

DECISION



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

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FILE: B-183175

DATE: MAY 30 1975

MATTER OF: Basic Allowance for Quarters at "with dependent" rate - Shadrick Johnson

DIGEST: Where military member executed a class Q allotment as required in order to receive a basic allowance for quarters at the "with dependent" rate on behalf of his mother, but under the Dependents Assistance Act of 1950, 50 U.S.C. App. 2201, et. seq. and implementing regulations then in force, his dependent mother failed to submit information concerning dependency as required by the Secretary of the Service concerned, this Office cannot authorize payment of the allowance in question since determinations by the Secretary of nonentitlement based on failure of proof of support are final and conclusive and are not subject of review by this Office

This action is in response to correspondence from Mr. Shadrick Johnson, concerning his claim for basic allowance for quarters (BAQ) at the "with dependent" rate on behalf of his mother for the period October 1, 1963, through April 30, 1966, incident to his service in the United States Army, in which he requests reconsideration of the settlement dated November 19, 1974, by our Transportation and Claims Division, which disallowed that claim.

The file shows that the member initiated action to receive BAQ at the "with dependent" rate on behalf of his mother, Juanita Smith (Johnson), by executing a class Q allotment in the amount of \$40, effective October 1, 1963, as prescribed by the applicable law and regulations. On or about October 14, 1963, the member's mother submitted the requested dependency affidavit to the then U.S. Army Finance Center. After determining that additional information was needed, the Finance Center requested additional information from the member's mother on December 5, 1963. Having received no response to its December 5, 1963 request, the Army initiated a followup request on January 7, 1964. On January 21, 1964, not having received a response to the requests for additional information, the Finance Center disapproved the member's claim for BAQ at the "with dependent" rate and the member was so notified on the same date.

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Under the provisions of section 1 of the Dependents Assistance Act of 1950, 50 U.S.C. App. 2201, applicable to the period in question, the dependency of a parent is determined on the basis of an affidavit submitted by such parent and such other evidence as the Secretary concerned may deem necessary. That section also provides that no parent shall be deemed dependent unless the member of the uniformed services claiming such dependency has provided over one-half of the support of such parent for a period of time as the Secretary concerned may prescribe. It is also provided therein that all determinations of dependency are made by the Secretary of the department concerned or his designee and are final and conclusive and not subject to review in any court or by any accounting officer of the Government, except for cases involving fraud or gross negligence (50 U.S.C. App. 2210 and 2211).

Paragraph 5-60 of Army Regulations 37-104 (change 68, effective February 18, 1963), promulgated pursuant to the above authority, provides that if the dependent claimed is a parent, then the determination of dependency is made by the U.S. Army Finance Center and the parent must be in fact dependent on the service member for over one-half of his or her support.

The determination of the dependency of a member's parent is made on the basis of the facts submitted. Unlike a wife or natural child, a member does not qualify for basic allowance for quarters on behalf of a parent solely because of that relationship. In order to be entitled to BAQ at the "with dependent" rate on behalf of a parent the information submitted to the administrative office must substantiate that the member provides more than one-half support for the parent claimed.

While the member claims that his mother was dependent upon him, it appears from the file that there was insufficient proof of such dependency since the Army's request for additional information was never returned. The file indicates that the administrative determination of nonentitlement dated January 21, 1964, was based on such failure to respond.

Accordingly, since the governing law makes the necessary determination of dependency final and conclusive on this Office, we are

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without authority to review that determination and the action taken by our Transportation and Claims Division in Mr. Johnson's case is sustained.

R. F. KELLER

Deputy Comptroller General
of the United States