

DECISION

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

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MAY 5 1976

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FILE: B-185467

DATE:

MATTER OF: Actual subsistence expenses - Monthly hotel rental

- DIGEST:
1. Consultant who rents apartment on monthly basis for use in connection with his intermittent consulting duties in Washington, D. C., may include only one-thirtieth of monthly rent for purpose of determining his daily actual subsistence expense entitlement.
 2. Intermittently employed consultant whose duties require him to make recurring intermittent visits to Washington, D. C., on an average of 10 days per month may not be given across-the-board authorization for payment of actual subsistence expenses up to \$50. Federal Travel Regulations, paragraph 1-8.1 contemplates that actual subsistence expenses, justified on the basis of unusual circumstances, will be authorized incident to specific travel assignments.

The Assistant Secretary of Defense has requested our views concerning the subsistence expense entitlement of an individual who, incident to his duties as a consultant to the Department of Defense, maintains an apartment in the District of Columbia.

The consultant resides in Boston, Massachusetts. His consulting duties require him to spend an average of 10 days each month in Washington, for which purpose he has been issued travel orders authorizing actual subsistence expenses not to exceed \$50 per day, as approved by the Per Diem, Travel and Transportation Allowance Committee of the Department of Defense. As a matter of convenience the individual has rented an apartment in Washington at a cost of \$260 per month for the sole purpose of residing there while performing his consulting duties. We are informed that the apartment is not used for any purpose other than as a residence for the consultant while performing his duties with the Office of the Secretary of Defense.

The Assistant Secretary suggests that in determining his actual daily subsistence expenses the consultant should be reimbursed for each day's lodging in an amount equal to the difference

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between his expenditures for that day's meals and \$50, provided, however, that the amount of reimbursement allocable to lodging in one calendar month not exceed \$260. While recognizing that daily lodging expenses would normally be determined as one-thirtieth of the monthly rent for each day of occupancy, the Assistant Secretary offers his view that the former method of allocating rent is more appropriate given the fact that the apartment is used by the individual only in conjunction with his consulting responsibilities. The following analysis is offered by way of further justification:

"It would appear that the former view reflects the proper method of reimbursement to be used in this situation. Under this method the consultant would be entitled to receive no more or no less money than an individual who had been authorized an actual expense allowance not to exceed \$50 per day and who had chosen to rent a motel or hotel room on a daily basis instead of an apartment. In addition, because the maximum amount the consultant would be entitled to receive under this method as reimbursement for lodging expenses during any one calendar month would be limited to \$260, the Government would save money should the consultant spend a lengthy period of time in Washington. Depending on the cost of alternate accommodations, savings to the Government could begin after 7 days. Should the consultant, however, spend less than 8 days in Washington during one calendar month, he would bear the responsibility for any lodging expenses incurred which were in excess of the actual expense allowance of \$50 per day minus the cost of his meals."

In very limited circumstances we have recognized that rent may be prorated on a basis of other than one-thirtieth of the monthly rental rate for the purpose of determining an employee's daily actual subsistence expense entitlement. Our decision B-138032, January 2, 1959, involved an employee who was sent on a temporary duty assignment in connection with the conduct of a trial initially expected to last 4 months. The employee rented an apartment for \$145 per month under a rental agreement containing

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a 1-month notice provision. His temporary duty assignment was unexpectedly cut short by the defendant's filing of a consent judgment, with the result that the employee was obliged to pay 2 months rent although he in fact occupied the apartment for a considerably shorter period of time. We there indicated that in determining the actual subsistence expenses of the employee, his daily lodging costs could be determined as a proration of the total amount of rent paid for the period the apartment was actually occupied.

Other than in the case of foreshortened assignments, we have sanctioned proration of monthly rental costs on the basis of actual occupancy only where the monthly rate offered for commercial accommodations is less than the amount the employee would have been required to pay based on the daily rental rate for the days of actual occupancy. The employee whose claim was the subject of B-183341, May 13, 1975, was assigned to temporary duty in Washington, D.C., from July 29 through August 9, 1974, and from August 19 through August 30, 1974, requiring a total of 22 nights lodgings for both assignments. Had the employee arranged for accommodations on the basis of the hotel's daily rate, the cost to the Government of his lodgings for 22 nights would have been \$466.40. Instead, the employee opted to rent the hotel room on a monthly basis at a cost of \$412.50. Since the total lodging costs incurred on a monthly basis were less than what would have been incurred had the employee secured lodgings on a daily basis, we held that the monthly rental rate could be prorated over the 22 days for which lodgings were required for the purpose of determining the employee's actual subsistence expense entitlement.

The above cases involving lodging costs incurred in connection with specific temporary duty assignments are to be distinguished from situations involving long-term rental arrangements made in connection with recurring but intermittent visits to a single location over an extended period of time. As in the instant case such situations are likely to involve intermittently employed experts and consultants who, under 5 U.S.C. § 5703 (1970), may be paid travel expenses including a per diem allowance or actual subsistence expenses while away from their homes or regular places of business.

Our decision B-181294, March 16, 1976, concerned an individual serving as chairman of a commission. The chairman resided in

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Illinois and was required to travel to Washington, D. C., two or three times a month for commission meetings. In part because he felt he might be unable to obtain hotel accommodations on his intermittent visits, the chairman rented an apartment in the Washington metropolitan area for use in connection with commission business. We there held that the apartment need not be considered a second residence and that the chairman was eligible for reimbursement of lodging costs while on commission business in the District of Columbia by means of an actual subsistence expense allowance. In limiting reimbursable daily lodging costs to one-thirtieth of the monthly rental rate, it was noted that the chairman had rented the apartment partly for his own convenience and that there was no precise method of determining beforehand the extent to which he would use the apartment while on commission business.

While our consideration of B-181294, supra, did not squarely involve the issue of whether monthly rental costs could be apportioned on the basis suggested by the Assistant Secretary, we believe that our holding in that case that daily lodging expenses should be determined as one-thirtieth of the monthly rental rate is correct. The mere fact that the Government may benefit financially as a result of an employee's rental arrangements, depending upon the monthly rental rates, hotel costs in the area and the frequency and duration of intermittent duty performed, is insufficient justification to otherwise prorate lodging costs for determining actual subsistence expense entitlement.

We have recognized, however, that in cases of prolonged temporary duty in advance of which the employee determines to rent an apartment administrative consideration should be given to paragraph 1-7.3c(3) of Federal Travel Regulation (FPMR 101-7) as amended by Temporary Regulation A-11 (May 19, 1975) which provides that a specific per diem rate not to exceed the maximum per diem rate may be established when an agency determines that the lodgings-plus system is not appropriate in given circumstances. 52 Comp. Gen. 730 (1973).

We believe that matters related in the Assistant Secretary's submission warrant our further comment. Specifically, we are concerned with the fact that the consultant has been authorized actual subsistence expenses not to exceed \$50 per day. Part 8 of the FTR as amended by Temporary Regulation A-11 (May 1975) provides authority for payment of actual subsistence expenses

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when the authorized maximum per diem allowance would be inadequate to cover the actual and necessary expenses of the traveler due to unusual circumstances of the travel assignment or for travel to high-rate geographical areas. Paragraph 1-8.6 of the FTR designates all locations within the corporate limits of Washington, D. C., and the county of Arlington and the city of Alexandria, Virginia, as a high-rate geographical area for which a maximum daily rate of \$42 is prescribed.

In order for the consultant to have been authorized actual subsistence expenses limited instead to the \$50 statutory maximum, the determination was presumably made that costs in excess of the otherwise applicable \$42 maximum would be incurred by reason of unusual circumstances of the consultant's travel. The circumstances under which such authorization is appropriate are set forth at paragraph 1-8.1c of the FTR and provide as follows:

"c. Unusual circumstances of the travel assignment. Actual subsistence expense reimbursement may be authorized or approved for specific travel assignments within and outside the conterminous United States when it is determined that maximum per diem allowance (see 1-7.2) would be inadequate due to the unusual circumstances of the travel assignment.

"(1) The actual subsistence expense basis of reimbursement shall not be authorized or approved in instances in which the actual and necessary subsistence expenses exceed the maximum per diem allowable only by a small amount. The actual subsistence expense basis may appropriately be authorized or approved for travel assignments which otherwise meet conditions prescribed herein and by the head of the agency if, due to unusual circumstances:

"(a) The actual and necessary subsistence expenses exceed the maximum per diem allowance (see 1-7.2) by 10 percent or more, or

"(b) The traveler has no alternative but to incur hotel costs which absorb all or nearly all of the maximum per diem allowance (see 1-7.2), since hotel accommodations constitute the major portion of necessary subsistence expenses.

"(2) Notwithstanding the criteria outlined above, actual subsistence expense reimbursement shall not be authorized or approved solely on the basis of inflated lodging and/or meal costs since inflated costs are common to all travelers; some unusual circumstances of the travel assignment must be involved to cause the lodging and or meal costs to be higher than those which normally would be incurred at a particular location (42 Comp. Gen. 440).

"(3) Travel which involves unusual circumstances may include, but is not limited to, the following situations:

"(a) The traveler attends a meeting, conference, or training session away from his official duty station where lodging and/or meals must be procured at a prearranged place (such as the hotel where the meeting, conference, or training session is being held) and the lodging costs, incurred because of such prearranged accommodations, absorb all or practically all of the maximum per diem allowance.

"(b) The traveler, by reason of the assignment, necessarily incurs unusually high expenses in the conduct of official business such as for superior or extraordinary accommodations including a suite or other quarters for which the charge is well above that which he would normally have to pay for accommodations.

"(c) The traveler necessarily incurs unusually high expenses incident to his assignment to accompany another traveler in a situation as described above."

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The language of the above-quoted regulation contemplates that actual subsistence expenses, justified on the basis of unusual circumstances, will only be authorized incident to specific travel assignments. The regulations further provide that such authorization will not be predicated solely on the basis of inflated lodging and meal costs, which in the case of travel to Washington, D. C., is accounted for by its inclusion as a high-rate geographical area. While we have not been informed as to the particular duties required of the consultant, we question that the nature of his travel to Washington is consistently similar to those situations outlined in paragraph 1-8. 1c(3), above. Nonetheless, the regulations do not contemplate an across-the-board authorization of actual subsistence expenses based on unusual circumstances in connection with recurring intermittent assignments. The travel orders issued the consultant should be amended prospectively to authorize actual subsistence expenses not in excess of \$42 per day. Actual subsistence expenses greater than that maximum may be authorized in connection with particular travel assignments to Washington, D. C., or elsewhere only to the extent justified in accordance with the provisions of paragraph 1-8. 1 of the FTR, quoted above.

R.F.KELLER

Deputy Comptroller General
of the United States