

DECISION

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

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FILE: B-215441
B-215630

DATE: January 29, 1985

MATTER OF: Major Gary R. Scott, USAF and
Captain Christopher Bonwich, USAF

DIGEST:

A divorced member of the uniformed services, who is paying child support for a dependent residing with the member's former spouse in Government quarters, is not entitled to a basic allowance for quarters at the with-dependent rate. However, if the dependent resides with the member in private quarters for more than 3 months, he or she is entitled to the increased allowance, since under 37 U.S.C. § 403 and the pertinent regulations, periods in excess of 3 months are considered nontemporary.

A divorced member of the uniformed services who is paying child support for a dependent child in an amount greater than the amount specified in the applicable regulation is entitled to receive basic allowance for quarters at the with-dependent rate unless his or her dependent resides in Government quarters. Questions have arisen concerning the member's entitlement when a dependent who normally lives with the former spouse in Government quarters visits the member, who is not residing in Government quarters, for an extended period of time.^{1/} We find that a member is entitled to the increased allowance when the dependent resides with the member for more than 3 months.

Major Gary R. Scott and his spouse were divorced in 1978. Under the terms of their divorce decree, the child of their marriage was placed in the custody of its mother. Major Scott was ordered to pay child support, the amount of

^{1/} Questions were submitted by two different disbursing officers, the Chief, Accounting and Finance Branch, Comptroller Division, Barksdale Air Force Base, Louisiana, and the Accounting and Finance Officer, Hill Air Force Base, Utah. The Department of Defense Military Pay and Allowance Committee assigned submission number DO-AF-1442 to the matter. We have combined the submissions and will treat them as one case because of the similarity.

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which exceeds the difference between the with-dependents and the without-dependents basic allowance for quarters rates. He was also permitted visitation rights. While the child is visiting him, he has the duty to the child of care, control, protection and reasonable discipline, and the duty to provide him with food, clothing, and shelter.

Major Scott's former wife is now remarried to another member of the uniformed services. His dependent child resides with its mother and stepfather in Government quarters. Since a member is not entitled to basic allowance for quarters at the with-dependents rate when his dependent(s), on account of whom the increased allowance is paid, resides in Government quarters, Major Scott is paid basic allowance for quarters as a member without dependents while his child resides with its mother and stepfather in the assigned quarters. (See Department of Defense ~~Military~~ Military Pay and Allowances Entitlements Manual (DODPM), paragraph 30237a(2) (change 79); 58 Comp. Gen. 100 (1978).)

However, since Major Scott's child resided with him in his own private quarters during a visitation period from June 15 to September 5, 1983, Major Scott has presented a claim for payment of basic allowance for quarters at the with-dependents rate for that period.

In June 1981, Captain Christopher Bonwich was married to Captain Rosemary Bonwich each having at that time a child. In January 1983, Christopher and Rosemary Bonwich were divorced. Under their divorce decree, Mrs. Bonwich was awarded custody of both children and Mr. Bonwich was awarded reasonable visitation rights, including continuous visitation during 4 months of the year with his own natural child, and 30 days' continuous visitation with Mrs. Bonwich's natural child. Mr. Bonwich is to pay support for the two children in the amount of \$334 per month, but he is not required to pay any child support during any continuous visitation period of 30 days with either of the children.

Mr. Bonwich is stationed at Hill Air Force Base, Utah, where he resides in private quarters. Mrs. Bonwich is stationed at Myrtle Beach Air Force Base, South Carolina, where she and the two children reside in Government quarters. Mr. Bonwich claims basic allowance for quarters

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and variable housing allowance as a member with dependents, covering a period of continuous visitation with his natural child from April 6, 1984, through September 1, 1984.

Under the applicable statutes and regulations, members of the uniformed services who are entitled to basic pay are entitled to a basic allowance for quarters unless they are provided Government quarters adequate for themselves and their dependents. 37 U.S.C. § 403, implemented by Part 3, chapter 2 of the Department of Defense Military Pay and Allowances Entitlements Manual (DODPM). If the dependent of two members who are divorced or legally separated resides in private quarters, the parent who does not have custody may be paid an increased allowance on account of that dependent if that member pays support on behalf of his or her dependent in a monthly amount equal to or greater than the difference between the basic allowance for quarters without dependents and the increased allowance on account of dependents. DODPM, paragraph 30236a(1). If, on the other hand, that member's dependent resides in Government quarters, the member is not entitled to an increased quarters allowance on account of his dependent, even though he pays support. DODPM, paragraph 30237.

Basically, the question to be resolved is what period of time constitutes more than a short visit for the purposes of providing an increased allowance to the members in the circumstances presented.

In a similar situation involving entitlement to an increased allowance for members whose dependents visit or reside in Government quarters assigned to another member the question arose as to how long the dependents could stay in the Government quarters before the member lost entitlement to the increased allowance. We concluded that 3 months was a reasonable time period for the dependents to reside in Government quarters assigned to another member before loss of entitlement to the increased allowance. 37 Comp. Gen. 517 (1958); DODPM, Table 3-2-4, Note 11. That conclusion was based in part on the fact that under the applicable law members without dependents continued to receive a basic allowance for quarters while performing periods of field duty or sea duty of less than 3 months since such periods were considered temporary. See 37 U.S.C. § 403(c)(3). By analogy this rule was extended to the situation where a

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member's dependents reside in Government quarters assigned to another member.

It is our opinion that, in the absence of a controlling regulation to the contrary, the same rationale should be applied in these cases. That is, when the dependent who resides with the former spouse in Government quarters, resides with the member paying child support for a period in excess of 3 months it should not be considered of a temporary nature within the meaning of the law authorizing the allowance. Thus, the member is entitled to the basic allowance for quarters at the with-dependent rate. Similarly, a member who is not paying child support during the period the dependent resides with the member would be entitled to the increased allowance if the period is more than 3 months.

Under that rule Major Scott is not entitled to the increased allowance while his dependent resides with him since the period of time is considered to be temporary (less than 3 months), even though he continues to pay child support during the period of the visit.

Captain Christopher Bonwich is entitled to the increased allowances since at least one dependent resides with him for a period of time considered nontemporary (3 months or more). This is the case regardless of whether he pays child support during this period.

for 
Comptroller General
of the United States