

DECISION



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

R. Bredlow

PLM II

7713

FILE: B-192448

DATE: September 19, 1978

MATTER OF: Medical benefits for dependent adoptive
parents

DIGEST: Bona fide adoptive parents of members of the
uniformed services should be included, simi-
larly to natural parents, as eligible dependents
to receive medical benefits pursuant to 10 U.S.C.
1071-1088 (1976), despite the fact that the
statute does not expressly include adoptive
parents within the term "parents" in authorizing
such benefits. Decisions to the contrary should
no longer be followed.

It has come to our attention that dependent adoptive parents
of members of the uniformed services are not eligible to receive
medical benefits pursuant to 10 U.S.C. 1071-1088 (1976) under the
current interpretation of the term "parent" as used in 10 U.S.C.
1072 and applicable regulations. After reviewing this situation
we conclude that this interpretation should be changed to
construe "parent" as used in 10 U.S.C. 1072 as including bona
fide adoptive parents.

Chapter 55, sections 1071-1088, title 10, United States Code,
provides for a uniform program of medical and dental care for
members of the uniformed services, and for "their dependents."
In subsection 1072(2)(F), "dependent" is defined to include "a
parent or parent-in-law" who is, or was at the time of the member's
death, dependent upon him for over one-half of his support and
residing in his household.

The joint regulations (Medical Services, Uniformed Services
Health Benefits Program, September 15, 1970) issued by the Depart-
ment of Defense and Department of Health, Education, and Welfare,
implementing 10 U.S.C. 1071-1088, provide at paragraph 1-2 in
pertinent part as follows:

"f. Dependent. A person who bears any of
the following relationships to an active duty or
retired member of a uniformed service, or to a
person who at the time of his death was an active
duty or retired member of a uniformed service:

* * * * *

B-192448

"(3) Parent or parent-in-law who is, or was at the time of death of the active duty or retired member, dependent on the member for over one-half of his support and residing in a dwelling place provided or maintained by the member. (Does not include an adoptive parent, step-parent, or person who stood in loco parentis.)"

One recent case involved an active duty Air Force officer who was adopted when she was 8 years old and was contributing one-half of her adoptive mother's support. She applied for hospitalization benefits for her mother under the assumption she would be eligible for such benefits as her parent was dependent upon her for support. She was issued the dependent's identification card qualifying her for receipt of the benefits. However, several months later she was informed by the Air Force that pursuant to decisions of the Comptroller General her mother's entitlement to medical benefits was being revoked, as she was an adoptive parent and therefore ineligible. In view of the provisions of the regulations quoted above, we assume the other services are applying similar rules.

Our previous decisions which were referred to by the Air Force in dissenting the officer's mother to medical benefits have been premised on the principle that unless otherwise defined by the pertinent statute, the term "parent" refers to the natural father or mother and does not include adoptive parents. We have held that where the Congress intends that allowances be authorized in the case of a dependent parent other than a natural parent, it has expressly so provided. See 22 Comp. Gen. 1139 (1943); 26 Comp. Gen. 211 (1946); B-175578, April 21, 1972.

The express purpose of the legislation, stated in 10 U.S.C. 1071, is "to create and maintain high morale in the uniformed services by providing an improved and uniform program of medical and dental care for members and certain former members of those services, and for their dependents." In our review of the legislative history we have found no specific intent to distinguish between adoptive and natural parents.

During the past decade, the judicial trend has been to invalidate statutory classifications requiring dissimilar

treatment for those similarly situated. For example, the dependency provisions of 10 U.S.C. 1072 were held invalid as they related to the exclusion of illegitimate children from the category of dependents eligible to receive medical benefits by the District Court of the District of Columbia in 1972, Miller v. Laird, 349 F. Supp. 1034 (1972). The court found the critical issue to be whether the elimination of illegitimate children from the category of eligible dependents bore any rational relationship to the goals of the statute. The court concluded that the denial of benefits to illegitimate children was so lacking in rational justification as to be violative of the Due Process Clause of the Fifth Amendment.

Concerning the status of adoptive parents, generally an adoption effects a legal as well as a practical substitution of parents. The natural parents lose and the adoptive parents receive or assume the right to the child's custody, services, and earnings, the right to control the child, and the obligations of maintenance, education, etc. The child owes the duties arising out of the relationship to his adoptive parents and not to his natural parents. The purpose of the statutory adoption schemes of the various states is to transplant the adopted person into the family of the adopter, the person thus bearing the same legal relationships to the adoptive parents as does their natural child. See 34 Comp. Gen. 601, 604 (1955), and authorities cited therein.

We have held that in certain unusual cases such as where a member adopted her brother and sister, no bona fide parental relationship was established. 42 Comp. Gen. 578 (1963). However, generally for most purposes bona fide adoptive parents, such as the mother of the officer discussed above, are treated similarly to natural parents.

Accordingly, after reviewing the legislative history and in view of recent judicial decisions, it is now our view that bona fide adoptive parents should be included, similarly to natural parents, as eligible dependents to receive medical benefits pursuant to 10 U.S.C. 1071-1088. To the extent that prior decisions of our Office conflict with this view, they should no longer be followed regarding medical benefits authorized under these statutes.


Deputy Comptroller General
of the United States



R. Breslow PIM II

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20518

B-192448

September 19, 1978

The Honorable
The Secretary of Defense

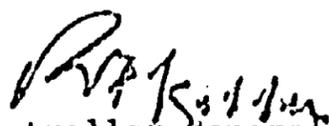
Dear Mr. Secretary:

It has recently been brought to our attention that adoptive parents of members of the uniformed services are not considered eligible for medical and dental care under the Uniformed Services Health Benefits Program, 10 U.S.C. 1071-1088 (1976). The exclusion of adoptive parents from the Program, under the applicable regulation, is apparently based on several decisions of our Office.

We have reviewed the law and legislative history of the Program, and in decision B-192448, dated today, copy enclosed, we have concluded that bona fide adoptive parents should be included in the Program similarly to natural parents.

We are also advising the Secretary of Health, Education, and Welfare of our views in this matter since he is co-administrator of the Program along with you. 10 U.S.C. 1073.

Sincerely yours,


Deputy Comptroller General
of the United States

Enclosure



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

B-192448

September 19, 1978

The Honorable
The Secretary of Health, Education, and
Welfare

Dear Mr. Secretary:

It has recently been brought to our attention that adoptive parents of members of the uniformed services are not considered eligible for medical and dental care under the Uniformed Services Health Benefits Program, 10 U.S.C. 1071-1088 (1976). The exclusion of adoptive parents from the Program, under the applicable regulation, is apparently based on several decisions of our Office.

We have reviewed the law and legislative history of the Program, and in decision B-192448, dated today, copy enclosed, we have concluded that bona fide adoptive parents should be included in the Program similarly to natural parents.

We are also advising the Secretary of Defense of our views in this matter since he is co-administrator of the Program along with you. 10 U.S.C. 1073.

Sincerely yours,

Handwritten signature of R. G. K...
Deputy Comptroller General
of the United States

Enclosure