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**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

*[Claim by DEA Employee For Miscellaneous Expenses  
Incurred Incident to Transfer]*

FILE: B-197072

DATE: August 4, 1980

**MATTER OF:** Leonard W. Alphin - Miscellaneous expenses  
for replacement of draperies and forfeiture  
loss on orthodontic contract

**DIGEST:**

1. Employee claims reimbursement as miscellaneous expense for cost of custom draperies that he conveyed to purchaser of residence at old station incident to transfer of permanent duty station. There is no authority for reimbursement of claimed expense. Situation is tantamount to inclusion of value of draperies in sale price of house and Federal Travel Regulations paragraph 2-3.1c(1) prohibits reimbursement for cost items in selling or buying real and personal property.
  
2. Transferred employee reclaims forfeiture losses on orthodontic contracts for treatment of children denied by agency on ground losses were nominal since contracts required payments in full during initial treatment periods and none during 3-year periods when children wore retainers. Employee may be reimbursed because arrangement provided for prepayment of treatments during retainer periods and there were forfeitures for treatments not made. Forfeitures should be determined by prorating dollar amounts of contracts over total months of treatments made by first orthodontist (including those in retention period) plus number of months required to complete treatment by new orthodontist.

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The Drug Enforcement Administration (DEA), United States Department of Justice, requests our decision concerning the propriety of reimbursing Mr. Leonard W. Alphin, a DEA employee, for certain miscellaneous expenses incurred incident to his transfer.

Mr. Alphin was transferred from Dallas, Texas, to Corpus Christi, Texas, effective January 14, 1979. Mr. Alphin has submitted supplemental vouchers incident to that transfer. On the first voucher he seeks reimbursement of \$400, representing the cost of material for custom draperies that were conveyed to the purchaser of his residence at his former duty station. On the remaining vouchers, he claims reimbursement of \$1,375.20 for forfeiture losses on orthodontic contracts for two of his children.

The DEA denied Mr. Alphin's claim for the cost of material for custom draperies on the basis that the Federal Travel Regulations (FPMR 101-7, May 1973) paragraph 2-3.1c(5) prohibits reimbursement for the costs of newly acquired items such as rugs or draperies. However, Mr. Alphin is not claiming reimbursement for draperies purchased for his residence at the new duty station. Rather, he is seeking reimbursement for drapery material purchased in October and November 1977, 2 years prior to his transfer, which apparently was intended for installation at his residence near Dallas. Thus, FTR paragraph 2-3.1c(5) does not apply.

Mr. Alphin argues that reimbursement should be allowed since the buyer of his residence at his former duty station requested that the draperies remain as a condition of the sale of the residence. However, regardless of the reason that the draperies were conveyed with the residence, we are unaware of any authority which would permit reimbursement of these items. Indeed, we believe that the provisions of FTR paragraph 2-3.1c(1) cover this situation. That paragraph prohibits reimbursement for cost items in selling or buying real and personal property. Moreover the situation herein involved is tantamount to the inclusion of the value of the draperies in the sale price of the house. As such, reimbursement would be barred by FTR paragraph 2-6.2e. See B-184869, September 21,

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1976. Accordingly, the \$400 claimed for drapery material may not be reimbursed.

On the remaining vouchers Mr. Alphin seeks reimbursement of forfeiture losses on orthodontic contracts that he entered into with an orthodontist in the vicinity of his former duty station. Federal Travel Regulations (FTR) paragraph 2-3.1b(5) provides for the reimbursement as a miscellaneous expense of forfeiture losses on medical, dental, or food contracts that are not transferable.

In a letter to Mr. Alphin at the time of his transfer the orthodontist summarized the treatment required for Mr. Alphin's children as follows:

Leonard, Jr. - Braces will be required for 24 months beginning February 16, 1976, plus 3 years retention time.

Leslie - Braces will be required for 27-28 months beginning January 17, 1977, plus 3 years retention time.

The issue raised by DEA is whether the 3 years of retention time should be included in determining the total number of months of orthodontic services required. The DEA concludes that substantial performance was completed upon removal of braces and installation of retainers and that foregoing the remaining visits results in only a nominal forfeiture. They base their conclusion on the following factors.

First, they were advised by the orthodontist's office that the phrase "three year's retention time" refers to the time that the patient must wear the retainers and not to the time that the doctor is obligated to provide his services. In fact, DEA was advised by the orthodontist's office that visits for periodic checking and adjusting of the retainers are done as an extra service at no charge to the patient. Secondly, DEA notes that the ideal schedule for checking retainers is once a month for the first 6 months, every 3 months for the next 6 months, and then once a year for the remaining 2 years.

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In Samuel H. Sackman, B-185048, November 1, 1976, we established guidelines for determining forfeiture losses under FTR paragraph 2-3.1b(5). We held, quoting from the digest, that the loss--

"must be determined pursuant to specific terms of contract, and matters independent thereof, such as cost of completing work or obtaining replacement at new duty station are not for consideration. However, in absence of contractual provision regarding termination, employee may be reimbursed on 'degree of completion' basis."

The term "degree of completion" was explained further in that decision:

"The employee should submit evidence indicating the contract price for the services at the former duty station, the number of months of performance received, the estimated number of months of orthodontistry yet to be performed, and the amount of any adjustment received from the former dentist. On the assumption that the total period necessary for orthodontic services is a constant, i.e., remains the same whether the work is performed by the same or different dentists, the amount of reimbursement may be computed by prorating the dollar amount of the original contract over the total months of orthodontic services to be performed under both the old and the new contracts to arrive at what would have been the average monthly rate for completion under the old contract. This monthly rate multiplied by the number of months of service necessary under the new contract, less any adjustment received by the employee under the old contract, is the measure of forfeiture."

As stated above, the issue raised by DEA is whether the 3 years of "retention time" should be included in determining the total number of months of orthodontic services required.

We do not agree with DEA's conclusion that Mr. Alphin has suffered only a nominal forfeiture on the two orthodontic contracts herein involved. An examination of the record indicates that Mr. Alphin was obligated to pay the total charges for the treatment of his children before the initial braces were removed and the retainers installed. In effect this arrangement required a prepayment of the fee attributable to installing, checking, adjusting and eventually removing the retainers. Therefore, Mr. Alphin did forfeit some of the fees paid by him because treatment was not completed at the time of his transfer.

Regarding the second point presented by DEA, we do not believe that a schedule of ten subsequent visits during the retention period indicates that the forfeiture losses were nominal. However, it does not appear practical to base the losses on the total number of visits for adjustment of the initial braces on the one hand and the total number of visits for installing, checking, adjusting, and removing retainers on the other hand. Rather, we are of the opinion that the forfeiture losses should be determined in accordance with the following language of the Sackman decision:

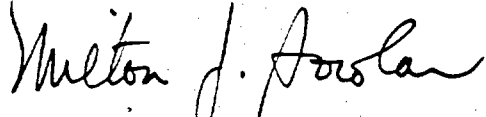
"The amount of reimbursement may be computed by prorating the dollar amount of the original contract over the total months of orthodontic services to be performed under both the old and the new contracts to arrive at what would have been the average monthly rate for completion under the old contract."  
(Emphasis supplied.)

Under the above rule, Mr. Alphin's forfeiture losses should be computed on the basis of monthly rates by prorating the dollar amounts of the original contracts over the total months of treatments performed under the old contracts (including any months during the retention periods) plus the number of months estimated by the new orthodontist to complete the treatment of each child. However, reimbursement of the forfeiture loss may not exceed the cost of the replacement contract at the new duty station.

Accordingly, upon Mr. Alphin's submission of new orthodontic contracts for the completion of the required

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services detailing the total number of months to complete the treatment of each child, he may be reimbursed in accordance with the formula set forth in Sackman, supra, to the extent forfeiture losses may be included in the miscellaneous expenses allowance.



For the Comptroller General  
of the United States