

DECISION



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

FILE: B-185813

DATE: JUL 13 1976

MATTER OF: Specialist Fourth Class , USA

DIGEST:

Female member, whose mother is a dependent, subsequently marries another service member while on permanent duty overseas, is entitled to Family Separation Allowance - Type I for her mother, while member is living off base in a common residence with husband, notwithstanding the availability of Government single quarters, since Government family quarters were not furnished to her and her husband.

This action is in response to letter dated December 22, 1975, from Lieutenant Colonel Ray L. Vaught, Jr., Finance and Accounting Officer, Department of the Army, 45th Finance Section, APO New York 09227, requesting an advance decision concerning the entitlement of Specialist Fourth Class

, USA, to Family Separation Allowance, Type I (FSA-I), following her marriage to another service member. The request was assigned Control No. DO-A-1253 by the Department of Defense Military Pay and Allowance Committee and forwarded here by Office of the Comptroller of the Army letter dated April 7, 1976.

In the submission it was stated that permanent change of station orders, dated August 23, 1974, directed Specialist from Fort Sill, Oklahoma, to Europe with ultimate duty assignment at Kaiserslautern, Germany. Upon arrival in Kaiserslautern on October 1, 1974, Specialist was single and was assigned and utilized living accommodations in available troop billets in the unit area. The record also shows that she was in a pay grade lower than E-4 (with over 2 years' service) and, therefore, was not entitled to the transportation of dependents to her new duty station at Government expense. See 1 Joint Travel Regulations (1 JTR), paragraph M7000-1. X

The submission also stated that in April of 1975, Specialist applied for Basic Allowance for Quarters (BAQ) on behalf of her mother, whom she claimed was dependent upon her for more than 50 percent of her total support as required by 37 U.S.C. § 401(3) X (Supp. III, 1973). The application was approved by the

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Army Finance and Accounting Center with an effective date of April 18, 1975, and payment of the allowance at the "with dependents" rate was then established on her military pay account.

It was stated that on July 8, 1975, the member was married to another service member, Specialist who was assigned to another unit at the same installation. Following the marriage Specialist, nee obtained approval for a date of departure from the overseas command to coincide with the date established for her husband's departure date of December 6, 1975. It was further stated that due to Army Regulation 210-50, which prohibits the assignment of family type quarters to personnel having less than 6 months remaining on their overseas tour, the were not eligible for family type Government quarters for the remainder of their duty at Kaiserslautern. Therefore, in order for the member to establish a joint residence with her husband, she obtained permission to reside off post and terminated her assignment to the troop billets.

The question is presented as to whether the member is entitled to the Family Separation Allowance (Type I) for her dependent mother, when that member marries another service member and establishes a common residence with her husband, off base, while adequate Government single quarters are available for her use on base.

Pursuant to the provisions of 37 U.S.C. § 427(a) (1970), paragraph 30303 of the Department of Defense Military Pay and Allowance Entitlements Manual (DODPM) provides that FSA-I is payable to each member with dependents who is on permanent duty outside the United States or in Alaska who meets all of the following conditions:

"(1) Transportation of his dependents to his permanent duty station or to a place near that station is not authorized at Government expense. This applies to all members, including members in pay grades E-1 through E-4 (4 years' service or less);

"(2) His dependents do not live at or near his permanent duty station; and

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"(3) Government quarters or housing facilities (as defined in the Glossary of Terms) are not available for assignment to him."

See also 43 Comp. Gen. 332, 338 (1963).

As stated above, Specialist permanent duty station was in Germany, apparently her mother was not living at or near such duty station, and the transportation of her mother to that station was not authorized at Government expense. Thus, the only remaining question to be decided concerning Specialist entitlement to FSA-I is whether Government quarters were available for assignment to her within the meaning of the law and regulations.

In this regard, paragraph III.A of Department of Defense Instruction 1338.1, April 18, 1974, provides as follows:

"It is the policy of the Department of Defense to encourage maintenance of the family unit. When both husband and wife are members of the Uniformed Services, and stationed at the same or adjacent military installations, both members are authorized the basic allowance for quarters prescribed for a member without dependents when public quarters for dependents are not assigned, notwithstanding the availability of adequate single quarters for either or both." (Emphasis added.)

See also the similar provision in paragraph 10-7, Army Regulation 210-50 (change 13, August 13, 1974).

Therefore, it is clear that upon her marriage the member was entitled to establish a common residence with her husband. Since she and her husband were not authorized Government family quarters because they had less than six months to serve at their overseas duty station, they were entitled to procure non-Government quarters and each receive basic allowance for quarters. See DODPM, Table 3-2-4, Rule 17, and 53 Comp. Gen. 148, 153 (1973).

It has been our view that family separation allowances under 37 U.S.C. 427 are, in effect, additional quarters allowances authorized under specified conditions and, therefore, in similar circumstances we have been guided by the rules applicable to payment of basic allowance for quarters in determining entitlement to family separation allowances. See 51 Comp. Gen. 116, 118 (1971)

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and cases cited therein. Thus, in view of the above-stated service policy concerning entitlement to family quarters, it appears that the fact that Government single quarters were available would not defeat the member's entitlement to FSA-I in these circumstances since family quarters to which she and her husband were entitled were not furnished to them.

Accordingly, the member having met the requirements for FSA-I during the period in question, the voucher and supporting statement submitted by the Finance and Accounting Officer are returned herewith, payment being authorized, if otherwise correct.

Paul G. Dembling
Comptroller General
of the United States