

Introduction

1. The Applicant is a Movement Control Officer with the Department of Operational Support (“DOS”) based in New York. On 30 June 2023, he filed an application in which he contests “the Administration’s decision of 9 January 2023 not to include the transportation costs in the special education grant for his son [...] and not to reimburse him the justified transportation expenses for the child with a disability to the after-school therapy and the special education and training classes”.
2. On 2 August 2023, the Respondent filed a reply submitting that the application is “meritless” because the contested decision was “legal, reasonable, and procedurally fair”.
3. By Orders No. 087 (NY/2023) of 20 September 2023; No. 112 (NY/2023) of 20 October 2023; and No. 147 (NY/2023) of 19 December 2023, the Tribunal encouraged the parties to confer with each other with a view to resolving the issues in dispute in this case amicably.
4. On 18 January 2024, the parties filed a joint submission informing the Tribunal that they had conferred but “could not reach an agreement to informally resolve the matter at this time”.
5. Noting that the Applicant had failed to file a rejoinder to the Respondent’s reply by the deadline of 14 February 2024 set out in Order No. 147 (NY/2023), the Tribunal issued Order No. 029 (NY/2024) dated 15 March 2024 notifying the parties that unless either of them expressed any objections by 20 March 2024, it would proceed to adjudicate the case on the papers before it.
6. No further submissions were received from the parties.
7. For the reasons set out below, the Tribunal grants the application in part.

Facts

8. The Applicant holds a fixed

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18. The Applicant's submissions may be summarized as follows:

a. Under sec. 5.1(b) of Administrative Instruction ST/AI/2018/2 (Special education grant and related benefit for children with a disability), the special education grant includes the expenses incurred for local transportation required by the child with a disability as certified by the medical services.

Since the child's school in New York does not offer any transportation to the after-school activities which the child requires, the Applicant himself had to drive the child to the required activities and therapy. TQEI948(a)Tf1 0 0 Tf&d*n9808871 0 595.32 842.04 reW*nBT/F1 12 Tf1

19. The Respondent's submissions may be summarized as follows:
- a. The language of sec. 5.1(b) of ST/AI/2018/2 has consistently been interpreted to refer to daily group transportation to and from a school, usually provided by the school or organized on a school-wide basis by another party. While this can be extended to the attendance of therapy, it would not be reasonable to extrapolate that local transportation refers to private transportation.
 - b. According to the Management Evaluation Unit, the framers of the policy intended reimbursement for "local transportation" to mean "transportation services outside the staff member's own means of transportation such as their private vehicle". The portion of the SEG related to "local transportation" is meant to cover costs for any transportation provided by a third-party transportation service with whom the staff member contracted for the specific purpose of transporting the child with special needs. As stated in the management evaluation response, "it was not the intent of the framers in those instances to reimburse such expenses as gasoline, maintenance costs, car insurance and mileage calculation for the use of a private vehicle that the staff member uses in the ordinary course of things".
 - c. Since the Applicant "did not incur local transportation expenses", the denial of his claim for reimbursement was a proper exercise of discretion. Consequently, the Applicant's claim for local transportation costs involving the use of his private vehicle cannot be considered admissible for the purposes of the SEG. Moreover, under the "presumption of regularity", an applicant has the burden of proving that the contested decision is unlawful but in this case the Applicant has failed to meet this burden.
 - d. DHMOSH did not recommend that the Applicant be reimbursed for the use of his private motor vehicle and did not opine on whether costs

Section 5

Special education grant: admissible educational expenses

5.1 The special education grant will be computed on the basis of the following educational expenses:

...

b) Expenses incurred for local transportation required by the child with a disability as certified by the Medical Services Division.

Local transportation

22. The issue before the Tribunal is whether the Administration's decision not to reimburse the Applicant for the local transportation costs he incurred in using his private motor vehicle to transport his child with a disability to require after-school therapy and special education and training classes, is unlawful.

23. The Tribunal notes that, in essence, the dispute between the parties revolves around the interpretation of the term "local transportation" contained in sec. 5.1(b) of ST/AI/2018/2. Under this provision, the special education grant is computed on the basis, *inter alia*, of "[e]xpenses incurred for local transportation required by the child with a disability as certified by the Medical Services Division".

24. On the one hand, the Applicant submits that since neither the child's school nor the local authorities offered any transport to the therapy or the after-school activities that the child requires, and since the child's medical condition made it impractical to delegate the task to a third party, the Applicant's only available option was to transport the child in his private car. The Applicant asserts that the costs he incurred for the transportation of his child were certified by DHMOSH and are, therefore, admissible.

25. On the other hand, the Respondent argues that expenses incurred for local transportation required by a child hilasse7.85 Tm66r95.32 842.04 re6004C0057BT/F1 12 [(the)-97(s

36. However, it is not for the Tribunal to compute the exact amount of the reimbursement the Applicant is entitled to receive. Rather, given the absence of any other relevant provision in the context of admissible educational expenses related to local transportation under sec. 5.1(b) of ST/AI/2018/2, the Tribunal will instruct the Administration to apply the provisions of ST/AI/2013/3 and ST/IC/2019/6, as appropriate, to calculate the amount of reimbursable expenses to be paid to the Applicant.