participate in a smoking cessation program. 64 Comp. Gen. 789 is modified accordingly.



Acting Comptroller General
of the United States