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DECISION

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



FILE: B-197384

DATE: August 12, 1980

MATTER OF: Captain [REDACTED], USAF

- DIGEST: 1. Divorced member whose former wife was given legal custody, care, and control of their children under court order permitting them to visit with member is considered to be a member without dependents within the meaning of the Joint Travel Regulations. Erroneously issued orders authorizing dependents to accompany member to his overseas post cannot serve as the basis for reimbursement for dependent travel or to authorize dislocation, temporary lodging, housing and cost-of-living allowances at with dependents rate when the dependents visit him for the summer months just after his transfer.
2. Divorced member whose former wife was given legal custody, care, and control of their children under court order and who subsequently takes actual custody of children and then obtains court order granting him retroactive and prospective temporary legal custody, care and control is entitled to housing and cost-of-living allowances at with dependents rate for entire period during which member has temporary legal custody. Member also entitled to reimbursement for dependent travel since his permanent duty station was changed while he had temporary legal custody.

This action is taken in response to a letter dated October 11, 1979, with enclosures, from Major Ronald A. Dice, USAF, Accounting and Finance Officer, Headquarters

601st Tactical Control Wing (USAFE), APO New York, requesting an advance decision concerning the propriety of payment of a claim by Captain [REDACTED], USAF, [REDACTED]. The question is whether certain travel and overseas allowances expenses may be paid to Captain [REDACTED] on account of his children in the described circumstances. The request was forwarded to our Office with the January 2, 1980 endorsement of the Per Diem, Travel and Transportation Allowance Committee and has been assigned PDTATAC Control No. 79-44.

It appears from the record that a final judgment issued by the Circuit Court for Hillsborough County, Florida, in March 1977, dissolved the marriage between [REDACTED], and, among other things, granted the permanent care, custody and control of their two minor children to [REDACTED]. Pursuant to permanent change-of-station (PCS) orders, Captain [REDACTED] transferred to Germany in May 1977. He was joined by his children shortly thereafter. Their travel was performed under the PCS orders which authorized concurrent travel. On the basis of these orders, Captain [REDACTED] was paid dependent travel pay and dislocation allowance (DLA) at the with dependents rate. He was also paid temporary lodging allowance (TLA) for himself and his two children, and housing and cost-of-living allowances based on his two children once TLA status terminated. In August 1977, the children returned to Anita Bravo at Captain [REDACTED] expense.

About 1 year later, in July 1978, the Accounting and Finance Office discovered that the divorce decree granted the permanent care, custody and control of the children to [REDACTED]. As a result, it was determined that the travel authorization for the children was erroneous pursuant to Volume 1, Joint Travel Regulations (1 JTR), para. M7000-20, which provides that members are entitled to transportation of dependents at Government expense upon a PCS, except:

"for dependent children who are not under the legal custody and control of the member on the effective date of his permanent change-of-station orders (MS Comp. Gen. B-111142, 1 June 1957)."

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Therefore, the overpayments for the cost of Government transportation provided his children, and the excess TLA, housing and cost-of-living allowances based on his two children, were collected from Captain [REDACTED]. He was paid a DLA at the without dependents rate.

Captain [REDACTED] children returned to Germany on July 5, 1978. They have remained in his custody and control from that time through the present except for approximately 2 months between June 29, 1979, and August 31, 1979, when they visited with their mother.

Captain [REDACTED] obtained a court order, dated July 5, 1979, granting him temporary legal care, custody and control of his children retroactively from July 5, 1978, to June 29, 1979, and from August 31, 1979, through and including June 30, 1980. Relying on this court order, Captain [REDACTED] requested payment for housing and cost-of-living allowances based upon his children's presence in Germany during those periods. His request was denied by the Accounting and Finance Officer because of the temporary nature of the custody and because custody was granted retroactively. The Accounting and Finance Officer has submitted the questions of payment of Captain [REDACTED] claims to our Office for an advance decision.

Prior to the time Captain [REDACTED] obtained temporary legal custody, care and control of his children (July 5, 1978), he is not entitled to dependent travel nor DLA and station allowances (TLA, housing and cost-of-living) at the with dependents rate.

Members are not entitled to reimbursement for dependents' travel to a place at which they do not intend to establish a residence and travel expenses of dependents for a pleasure trip or for purposes other than with the intent to change the dependents' residence, may not be considered an obligation of the Government. Volume 1, JTR, para. M7000-13. Under the terms of the court order, Captain [REDACTED] children were only visiting with him during the summer of 1977. Although the children joined him shortly after his PCS, the travel involved did not change their visiting status to a dependency status, nor

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ing they travel with intent to change their residence from that of their mother. See 53 Comp. Gen. 787 (1974), 51 Comp. Gen. 716 (1972). Likewise, since Captain [redacted] is regarded as a member without dependents, he is not entitled to OLA, nor station allowances at the with dependents rate for that period.

In 1978 [redacted] entered an oral agreement, without the court's knowledge, under which [redacted] agreed to give Captain [redacted] custody of the children from July 5, 1978, through June 30, 1980. It was agreed that [redacted] would have the children live with her during the summer of 1978. Under Florida law once a court makes a custodial determination it retains jurisdiction to modify its custody orders at any time prior to the child's majority. This continuing jurisdiction to modify its own decree is generally considered exclusive to the divorce court. Walton County v. Ward, 314 So. 2d 138 (Sup. Ct. Fla. 1975), Jones v. Creathouse, 241 So. 2d 432, 433-434 (1st. Dist. Ct. App. Fla. 1970). Such jurisdiction is not affected by agreements between the parties. See 24 Am. Jur. 2d, Divorce and Separation § 825 (1966), and Bolton v. Cordon, 201 So. 2d 754 (4th Dist. Ct. App. Fla. 1967). See also B-186308, July 22, 1976. Thus, the oral agreement is without effect under Florida law.

However, in July 1979, Captain [redacted] obtained a court order in the Circuit Court for Hillsborough County, Florida, to modify the final judgment of dissolution of marriage. The court ordered temporary legal care, custody and control of the children to Captain [redacted], retroactively from July 5, 1978, until June 29, 1979 (the time within which the children had already resided with Captain [redacted] pursuant to the oral agreement between Captain [redacted] and his former wife), and from August 31, 1979, through and including June 30, 1980. Since the retroactive court order in effect recognized the facts of custody, we believe it appropriate to conclude that Captain [redacted] had legal custody of his children for that period. For the period after August 29, 1979, Captain [redacted] had temporary legal custody. Since that temporary custody extended over a period longer than would be covered by a visit we would accept it as legal custody

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for purposes of the travel regulations. Therefore, he is entitled to housing and cost-of-living allowances at the with dependents rate for these periods. In addition, since the children were in his legal custody at the time of his PCS back to the United States in June 1980, Captain [REDACTED] is entitled to reimbursement for dependent travel pursuant to Volume 1, JTR, para. M7000. We note that Captain [REDACTED] has now been granted permanent custody of his children so that he will be entitled to all future allowances at the with dependents rate.

The Accounting and Finance Officer asks whether Captain [REDACTED] would be required to secure the concurrence of the overseas commander to have his dependents in the overseas area in order to avoid their being considered individually sponsored dependents for purposes of Volume 1, JTR, para. M4300-2, item 4. He points out that the original travel orders erroneously authorized dependent travel. In addition, he asks if the answer to this question is affirmative, would station allowances be appropriate prior to the issuance of dependent travel orders.

Captain [REDACTED] was given orders which authorized concurrent dependent travel, albeit erroneously as his children were not his dependents at that time. Those orders do demonstrate, however, that there was no official objection to the authorization of dependents at Captain [REDACTED] duty station.

Paragraph M4300-1, item 2, defines a member with dependents as a member:

"who is joined by or who acquires dependents while serving outside the United States provided he has at least 12 months remaining on his overseas tour after arrival or acquisition of dependents, or serves the accompanied tour of duty at that station, whichever is considered to be in the best interest of the Government as determined by the Service concerned;"

Since Captain [REDACTED] acquired dependents while he was serving in Germany, and since he had 2 years remaining on

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his overseas tour at the time he was joined by his children, it appears that he meets the definition of a "member with dependents." Further, since he had orders authorizing dependents at this overseas station we do not believe that any further question should be raised regarding concurrence of the overseas commander in this case. Captain [REDACTED] had his children with him for the 2-year period in question, and he has cleared up the question of legal custody. Therefore he should be paid the allowances in question at the with dependents rate and permitted to return his children to the United States at Government expense.



For The Comptroller General
of the United States

TRANSPORTATION

Dependents

Military personnel

Dislocation allowance

Members without dependents

TRANSPORTATION

Dependents

Military personnel

Dislocation allowance

Children in divorced wife's custody

2.

TRANSPORTATION

Dependents

Military personnel

Dislocation allowance

Children's custody transferred to member

TRANSPORTATION

Dependents

Military personnel

Children

Member's duty station change during children's visit