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DECISION



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

J. B. ...
G. G. M.

FILE: B-164031(4)

DATE: March 11, 1977

MATTER OF: Purchase of Wheelchair for Use of
Social Security Administration Employee

- DIGEST: 1. Social Security Administration (SSA) violated in the Southeastern Program Service Center the carpeting standards established under Architectural Barriers Act of 1968 and under Department of Health, Education, and Welfare (HEW) regulations. Prior to this violation, its employee had supplied his own nonmotorized wheelchair and was capable of performing his assigned duties. In order to make the best use of available personnel and in view of the fact that a powered vehicle became necessary only because of the violation of the Act's standards, we will not object to SSA's reimbursing its employee for the cost of acquiring the motorized wheelchair. The wheelchair will then become the Government's property for use solely in the subject building.
2. Primary jurisdiction for assuring compliance with standards established under the Architectural Barriers Act of 1968, 42 U.S.C. § 4151 (1970), is placed by statute with the General Services Administration (GSA), 42 U.S.C. § 4156, and with the Architectural and Transportation Compliance Board, 29 U.S.C. § 792 (Supp. IV, 1974). Social Security Administration should determine from those entities the proper means of rectifying noncompliance with standards on carpeting, which noncompliance has resulted in handicapped persons requiring the use of powered wheelchairs. Section 236 of the Legislative Reorganization Act, 31 U.S.C. § 1176 (1970) is applicable to this recommendation for corrective action.
3. Should GSA, pursuant to 42 U.S.C. § 4156 (1970), and/or the Architectural and Transportation Compliance Board, pursuant to 29 U.S.C. § 792 (Supp. IV, 1974), order the SSA to purchase and have available motorized wheelchairs for other handicapped employees and members of general public to rectify the violation in the Southeastern Program Service Center of the carpeting standards established pursuant to the Architectural Barriers Act of 1968, it may use its appropriations for that purpose. If other action is prescribed, wheelchair purchases are not authorized, regardless of savings in cost.

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This decision is in response to a letter, with enclosures, dated November 10, 1976, from Mr. Fred Schutzman, Director, Office of Financial Management, Social Security Administration (SSA) of the Department of Health, Education, and Welfare (HEW), (his reference IAD-43), requesting a decision as to whether SSA is authorized to use its appropriations to reimburse a handicapped employee for a motorized wheelchair.

In his letter, the Director indicates that the employee in question is employed with the Southeastern Program Service Center. He performed his duties with the aid of a hand operated wheelchair until the Southeastern Program Center moved to a new building. The floors in that building are entirely covered with carpeting installed over a high density foam padding which makes the hand operated wheelchair very difficult to push. In order to carry out his duties, the employee found it necessary to purchase a motorized wheelchair at his own expense.

The Director reports that it would cost \$68,250 to remove and replace the carpeting on the employee's floor and \$624,000 to remove and replace the carpeting throughout the entire building. Because the wheelchair costs approximately \$1,167, an amount far less than the cost of removing and replacing the carpeting, the Director has asked if it would be permissible for the SSA to reimburse its employee for the cost of the wheelchair. The wheelchair would then become the property of the Government and the employee would not be permitted to take it home. In addition, if we decide such reimbursement is allowable, he has requested our opinion concerning whether the SSA may purchase other wheelchairs should they hire more handicapped employees to work in the subject building.

On August 12, 1968, there was enacted the Architectural Barriers Act of 1968, Pub. L. No. 90-480, as amended, 82 Stat. 718, 42 U.S.C. §§ 4151 et seq. (1970), regarding the design and construction of public buildings to accommodate the physically handicapped. Section 2 thereof, 42 U.S.C. § 4152, provides:

"The Administrator of General Services, in consultation with the Secretary of Health, Education, and Welfare, is authorized to prescribe such standards for the design, construction, and alteration of buildings (other than residential structures subject to this chapter and buildings, structures, and facilities of the Department of Defense subject to this chapter) as may be necessary to insure that physically handicapped persons will have ready access to, and use of, such buildings."

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Pursuant to that section the General Services Administration (GSA) has directed that every Government building be designed, constructed, or altered in accordance with the minimum standards in the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A 117-R 1971, FPMR 101-19.603, 41 C.F.R. § 101-19.6 (1976). The subject carpeting did not meet the standards set forth therein. GSA is also authorized to conduct such surveys and investigations as it deems necessary to assure compliance with those standards, 42 U.S.C. § 4156. In addition, the Architectural and Transportation Barriers Compliance Board, established by section 502 of Pub. L. No. 93-112, September 26, 1973, 87 Stat. 391, as amended, 29 U.S.C. § 792 (Supp. IV, 1974) is responsible for insuring compliance with the standards established by GSA under the Architectural Barriers Act of 1968. The Board may issue orders of compliance to Federal departments, agencies or instrumentalities which are final and binding and which may withhold or suspend Federal funds with respect to any building found not to be in compliance with those standards, 29 U.S.C. § 792(d).

Installation of the subject carpet also violated the provisions of section 4.12, ch. 3.3.5.2 of the Department of Health, Education, and Welfare's Technical Handbook for Facilities Engineering and Construction Manual which provides:

"Carpeting in public or general areas should be heavy duty type with a tight weave and low pile, preferably installed without padding."

Chapter 3.3.5.3 of that manual provides:

"Floors of primary circulation paths should have a hard surface (such as vinyl asbestos tile) which permits easy movement of wheelchairs. Travel distance over carpeting required to reach such a path should not exceed 50 feet."

Generally, the cost of clothing and personal equipment to enable an employee to qualify himself to perform his official duties constitutes a personal expense of the employee, and, as such, is not payable from appropriated funds. 23 Comp. Gen. 931 (1944). As a guide in determining whether any particular equipment is to be considered personal to the employee, we stated in 3 Comp. Gen. 433 (1925) that:

"In the absence of specific statutory authority for the purchase of personal equipment, particularly wearing apparel or parts thereof, the first question for consideration in connection with a proposed purchase of such equipment is whether the object for which the appropriation involved was made can be accomplished as expeditiously and satisfactorily from the Government's standpoint, without such equipment. If it be determined that use of the equipment is necessary in the accomplishment of the purposes of the appropriation, the next question to be considered is whether the equipment is such as the employee reasonably could be required to furnish as part of the personal equipment necessary to enable him to perform the regular duties of the position to which he was appointed or for which his services were engaged. Unless the answer to both of these questions is in the negative, public funds cannot be used for the purchase. In determining the first of these questions there is for consideration whether the Government or the employee receives the principal benefit resulting from use of the equipment and whether an employee reasonably could be required to perform the service without the equipment. In connection with the second question the points ordinarily involved are whether the equipment is to be used by the employee in connection with his regular duties or only in emergencies or at infrequent intervals and whether such equipment is assigned to an employee for individual use or is intended for and actually to be used by different employees."

See also 42 Comp. Gen. 626 at 627-628 (1963) and 45 id. 215 (1965).

Normally, a person needing a wheelchair to perform his duties would be required to provide that equipment himself. Such equipment is of a personal nature and could not be readily used by different employees or used only on an emergency basis or at infrequent intervals to accomplish a special agency purpose.

In the instant situation, however, the employee was providing his own nonpowered wheelchair and was satisfactorily performing his assigned duties. A powered wheelchair became necessary only because the agency, when it occupied new quarters, failed to comply with the standards established under the Architectural Barriers Act of 1968, supra. Because of this and since the wheelchair will enable the agency

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to obtain the best results from its available personnel under existing circumstances, 23 Comp. Gen. 821 (1944), we will not object to SSA's reimbursing the employee for the cost of the powered wheelchair, with the understanding that the wheelchair becomes the property of the Government. In this regard the Director states that the wheelchair will not be removed from the Program Service Center.

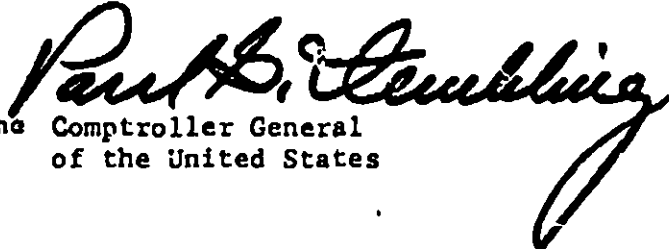
It should be noted that the Architectural Barriers Act of 1968, supra, was not intended solely for protection of handicapped Government employees but for the benefit of any handicapped person who is present in a Government building. Accordingly, although the submission asked only whether future purchases of wheelchairs were authorized for new employees who require them, we have considered the question as covering purchases of wheelchairs for disabled members of the general public as well.

The primary jurisdiction for assuring compliance with the standards established under the Architectural Barriers Act of 1968, supra, rests with the General Services Administration, 42 U.S.C. § 792 (Supp. IV, 1974) and not with this Office. (GSA is authorized by 42 U.S.C. § 4156, to exempt buildings from those standards on a case-by-case basis.) Accordingly, the Social Security Administration should contact those entities to determine what must be done to bring the Southeastern Program Service Center into compliance. Should GSA and the Board determine that the purchase of additional motorized wheelchairs by the SSA for the use of disabled employees in the course of their employment and for use by disabled members of the general public while visiting the building would be the appropriate means to achieve compliance, we will not object to the use of appropriated funds for that purpose. However, if the Board issues an order of compliance requiring a different method for accommodating the building to the needs of handicapped individuals, e.g., by removing the carpeting in question immediately, regardless of cost, then that order must be complied with, 29 U.S.C. § 792(d), supra, and appropriated funds may not be used to purchase other motorized wheelchairs.

However, in order to comply with the letter and spirit of statutory provisions such as section 501 of Pub. L. No. 93-122, September 26, 1973, 87 Stat. 390, 29 U.S.C. § 791(b)(Supp. IV, 1974), we will not object to the acquisition of motorized wheelchairs as a temporary expedient by the Social Security Administration for use of any handicapped individuals it wishes to hire while the matter of bringing the Southeastern Program Service Center into compliance with standards established under the Architectural Barriers Act of 1968 is being raised with GSA and the Board.

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The recommendation for corrective action discussed herein is subject to the reporting requirements of section 236 of the Legislative Reorganization of 1970, 31 U.S.C. § 1176 (1970).


For The Comptroller General
of the United States