

**DECISION**



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

FILE: B-181524

DATE: SEP 12 1975

MATTER OF: Entitlement to death gratuity -

**DIGEST:** The stepchild of deceased member who resided with her mother, the deceased member's wife, in the residence provided by the deceased at which he resided for only a short period while on leave from overseas is not entitled to the six-month death gratuity she claims because her mother was found guilty of the member's murder, since, in addition to the limited sharing of a home, the report of the appeal of the murder conviction shows that such stepchild attempted to disrupt the family unit. In the circumstances the stepchild does not qualify as a member of the decedent's household as that phrase is used in 10 U.S.C. 1477(b)(3).

This action is in response to a letter dated April 23, 1975, from Haygood Gulley, Esq., attorney for Mrs. , requesting reconsideration of the settlement of our Transportation and Claims Division dated April 17, 1975, which disallowed her claim for the death gratuity due upon the death of her stepfather, the late Technical Sergeant USAF,

Section 1477 of title 10, United States Code, provides in pertinent part:

"(a) A death gratuity payable upon the death of a person covered by section 1475 \* \* \* shall be paid to or for the living survivor highest on the following list:

"(1) His surviving spouse.

"(2) His children, as prescribed by subsection (b), in equal shares.

\* \* \* \* \*

"(b) Subsection (a)(2) applies, without regard to age or marital status, to--

\* \* \* \* \*

"(3) stepchildren who were a part of the decedent's household at the time of his death;"

ajb

In line with the general principle of law that a person may not profit from his or her wrongful act, it has uniformly been held by this Office that it is against public policy to permit payment by the Government of compensation or benefits to an heir or beneficiary who feloniously kills the person upon whose death such payment becomes due. See 34 Comp. Gen. 1037(1954), and 51 Comp. Gen. 4837(1972).

As \_\_\_\_\_, the deceased member's surviving spouse, has been convicted of his murder she is not eligible to receive benefits and Mrs. \_\_\_\_\_, as secondary beneficiary, has asserted her claim.

Mrs. \_\_\_\_\_ claim was disallowed for the second time by our Transportation and Claims Division settlement of April 17, 1975. Noting that Mrs. \_\_\_\_\_ only lived in the \_\_\_\_\_ home with the decedent present for approximately one month, that settlement states in pertinent part:

"As felonious intent exists in Mrs. \_\_\_\_\_ case your claim depends upon construction of the term 'household' as used in 10 U.S.C. 1477(b)(3). The term 'household' has generally been held to be synonymous with 'family.' See Lumbermens Mutual Casualty Co. v. \_\_\_\_\_ at al, 41 F. Supp. 249 (1941). The term involves a concept of the householder as its head who gives life, support, and guidance to that particular social unit. The existence and continuation of a close family relationship at the time of death — not the fact of actual residence — is controlling on the question of whether a stepchild is a member of a serviceman's household within the meaning of the death gratuity statute."

\* \* \* \* \*

"Despite the fact that you maintained a residence in the home which the decedent maintained for his wife while he was in Viet Nam and which he used while on leave, you never entered into the communal spirit or purpose inherent in the concept of a 'household' as used in the statute.

"Accordingly, you did not qualify as a member of the decedent's household for the purpose of the death gratuity statute and your claim is therefore denied."

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Mr. Gulley contends that the disallowance is subjective and based on hearsay concerning the type of relationship enjoyed by a stepfather and a stepdaughter.

Rather than being based on hearsay as contended by Mr. Gulley, that statement is based on language contained in footnote 8 of V. State, 484 S.W. 2d 866, 871, which states in part:

"\* \* \* [ ] intensely-  
disliked both the deceased [ ] T. Sgt. [ ]  
and appellant [ ] [ ] blamed appel-  
lant for the dissolution of the marriage with  
father, and was attempting to get her mother [ ]  
[ ] to remarry her father. She viewed the  
deceased as an obstacle to this plan. The deceased  
was upset at [ ] for attempting to destroy his  
marriage. \* \* \*"

The term "household" has generally been held to connote a settled status, i.e., a more permanent situation than is indicated simply by the words "house" or "apartment". State Farm Mutual Insurance Company v. \_\_\_\_\_, 142 S.E. 2d 562, 565 (1965). It is clearly the majority view that when the term household is involved, a continuing close family relationship is intended. In this regard, Federal courts have held that:

"The word 'family' \* \* \* has frequently been defined as such persons as habitually reside under one roof and form one domestic circle \* \* \*. The meaning to be given to the word 'family' depends to a greater or less extent on the intention of those using the term. The term 'family' or 'household' cannot be so limited and strait-jacketed as always to mean, regardless of facts and circumstances, a collection body of persons who live in one house \* \* \*"

V. State Farm Mutual Insurance Company, 252 F. 2d 158, 161 (8th Cir. 1958).

On the basis of the record before us it does not appear that Mrs. [ ] qualifies as a member of the household of Sergeant [ ] at the time of his death as that term is used in 10 U.S.C. 1477. X

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Accordingly, she is not entitled to payment of the death gratuity in question and the action taken by our Transportation and Claims Division in this matter is sustained.

R. F. KELLER

Acting Comptroller General  
of the United States