

## DECISION



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

10,319

FILE: B-193958

DATE: May 29, 1979

MATTER OF: Bernice S. Limberg *PN*

DIGEST: Transferred employee acquired custody of her niece two weeks after permanent change of station. Subsequent change in regulations to include legal minor wards or other dependent children under legal guardianship is effective prospectively. [Claim for subsistence *For Niece* while occupying temporary quarters] is denied since only applicable definition of dependent at time of travel does not include niece.

By letter of January 12, 1979, Major T.R. Moody, AGC 00629  
Accounting and Finance Officer, Wright-Patterson Air Force  
Base, Ohio, requests a decision concerning the reimbursement of subsistence while occupying temporary quarters (TQSE) to Mrs. Bernice Limberg for a niece committed to her temporary custody incident to a permanent change of station. For the following reasons Mrs. Limberg is not entitled to reimbursement.

The record indicates that on July 15, 1976, Travel Order No. AA-2138, was issued authorizing Mrs. Limberg, a civilian employee of the U.S. Air Force, and her dependent daughter to move from Dayton, Ohio, to the Battle Creek, Michigan area. Approximately two weeks later, the Court of Common Pleas, Juvenile Division, Montgomery County, Ohio, issued a decree placing Doris Pytel (claimant's niece) in Mrs. Limberg's temporary custody.

The authorized travel was subsequently completed by Mrs. Limberg, her daughter and her niece. Payment was made according to the orders. Mrs. Limberg now seeks reimbursement for TQSE for the niece.

Legal rights and liabilities incident to travel allowances vest at the time the travel is performed under the travel orders which may not be revoked or modified retroactively to increase or decrease rights and liabilities. An exception may be made only when an error is apparent on the face of the orders and all facts and circumstances

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demonstrate that some provision previously determined and definitely intended has been omitted through error or inadvertance. B-175433, April 27, 1972. No such error occurred in the present situation.

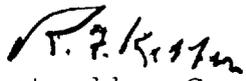
At the time of Mrs. Limberg's move Appendix D Volume II of the Joint Travel Regulations (JTR) defined "dependent" as

"Any of the following named members of the employee's household at the time he reports for duty at his permanent duty station or performs authorized or approved renewal agreement or separation travel: spouse; children (including stepchildren and adopted children) unmarried and under 21 years of age or physically or mentally incapable of supporting themselves regardless of age; or dependent parents of the employee and of the employee's spouse."

Under this definition a person in the temporary custody of an employee is not a dependent for purposes of receiving permanent change of station allowances.

Mrs. Limberg maintains that she should be reimbursed since the definition of "dependent" in the JTR was later expanded to include legal minor wards or other dependent children who are under the legal guardianship of the employee. See JTR Change 145, November 1, 1977. The fact that Mrs. Limberg's niece would now fall under the revised definition is not determinative of the outcome. Changes to the JTR are not to be given retroactive effect unless specifically stated. At the bottom of Change 145 is a note stating that the new definition of dependents is only applicable to dependents of employees whose effective date of transfer is on or after June 1, 1977.

The effective date of Mrs. Limberg's transfer was in August 1976. Thus, Change 145 would not be applicable. The only applicable definition of "dependent" is that which was in effect at the time of Mrs. Limberg's transfer. Since Mrs. Limberg's niece is not a dependent under that definition, her claim for TQSE is denied.

  
Deputy Comptroller General  
of the United States