



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Internal Revenue Service; Use of
Appropriated Funds to Pay for Eldercare
Facilities and Counseling Services

File: B-247730

Date: September 21, 1992

DIGEST

Without specific statutory authority, funds appropriated to the Internal Revenue Service (IRS) are not available to provide space for eldercare facilities for adult relatives of IRS employees. IRS appropriated funds are available, however, to undertake employee referral and counseling programs.

DECISION

The Internal Revenue Service (IRS or Service) has requested an advance decision regarding the propriety of using funds appropriated to IRS to pay for certain operating costs associated with eldercare facilities for adult relatives of IRS employees. The Service proposed to incur start-up costs for the eldercare facilities, including construction and renovation costs, and thereafter provide space and related services without charge. In addition, IRS plans to implement a resource and referral service for its employees on eldercare issues and undertake related employee awareness and training programs. For the reasons given below, we conclude that the Service may not use appropriated funds to provide space or incur specified operating costs associated with eldercare facilities without specific statutory authority. IRS may use its appropriated funds, however, to undertake employee counseling and to provide referral services related to eldercare.

BACKGROUND

The Service had proposed supporting three to five on-site eldercare facilities for adult relatives of IRS employees. These adult day care centers would serve mildly impaired adult relatives of IRS and other government employees; they would provide respite to caregivers who would otherwise be

absent from work.¹ The Service's plan was that employees would pay approximately \$33 per day to support a nonprofit facility. The Service would support the facility by incurring start-up costs for the centers, including construction and renovation costs, and thereafter, by providing space and related services without charge. On July 20, 1992, we were informed that the IRS Policy Board for Human Resource Issues has determined that the Service is not in a position, at this time, to make the long-term financial commitment necessary to support the eldercare facilities. We are issuing this decision, nonetheless, at the request of the Service because of its continuing interest in this issue and the possibility that this project will be renewed in the future.

Also, the Service plans to implement a resource and referral service for its employees on eldercare issues. IRS' plan includes providing employees "a toll free number that will connect them to counselors who can answer a wide range of questions and assist with problems." IRS also plans to undertake related employee awareness and training programs.

Recognizing that there is no specific statutory authority to conduct an eldercare program, IRS is of the view that appropriated funds are available for this project as a necessary expense of the Service. In this regard, the Service's position is that an eldercare program is necessary for recruiting and retaining staff and maintaining employee morale.

ANALYSIS

In Pub. L. No. 102-141, 105 Stat. 834, 839 (1991), Congress, under the heading "Administration and Management," appropriated funds "for necessary expenses of the Internal Revenue Service." (Similar language is included in prior years' appropriations acts.) Section 1301(a) of title 31, United States Code, states one of the basic tenets on the use of appropriated funds: appropriated funds may be used only for purposes for which they were appropriated. Since there is no law which specifically authorizes the use of

¹The Service's proposal refers to the eldercare project as a "demonstration" project. IRS planned to conduct a comprehensive evaluation of the project after three years of operation, including such success measures as improved employee recruitment and retention. Our legal analysis, however, addresses IRS' general authority to implement an eldercare program. There is no specific statutory authority for a "demonstration" project, and hence, IRS' initiatives must fall within the bounds of the "necessary expense" rule as discussed herein. Cf. 5 U.S.C. § 4703 (1988).

appropriated funds for the operation of eldercare facilities, the issue here is whether IRS may treat the operation and support of eldercare facilities as a "necessary expense" of its administration and management appropriation. We have long held that an appropriation made for a particular purpose, by implication, confers authority to incur expenses which are reasonably necessary or incident to the proper execution of that purpose. 70 Comp. Gen. 248 (1991); 66 Comp. Gen. 356 (1987); 29 Comp. Gen. 419 (1950). As a general rule, appropriations for "necessary expenses" of an agency may be used for purposes not specifically set forth in the appropriations act if the expenses in question are for the direct support of the agency's mission. 68 Comp. 502 (1989); 54 Comp. Gen. 1075, 1076 (1975).²

We address, first, whether IRS could pay for certain operating costs associated with eldercare facilities for adult relatives of IRS employees. In this regard, the Service proposed to incur start-up costs for the eldercare facilities, including construction and renovation costs, and thereafter provide space and related services without charge.

The costs of caring for one's elder relatives normally are considered a personal expense. We have long held that an agency may not use appropriated funds to pay for items of personal expense unless there is specific statutory authority to do so. 68 Comp. Gen. 502, 505 (1989). This is not to say, however, that an agency may not use appropriated funds to pay an expense in a particular situation, which, in another context, would be considered personal. For example, we held that the Department of the Navy was authorized to use appropriated funds to reimburse a private citizen, who was invited to participate aboard ship in a naval exercise, for the cost of a physical examination. Ordinarily, a physical examination is considered a personal expense; here, the examination was primarily for the benefit of the government to minimize the possibility of having to divert the ship from its mission. 65 Comp. Gen. 677 (1986). More recently, in B-239774, July 22, 1991, we held that the Federal Trade Commission (FTC) was authorized to use appropriated funds to pay for cable television service installed in an employee's home. We concluded that the cable television costs primarily benefitted the government because cable service was not otherwise available to FTC and the Commission was thereby enabled to monitor advertising on cable television, an objective in direct furtherance of its statutory mission.

²This concept is known as the "necessary expense doctrine." For a discussion of this doctrine, see, e.g., B-242391, Sept. 27, 1991 and B-223608, Dec. 19, 1988.

We have also accepted the retention of employees and promotion of employee morale, generally, as a justification for paying some expenses that, in many circumstances, would be viewed as personal in nature but are typically provided by employers. 68 Comp. Gen. 127 (1988); 67 Comp. Gen. 87 (1987). We recognize that as the population ages and medical advances prolong the lives of people with chronic disabling conditions, greater attention is being given to eldercare as an employee benefit. Nonetheless, this type of employee benefit is not typical of those historically offered by federal agencies. See Balancing Work Responsibilities and Family Needs: The Federal Civil Service Response, MSPB (Nov. 1991). Nor are we aware that eldercare has become a typical benefit provided the non-federal workforce.³

In similar circumstances, Congress has provided specific statutory authority for the use of agency appropriations to support child care centers. In 40 U.S.C. § 490b (1988), commonly referred to as the Tribble amendment, Congress authorized federal agencies to provide space for child care facilities without charge for rent or services. The term "services" includes "the providing of lighting, heating, cooling, electricity, office furniture, office machines and equipment, telephone service . . . and security systems." Specific statutory authority is also provided, for example, for the use of appropriated funds to support physical fitness facilities. See 5 U.S.C. § 7901; 70 Comp. Gen. 190 (1991); B-216852, March 6, 1985.

Given that eldercare is not a typical benefit offered the American workforce, and that other similar benefits are available to federal workers only pursuant to specific legislation, we think that it is for the Congress to decide whether agency appropriations can be used to support eldercare centers. Consequently, it is our view that IRS may not use its appropriations to pay start-up and certain operating costs associated with eldercare facilities for adult relatives of its employees in the absence of a specific authorization from Congress to do so.

We next address IRS' use of appropriated funds to implement a resource and referral service on eldercare issues and undertake related employee awareness and training programs.

³See Parker, Companies offering elder-care help, Baltimore Sun, August 17, 1992 (less than 1 percent of U.S. employers offer eldercare programs); Haber, Health Care for an Aging Society 62-63 (1989) (describing work site elder care programs as an "emergency employee benefit" while observing that "elder care is not common among major corporations today.")

Under the authority of 5 U.S.C. § 7901, which authorizes "preventive programs relating to health," agencies have implemented employee assistance programs that deal with a broad range of employee personnel problems that adversely affect job performance or conduct, including employee programs related to eldercare.⁴

As stated in the Federal Personnel Manual, ch. 792 (Inst. 337, Oct. 2, 1986), "[c]ounseling services . . . may include: alcohol and drug abuse, emotional, financial, marital, family and legal. The scope of these programs is determined by each agency." Consequently, we conclude that the Service is authorized to undertake employee counseling and referral programs related to eldercare.

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for Comptroller General
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⁴As noted in the Federal Pay and Benefits Reporter, vol. 7, issue 12, 91-45 Jan. 1992:

"[T]he two most common forms of indirect eldercare assistance which employers provide are: proactive educational programs which prepare employees for present or future caregiving roles; and resource and referral networks, which assist employees to find the kinds of help or services which their elderly dependents need. Several Federal agencies are currently experimenting with both of these types of programs."