



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 2, 2015

CBCA 4123-TRAV

In the Matter of DAVID C. SCHEIVERT

David C. Scheivert, APO Area Pacific, Claimant.

Holly Kay Botes, Command Counsel, Department of the Army, United States Army Garrison - Kwajalein Atoll, appearing for Department of the Army.

ZISCHKAU, Board Judge.

The claimant, David C. Scheivert, seeks our review of the agency's demand for repayment of \$2952.70 from an advance payment of \$5228.91 made by the agency to the claimant for his wife's travel to the continental United States in connection with maternity care prior to delivery, and post-natal care of their baby after delivery. The original travel authorization provided for meals and incidental expenses (M&IE) of \$2894.50 over a forty-nine day period with a departure from the Kwajalein Atoll, arriving on February 5 in Columbus, Ohio, and a return to the Kwajalein Atoll on March 26, 2013. Only reimbursement of M&IE is at issue as the claimant only sought reimbursement for one hotel stay in Honolulu, and that amount was reimbursed. Ms. Scheivert's actual travel dates were a departure from the Kwajalein Atoll on or about February 4, and a return to the Kwajalein Atoll on May 11, with the birth of the baby occurring on March 24, the due date. The agency, in reviewing the claimant's voucher after the travel was completed, calculated that claimant was entitled to reimbursement of per diem for M&IE of \$1111.50, limited to the dates February 5, March 16-23, March 26-31, May 5, and May 10. We conclude that the claimant is also entitled to reimbursement of M&IE for the period February 6 through March 15 as part of maternity care prior to delivery of the infant. Regarding the period of April 1 through May 4, we remand to the agency for a determination of a proper period for per diem based on the applicable regulations for the claimant's wife and newborn infant.

Mr. Scheivert is a civilian employee of the Department of the Army stationed at the United States Army Garrison - Kwajalein Atoll, located in the Republic of the Marshall Islands, approximately 2100 nautical miles southwest of Hawaii. Due to Kwajalein Atoll's

remote location and insufficient maternity medical care on the island, employees and their dependents are sent off-island for necessary specialty or obstetric care in accordance with the Joint Travel Regulations (JTR), chapter 5 (Permanent Duty Travel), part C (Dependent Travel and Transportation Allowances), section 5 (Dependent Medical Travel). Citations to the JTR throughout this decision refer to the February 1, 2013 edition of the JTR, which is the applicable version based on the February 2013 departure date that Ms. Scheivert began her medical travel. In her travel orders, Ms. Scheivert was authorized travel pursuant to JTR C5134 for “maternity care prior to delivery” and “post-natal care after delivery.” JTR C5134 provided in relevant part:

C. Required Health Care Determination. Required health care is medical or dental care that the AO determines is needed by a dependent whose employee sponsor is stationed at a foreign OCONUS PDS at which there is no adequate facility to provide suitable care. This determination must be based on the advice of an appropriate professional certifying physician.

D. Authorized Health Care

1. Medical Care. Qualified medical care is treatment that . . . [i]ncludes specialized examinations, special inoculations, obstetrical care, and hospitalization ([Lena E. Hagedorn,] GSBKA 15948-TRAV, [03-2 BCA ¶ 32,318] 30 April 2003).

The statutory basis for the JTR provisions on dependent medical travel is found in 10 U.S.C. § 1599b (2012), which states:

(a) IN GENERAL. – The Secretary of Defense may provide civilian employees, and members of their families, abroad with benefits that are comparable to certain benefits that are provided by the Secretary of State to members of the Foreign Service and their families abroad as described in subsections (b) and (c). . . .

(b) TRAVEL AND RELATED EXPENSES. – The Secretary of Defense may pay travel expenses and related expenses for purposes and in amounts that are comparable to the purposes for and the amounts in which, travel and related expenses are paid by the Secretary of State under section 901 of the Foreign Service Act of 1980 (22 U.S.C. 4081).

Because 10 U.S.C. § 1599b gives the Secretary of Defense authority to issue regulations “comparable” to those issued by the Secretary of State, it is useful to look at the language of 22 U.S.C. § 4081 (2012):

The Secretary [of State] may pay the travel and related expenses of members of the Service and their families, including costs or expenses incurred for –

....

(5) obtaining necessary medical care for an illness, injury, or medical condition while abroad in a locality where there is no suitable person or facility to provide such care

The regulations issued by the Secretary of State implementing this statute shed light on the authority conferred on the Secretary of Defense in issuing the applicable provisions of the JTR. The Secretary of State regulates travel for obstetrical care through chapter 16 of the Foreign Affairs Manual (FAM), section 315.2 (Travel for Obstetrical Care):

a. A pregnant patient who is abroad under U.S. Government authorization is strongly encouraged to have her delivery in the United States. The patient may depart from post approximately 45 days prior to the expected date of delivery and is expected to return to post within 45 days after delivery, subject to medical clearance or approval.

b. A patient who elects to have her delivery in the United States may specify the location within the United States. Travel and per diem will be at the rate of the specified location. Return travel back to post for the mother and infant will be approved after a medical clearance has been issued by MED [Department of State Medical Program].

....

d. Pregnant employees or eligible family members who travel to post from the United States at or after 34 weeks gestation for assignment will not be authorized obstetrical medical travel for delivery of that pregnancy.

JTR C5140 (entitled “Per Diem” for dependent medical travel) implements these statutes and policies by stipulating how, and for how long, per diem expenses related to dependent travel for obstetric care may be authorized:

B. Maximum Number of Days. Subject to pars. C5140-C, C5140-D, C5140-E, C5140-F, and C5140-G, the AO may authorize/approve per diem for up to, ***but in no case more than***, 180 consecutive days including:

1. Travel time to and from the designated point/elective destination, and
2. Necessary delays before treatment and while awaiting return transportation
.....

C. Elective Destinations. If a dependent elects travel to other than the designated point, per diem may be authorized/approved for travel periods to and from the elective destination, but for no longer than the constructed travel time to and from the designated point.

D. Hospital Stays. Per diem is not authorized/approved for a dependent during a hospitalization period.

.....

F. Obstetric Care. A dependent traveling for obstetric care ordinarily leaves the PDS 6 weeks before the expected delivery date and returns 6 weeks thereafter. The AO may not authorize/approve per diem for obstetric care travel for a period longer than 90 days, unless an early departure from, or delayed return to, the PDS is medically required.

G. Newborn Infant. A newborn infant is authorized per diem under the same circumstances and conditions as the mother, except at one-half the applicable locality rate.

H. Per Diem Rates. The applicable locality per diem rate applies. If the dependent elects health care travel to a location other than the designated point, the per diem rate may not exceed the rate for the designated point.

Mr. Scheivert signed an excess cost agreement pursuant to JTR C5136-D.1. The agreement stated that the designated point for obtaining medical care was Honolulu, Hawaii, and that Mr. Scheivert agreed to reimburse to the Government any excess travel costs incurred by his dependent over what such travel to and from the designated point would have cost. The per diem rates for lodging and M&IE for Honolulu were \$177 and \$126 respectively. The per diem rates for lodging and M&IE for Columbus, Ohio, were \$94 and

\$56 respectively, and the per diem rates for Easley, South Carolina, were \$77 and \$46 respectively.

Ms. Scheivert's travel orders authorized her to travel from the Kwajalein Atoll to an elective destination of Columbus, Ohio, with an arrival on February 5, 2013, staying in Columbus from February 6 through March 23, during which time Ms. Scheivert presumably would have given birth, then departing Columbus and being in Honolulu from March 24-25, and finally returning to the Kwajalein Atoll on March 26. Because the due date for the baby was March 24, it appears that the authorizing official reasonably provided approximately six weeks of per diem prior to the due date; however, the return travel beginning on or about the due date obviously would only be possible if the baby was born prior to the March 24 due date. We expect that the authorizing official would have intended to adjust the return travel based on the actual delivery date and the medical condition of the mother and the newborn.

It appears from the record that Ms. Scheivert departed the Kwajalein Atoll on February 4, arrived at the airport in Charlotte, North Carolina, picked up the family's car, and then drove to Columbus, Ohio, arriving on February 5, and stayed with family. On March 16, Ms. Scheivert traveled from Columbus, Ohio, to Easley, South Carolina, to stay with other family members. Ms. Scheivert was hospitalized on March 24, her due date, and gave birth. She left the hospital on March 26. On March 31, she and the baby traveled back to Columbus, Ohio, and remained there until departing for Honolulu on May 5. On May 10, Ms. Scheivert and the baby left Honolulu and returned to the Kwajalein Atoll.

The agency, in reviewing the claimant's voucher after the travel was completed, calculated that claimant was entitled to reimbursement of M&IE per diem of \$1111.50, for the dates February 5, March 16-23, March 26-31, May 5, and May 10. The claimant asks the Board to review that determination.

The agency argues that Ms. Scheivert's travel to Charlotte, North Carolina, on February 5 to pick up their car to drive to Columbus, Ohio, and subsequent time spent in Easley, South Carolina, from March 17-30, was not authorized by the travel orders which designated Columbus, Ohio, as the destination point, and as a result, the claimant should not be compensated "for personal travel outside the authorization of the travel orders and the JTR." The agency also argues that the claimant is not entitled to per diem during the time the claimant's wife was in Columbus on the theory that travel to multiple elective destinations during medical travel is not permitted by the JTR. To support this position, the agency claims that the singular form of the phrase "elective destination" used in the JTR means that medical travel may not include more than one location. The agency cites *Andrew R. Gonzales*, CBCA 603-TRAV, 07-1 BCA ¶ 33,544, for the "importance of singular wording in the JTR." We find this argument unpersuasive. In *Gonzales*, which dealt with

the Federal Travel Regulation (FTR), not the JTR, the claimant sought reimbursement for the travel of multiple family members as a result of an injury he sustained while on TDY travel. In that case, we denied the claimant's appeal for travel expenses for multiple family members, stating that "[n]othing in [41 CFR 301-30.4 (2005)] allows for payment for multiple family members, and the use of the singular wording, 'a medically necessary attendant,' further confirms that reimbursement is to be limited to one individual."

The Board's application of the FTR provision at issue in *Gonzales* does not inform our reading of the JTR provisions at issue in the present case. The agency's characterization of the claimant's wife's time spent in Easley, South Carolina, away from the elected destination of Columbus, Ohio, as "personal travel" misses the underlying purpose of the provisions authorizing the medical travel. The traveler in this instance is not an employee of the DOD traveling for government work at a specific location. Instead, the traveler, a dependent of a DOD employee, is traveling for personal medical care authorized pursuant to JTR provisions that allow for reimbursement of per diem at "[t]he applicable locality per diem rate . . . not to exceed the rate for the designated point." JTR C5140-F. There is no provision in JTR part C section 5 that bars reimbursement of per diem when a dependent on medical travel for maternity and post-natal care visits more than one CONUS destination. As stated in JTR 5140-H, the limitation on elective destinations is simply the applicable locality per diem rate, not to exceed the rate for the designated point.

The original travel orders, which provided a travel period from February 5 through March 26, take into account that the timing of a natural birth is not precisely predictable and thus provided for Ms. Scheivert departing the Atoll about six weeks before the expected due date for delivery, entirely consistent with statute and regulation. The per diem cost of her being in Columbus or Easley are clearly less than the constructive cost at the designated location of Honolulu. The agency erred in demanding repayment of previously authorized M&IE per diem for the period February 6 through March 15 on this basis. The claimant is entitled to the applicable Columbus per diem rate for this period.

There is no dispute that the agency correctly reimbursed the claimant for his wife's applicable locality per diem rate for the period March 16-23 and March 26-30 (per diem rate of Easley, South Carolina), for March 31 (per diem rate of Columbus, Ohio), and for May 5 and 11 in connection with the return travel to the Atoll through Honolulu, as shown in the travel voucher.

For the period of time from April 1 through May 4, the agency refused to reimburse the claimant for his wife's M&IE per diem expenses based on the same rationale it used for denying the per diem for the period February 4 through March 15, namely claimant's wife spent time in both Columbus, Ohio, and Easley, South Carolina. Because that basis for

denial was in error, we remand to the agency to reconsider the denial of per diem for the period April 1 through May 4. The applicable JTR provision sets the standard at six weeks before delivery and six weeks after delivery for the period of obstetric medical travel and per diem. JTR C5140-F (“A dependent traveling for obstetric care ordinarily leaves the PDS 6 weeks before the expected delivery date and returns 6 weeks thereafter.”). Providing only a single week after delivery seems unreasonable.

The amount of per diem for the dependent newborn baby during the approved days following delivery, authorized in JTR C5140-G (“A newborn infant is authorized per diem under the same circumstances and conditions as the mother, except at one-half the applicable locality rate.”), is not addressed by the parties in the record. The agency should examine the record to ascertain that the appropriate per diem was paid for the Scheivert baby, and if it was not, that amount should be paid to the claimant or offset against the agency’s claimed repayment amount.

JONATHAN D. ZISCHKAU
Board Judge