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DECISION

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

FILE: B-198804 DATE: December 31, 1980

[Entitlement to
MATTER OF: Reimbursement for alcoholism treatment
and rehabilitation expenses]

DIGEST: The Department of Housing and Urban Development seeks approval to reimburse an employee for the hospital treatment of chronic alcoholism where the agency had incorrectly informed her that such expenses would be covered by her Federal Employees Health Benefits Plan. Because FPM Supp. 792-2, paragraph S6-3, states that the employee is responsible for the costs of treatment and rehabilitation, and since the Government may not be bound by the unauthorized acts of its employees, the Department may not reimburse the employee for the claimed expenses.

The Department of Housing and Urban Development asks whether it may reimburse an employee for rehabilitation and treatment expenses incurred after she was erroneously assured by Department officials that her Federal Employees Health Benefits Plan would cover the expenses.

The record submitted by the Department shows that the employee was experiencing difficulty in the performance of her duties due to alcoholism. Despite repeated counseling, the problem continued. Finally, when the Department believed that the only alternative to treatment would be an adverse personnel action which might eventually lead to her dismissal, it recommended that the employee check herself into a private hospital. The employee questioned whether her Federal employees Health Benefits Plan (group health insurance) would cover the cost of treatment in the particular hospital that the Department had recommended to her because of its reputation for the effectiveness of its program. Officials of the Department advised the employee that her group health insurance carrier would cover the cost of treatments at the recommended hospital.

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The employee checked into the hospital on March 29, 1978, and remained there until April 14, 1978 when she was notified that her group health insurance carrier would not cover the bill. 1]

The employee believes that the Department should be held responsible for the cost of treatment since its personnel assured her that the costs would be covered by her group health insurance carrier.

The Department submitted with the record a memorandum from its Counsel's office concluding that the Department is liable and should reimburse the employee. The Counsel argues that our decision in Environmental Protection Agency, 57 Comp. Gen. 62, 66 (1977) does not bar payment of this claim. In that decision, citing the general rule that medical care and treatment are personal to the employee and may not be paid from appropriated funds, we held that payment for diagnostic and preventive psychological counseling services was proper but that treatment and rehabilitation expenses must be borne by the employee.

The Counsel seeks to distinguish the present situation from our decision because the expenses here have already been incurred, while our decision involved proposed expenditures. It is argued that the employee incurred the expenses in reliance upon the erroneous representations of the Department's employees. Thus, he argues that the Department may grant an exception under paragraph 4, HUD Handbook 792.2 to the requirement refered to in 57 Comp. Gen. 62, supra, that the employee bear the expenses. Paragraph 4 of HUD Handbook 792.2 states:

> "The Director of Personnel is authorized to make exceptions to the provisions in this Handbook so long as they are consistent with applicable law, presidential directives,

1] The Office of Personnel Management has authority to review a carrier's denial of an employee's claim (See FPM Supp. 890-1, par. S2-2). Accordingly, that issue will not he addressed here.

regulations and after appropriate recognized employee groups have been consulted."

The heart of the Counsel's argument is that the Department is responsible for the acts of its agents and is liable for the expenses incurred by the employee in reliance on their erroneous advice. He cites various legal authorities for the principle that in an agency relationship, liability may be imposed on the principal for the acts of an agent because of actual authority, apparent authority or estoppel.

The Department's argument clearly hinges on the Government's liability for the misrepresentations of its employees. The rule is well established that the United States can be neither bound nor estopped by the unauthorized acts of its agents. Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380 (1947). The actions that allegedly give rise to the Government's liability in this case are clearly unauthorized, as discussed below.

The Federal Personnel Manual Supplement (FPM Supp.) 792-2, April 1976, implements the provisions of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (Pub. L. No. 91-616, 84 Stat. 1848 (1970)) and the Drug Abuse Office and Treatment Act of 1972 (Pub. L. No. 92-255, 86 Stat. 65 (1972)). Paragraph S6-3 of that Supplement provides:

"EXPENSES OF REHABILITATION

"a. There is no provision in Public Laws 91-616 or 92-255 for payment of Federal employee rehabilitation costs. An employee is responsible for the costs of treating his or her drinking or drug problem as with any other health condition. The employee may receive some financial help, as with other illnesses, from his or her Federal Employees Health Benefits plan."

Clearly, in the face of this prohibition there is no authority for any Government employee to authorize the payment from Federal funds of alcohol rehabilitation costs such as are claimed here. This fact distinguishes the instant case from those cited by the Counsel. This distinguishing factor was recognized in Mursor Builders v. Roddy Realty, Inc., 459 F. Supp. 1317, 1324 (1978), where the court stated that the Government cannot be bound when the agent's actions were beyond the scope of authority permitted by law. Also see United States v. Zorger, 407 F. Supp. 25, aff'd 546 F.2d 421 (1976). Thus, payment to the employee may not be made on the basis of arguments founded in agency law.

In any event, we believe that the record clearly establishes that the Government officials involved here represented only that the employee's Federal Employees Health Benefit Plan would cover the expenses of rehabilitation. There is no evidence that the employee was advised or that the Government officials stated that the Federal Government would cover the costs of the employee's treatment. Clearly, the Department employees did not have authority to bind the carrier.

Thus, we are aware of no authority permitting the Government to cover the cost of the employee's treatment and rehabilitation expenses in this case.

Milton J. Socolar

Acting Comptroller General
of the United States