



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

VALEANU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Mariam Munang, OSLA

Counsel for Respondent:
Jérôme Blanchard, UNOG

Introduction

1. On 22 February 2017, the Applicant, an Administrative Officer, Division of Conference Management, United Nations Office at Geneva (“UNOG”), filed an application contesting the decision to calculate the education grant for his son for the school year 2015-2016 at a rate of 75% rather than 100% of admissible expenses.
2. The Respondent filed his reply on 27 March 2017.
3. By Order No. 187 (GVA/2018) of 2 November 2018, the Tribunal asked the parties whether a hearing would be necessary or if the case could be decided on papers. As both parties agreed that the case be decided on the documents, the Tribunal found that it was not necessary to hold a hearing and hereby delivers its judgment.

Facts

4. The Applicant’s son, born on 19 December 2009, has been attending *Collège du Léman* since 2013, a “regular” school in Versoix, Switzerland (“School”).
5. In November 2013, the Applicant’s son was diagnosed with speech and language difficulties. His teacher and the School’s Learning Support Coordinator were of the view that he would need further support with his speech.
6. From March 2014, the Applicant’s son received therapy sessions twice and later once a week by a therapist recommended by the School, who also came to work with other students. It was agreed between the School and the therapist (with the Applicant’s consent) that the child would be taken out of his regular class for a few hours during the week for his sessions. The sessions were conducted at the School and the therapist billed the Applicant directly for her services.

7. In a letter dated 8 October 2015, the School confirmed the following:

As [the Applicant's son's] speech difficulties have a direct impact on his ability to read and spell accurately, he works with a private speech and language therapist who has been given special permission by the Collège du Léman to provide therapy during school hours. Close collaboration between [his] class teacher and speech and language therapist is essential.

8. By memorandum of 21 August 2018, the Medical Services Division, UNOG, certified that the Applicant's son has a learning disability for which he receives special support, and recommended the payment of special education grant for the academic years 2014-2015 and 2015-2016.

9. For the academic year 2014-2015, the Applicant submitted his claim for education grant and special education grant. On 11 February 2016, the Administration approved the payment of 100% of admissible expenses and 100% of the therapy costs. The Administration noted that the Applicant had provided an agreement between the School and the therapist.

10. On 8 August 2016, the Applicant submitted, again through the "Education Grant Tool", his claim for education grant and special education grant for the academic year 2015-2016. He attached supporting documentation, including the certificate of attendance and costs signed by the School, a medical certificate attesting that his child requires specific training to assist him to overcome his learning disability and invoices issued separately by the speech and language therapist.

11. After review of the documents provided, the Applicant was paid CHF26.921,81 for the education grant of his child's school year 2015-2016. This amount represents 75% of the admissible expenses, plus 100% of the expenses for the speech therapist. In computing the Applicant's education grant, the maximum amount for disabled children was taken into account.

12. On 4 November 2016, the Applicant requested management evaluation of the decision to approve only 75% of the admissible expenses and claimed the balance of 25%. On 1 December 2016, the Under-Secretary-General upheld the contested decision.

Parties' submissions

13. The Applicant's principal contentions are:

- a. He is entitled to reimbursement of 100% of the regular education expenses for his son under sec. 14.1 of ST/AI/2011/4 (Education grant and special education grant for children with disability), since his child has a learning disability and he attends a regular educational institution that provides the necessary special arrangements for him;
- b. More particularly, it was the School itself that certified that his child needed the sessions and confirmed it would collaborate with the therapist, who it recommended and who also works with other children at the School. The School remained in control and provided instructions to the therapist, as well as the facilities and infrastructures for the sessions;
- c. Consequently, the Applicant requests payment of the balance of the special education grant under sec. 14.1 of ST/AI/2011/4.

14. The Respondent's principal contentions are:

- a. The Applicant's child attends a regular institution and, based on the documents provided by the Applicant, the School does not provide for special arrangements which would trigger the reimbursement of additional expenses required to assist said child to overcome his or her disability under sec. 14.1 of ST/AI/2011/4;
- b. While the School may have facilitated the provision of therapy by an outside specialist, it is not the provider of the necessary special arrangements for the Applicant's son and, accordingly, the 100% of the admissible expenses under the special education grant is not justified;

c. The Applicant was therefore entitled to payment of admissible expenses incurred against the normal education grant at the 75% rate plus the additional expenses incurred for special teaching and training against the special education grant at the 100% rate, under sec. 14.2(a) of ST/AI/2011/4; and

d. The fact that the Applicant was reimbursed at 100% of the admissible expenses for the academic year 2014-2015 plus 100% of the cost of the speech and language therapist was an oversight which resulted in a payment to which he was not entitled.

Consideration

15. The only issue at stake is whether the Applicant is entitled to be reimbursed 100% of the admissible educational expenses under sec. 14.1 of ST/AI/2011/4 by virtue of his child being followed by a private speech teacher therapist at school during the school year 2015-2016.

16. In essence, the parties disagree as to whether the situation falls under sec. 14.1 or sec. 14.2 of ST/AI/2011/4. On the one hand, the Applicant sustains he is entitled to be reimbursed at 100% of the admissible expenses for the academic year 2015-2016 (under sec. 14.1) because his child was receiving special therapy for speech and language difficulties as recognized by the Medical Services Division. On the other hand, the Respondent argues that under sec. 14. 2 of ST/AI/2011/4 he is only entitled to be paid 75 % of the admissible expenses under regular education grant plus 100% of the expenses of the speech therapist.

17. Under sec. 4.1(a) of ST/AI/2011/4, when a child attends an educational institution at the duty station, the amount of the grant shall be 75% of the admissible costs of attendance, up to predefined maximum amounts. In turn, under sec. 13.1 of the same administrative instruction, the amount of the grant for each child with disability shall be 100% of the admissible educational expenses actually incurred, still subject to predefined maximum amounts.

18. Section 14.1 of ST/AI/2011/4 on the relationship between the education grant and the special education grant provides that (emphasis added):

When a child with a disability is unable to attend a regular educational institution or *attends on a full time basis a regular educational institution that provides the necessary special arrangements for the child*, admissible educational expenses shall be reimbursed against the special education grant, regardless of whether the staff member would otherwise be entitled to a regular education grant in respect of the child.

19. In turn, sec. 14.2 provides in its relevant part that (emphasis added):

When a child with a disability is in full-time attendance *at a regular educational institution and no special arrangements are made at that institution* for the child concerned, reimbursement shall be subject to the following conditions:

(a) If the staff member is entitled to the regular education grant with respect to the child, admissible expenses incurred at the educational institution shall be reimbursed against the normal education grant entitlement at the 75 per cent rate. Additional admissible educational expenses incurred for special teaching and training outside the educational institution shall be reimbursed against the special education grant at the 100 per cent rate. The combined total of the two types of grant shall not exceed the amount specified in column 1 of the annex[.]

20. It follows from the above provisions that the distinction between reimbursement of 100 per cent of admissible educational expenses for a child with a disability who attends a regular education institution depends on whether the necessary special arrangements are provided by the educational institution or not. If the institution does not provide such arrangements, the special teaching expenses are reimbursed at 100% but the educational expenses are reimbursed at the regular rate of 75%.

21. The Tribunal is of the view that sec. 14.1 has to be read in conjunction with sec. 12 of the ST/AI/2011/4, which defines admissible expenses for the special education grant as “expenses required to provide an educational programme designed to meet the needs of the child with a disability so that he or she may attend the highest level of functional ability”. This means that the staff member is only

entitled to the special education grant when the regular institution that the child attends provides him or her with a special educational programme so as to allow him or her not only to attend that school but also to maximize his or her functional abilities.

22. The Tribunal concurs with the Respondent's view that the evidence on file does not allow to conclude that the School provided the speech and language lessons to the Applicant's child.

23. Instead, from the evidence on file, the Tribunal concludes that what was implemented was an *ad hoc* private tuition in speech language, which was facilitated by the School. This private tuition was implemented on a part-time and temporary basis and paid by the Applicant directly to the therapist. The letter of 3 October 2015 from the School makes it clear that it is not responsible for the speech and language sessions.

24. The fact that the School recommended that the Applicant's son receive support, that it facilitated the hiring of a private therapist and that it provided the facilities for the sessions is not sufficient to conclude that the institution provided special arrangements for the Applicant's son.

25. The Tribunal underlines that the *rationale* behind the special education grant's provision is of a specific nature. It is intended to safeguard those situations in which the school itself prepares and allocates its own human resources and logistics to accompany the child and help him or her on a daily and continuous basis to attend a regular school.

26. Therefore, the Tribunal finds that the Administration was correct in reimbursing the Applicant at a rate of 75% for the admissible expenses incurred at the School for the academic year 2015-2016.

27. The Tribunal notes that is not seized with the decision in respect of the payment of the Applicant's special education grant for the previous academic year, namely 2014-2015. Irrespective of the lawfulness of this decision, the Tribunal finds the fact that the Applicant was reimbursed at 100% of the admissible school

expenses and also 100% of the cost of speech therapy for 2014-2015 does not give him a right to continue to receive the same for 2015-2016, if upon examination of the case, he does not meet the eligibility requirement under sec. 14.1 of ST/AI/2011/4.

Conclusion

28. In view of the foregoing, the Tribunal DECIDES that the application is dismissed.

(Signed)

Judge Teresa Bravo

Dated this 19th day of November 2018

Entered in the Register on this 19th day of November 2018

(Signed)

René M. Vargas M., Registrar, Geneva