

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

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FILE: B-209073**DATE: April 22, 1983****MATTER OF: Joanne M. Haag, USAF****DIGEST:**

Where two married Air Force members with common dependents subsequently divorce, only one member may receive basic allowance for quarters based on the children as dependents, unless the class of common dependents is divided by separation agreement or court order. The member paying child support, which is stated to be on behalf of one child but is sufficient to qualify for entitlement under the applicable regulation, is entitled to the basic allowance for quarters at the with dependents rate while the member having custody of the children receives the allowance at the without dependents rate.

This action is in response to a request for an advance decision from the Accounting and Finance Officer, 47th Flying Training Wing, Laughlin Air Force Base, Texas. The request has been assigned Control Number DO-AF-1408 by the Department of Defense Military Pay and Allowance Committee.

The question for our determination is whether two divorced Air Force members are both entitled to an increased basic allowance for quarters when one member has custody of the couple's two children and the other member pays child support only on behalf of one child. Currently only the member paying child support receives the quarters allowance at the increased "with dependents" rate. The member with custody of both children is now seeking the quarters allowance at the with dependents rate on account of the child not claimed as a dependent by the former spouse. It is our view that only one member may receive an increased quarters allowance on behalf of common dependents who are all in the custody of one parent. In accordance with existing regulations the member paying child support is entitled to the increased allowance while the member with custody receives basic allowance for quarters at the without dependents rate.

The submission also asks whether our answer would differ if the couple were legally separated rather than

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divorced. It would not. Matter of Doerfer, B-189973, February 8, 1979.

Air Force member, Joanne M. Haag, requested an increased quarters allowance upon the finalization of her divorce from Air Force member Gerald L. Haag. Under the divorce decree, Ms. Haag was granted custody of the couple's two children. Mr. Haag was ordered to pay \$200 in child support on behalf of one of the two children. Ms. Haag is not disputing Mr. Haag's entitlement to the quarters allowance at the with dependents rate but is instead claiming that she is also entitled to the increased allowance on behalf of the child for whom she receives no support and whom Mr. Haag does not claim as a dependent for quarters allowance purposes.

Under the provision of 37 U.S.C. 403 a member entitled to basic pay is also eligible for quarters allowance unless provided with adequate Government quarters. Two rates of the allowance are the with dependents and without dependents rates. This allowance is intended to partially reimburse a member for the expense of providing quarters for himself and his dependents when Government quarters are not furnished. B-198818, April 21, 1981.

Paragraph 30236a of the Department of Defense Military Pay and Allowances Entitlements Manual deals with cases involving members who were married but are subsequently divorced and have dependents of the marriage. These provisions generally provide that a member paying child support to the member with custody of the child is entitled to the increased quarters allowance if the support payments are equal to or greater than the difference in that member's with and without dependents rates of the allowance. The member with custody of the child can only claim the increased allowance if the other member declines to claim the child as a dependent for quarters allowance purposes. The eligibility of the member having custody to claim the child for such purposes is not diminished because the member paying support is receiving an increased allowance on account of other dependents.

In effect, the two members have attempted to divide their class of common dependents and each member now claims one child to qualify for the increased allotment. However, the term "other dependents" as used in paragraph 30236a

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refers to dependents not common to the two members. See B-198818, April 21, 1981, and B-189973, February 8, 1979. Moreover, in the usual situation a claim for quarters allowance at the with dependents rate on the basis of one child constitutes a claim for an entire class of common dependents. B-189973, February 8, 1979.

The term dependent as used in 37 U.S.C. 403 (1976) includes a member's spouse and child. See 37 U.S.C. 401. A child of members married to each other is considered the dependent of both members. Matter of McDonald, 60 Comp. Gen. 154 (1981); 54 Comp. Gen. 665, 667 (1975); Matter of Cruise, B-180328, October 21, 1974. However, only one of the members may claim the child as a dependent for the purpose of the increased quarters allowance since the law permits only one payment of the allowance on account of the same dependents. 51 Comp. Gen. 413 (1972). Moreover, ordinarily married members (not divorced or separated) with more than one child are not allowed to divide the children in order that each member can claim a dependent. All common dependents are automatically included in one class. Thus, if a member is entitled to the quarters allowance at the with dependents rate, such entitlement exists whether that member has one or more dependents. Matter of Cruise, B-180328, October 21, 1974.

We find that that rule should also apply to divorced or separated members with common dependents when the dependents are all in the legal custody of one parent. The situation would differ only where the class of common dependents is divided by court order or separation agreement (each member receiving custody of one child and no child support being awarded) or where joint custody required two separate households. The Haag's class of common dependents has not been so separated. Both children reside in the same house. Mr. Haag's parental rights pertain to both dependents. In addition, Ms. Haag is under court order to place the support payment received while the children are with their father in a trust fund created in the names of both children. The fact that Mr. Haag's support payments are on behalf of only one of the children is not, by itself, enough to divide the class of common dependents. Therefore, we find that either Mr. Haag or Ms. Haag (but not both) is entitled to the increased allowance on account of their children while they are not residing in Government quarters.

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Paragraph 30236a of the Pay and Allowances Manual authorizes the increased allowance to the member paying child support if the amount of child support is sufficient to qualify under the criteria set forth therein. The member with custody receives basic allowance for quarters at the without dependents rate. Accordingly, Ms. Haag's claim for the difference between basic allowance for quarters at the without dependents rate and that allowance at the with dependents rate may not be allowed.

for *Harry R. Van Cleave*
Comptroller General
of the United States