

Mr. Neenan

PLM 2

DECISION



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

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FILE: B-196603

DATE: September 4, 1980

MATTER OF: Sergeant First Class Jerry D. Sims, USA -
Request for Station housing and cost-of-living allowances]

- DIGEST: 1. Army member who is entitled to station allowances at "with-dependent" rate in connection with his permanent assignment on Island of Oahu continues to be entitled to station allowances at "with-dependent" rate when he receives a permanent change of station to new overseas duty station on Island of Hawaii even though dependents, despite authorization to move to Hawaii at Government expense, remain on Oahu, since dependents continue to reside in "vicinity" of new duty station, for purposes of paragraph M4300-3 of 1 Joint Travel Regulations.
2. Station allowance to which Army member is entitled, even though he lives at new permanent duty station on Island of Hawaii while dependents remain at former duty station on Island of Oahu, are computed at rate applicable to member's permanent duty station on Hawaii rather than rate applicable to dependents' location on Oahu pursuant to Volume 1, Joint Travel Regulations, paragraph M4301-2.
3. Maui resident who enters active duty, and is assigned to Island of Oahu, and whose dependent wife remains on Maui is not entitled to station allowances at "with-dependent" rate, even though wife continues to reside in vicinity of member's permanent duty station, since wife's residence "outside United States" is not due to member's duty assignment.

The question presented in this case is whether Sergeant First Class Jerry D. Sims, United States Army, is entitled to station allowances at the with-dependents rate following his permanent change of

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station from the Island of Oahu to the Island of Hawaii, in the Hawaiian Islands, when his dependents continue to reside on Oahu. The answer is yes.

This question and others were presented as requests for advance decisions in letters dated September 24, 1979, and January 29, 1980, from the Finance and Accounting Officer, United States Army Support Command at Fort Shafter, Hawaii, and from the Assistant Comptroller of the Army (Finance and Accounting), Indianapolis, Indiana, respectively. The requests were forwarded to this Office by endorsement of February 1, 1980, by the Per Diem, Travel and Transportation Allowance Committee and have been assigned PDTATAC Control No. 80-7.

Sergeant Sims and his Command-sponsored dependents resided on the Island of Oahu, Hawaii, while he was assigned to the 25th Infantry Division there since December 1973. Sergeant Sims was authorized to live on the economy with his dependents and he received station allowances at the "with-dependent" rate applicable to Oahu.

In June 1979, Sergeant Sims was given a permanent-change-of-station assignment to the Army Support Command on the Island of Hawaii. Upon inquiry, he was informed by Army personnel that his pay would not decrease if he accepted the assignment on Hawaii.

He was entitled to move his dependents at Government expense to his duty station on Hawaii. However, the member's wife and children remained on Oahu while he served his tour on Hawaii. Shortly after the member moved to Hawaii, the Army discontinued his station allowances.

Sergeant Sims believes he is entitled to station allowances at the "with-dependent" rate since his dependents reside in the "vicinity" of his permanent duty station. The member is of the view that "vicinity" includes all islands in the State of Hawaii.

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[The Army challenges this interpretation, pointing out that "vicinity" does not encompass situations involving separate areas and separate households. The Army states that "the definition is intended for a situation where the member and his/her dependents resided in the same household and from which he/she commuted to his/her permanent station."]

[The Army also notes that the member is no longer entitled to station allowances because he is serving a "with-dependents" tour, and there are no restrictions to preclude him from moving his family to Hawaii at Government expense. As a result, maintenance of the family residence on Oahu is a personal choice.]

In their endorsement of February 1, 1980, the Per Diem, Travel and Transportation Allowance Committee comments that under Volume 1 of the Joint Travel Regulations (1 JTR), [Hawaii, like Alaska for travel and station allowance entitlement purposes, is regarded as a distinct overseas geographical locality, somewhat like a different country, that is separate from the rest of the United States.] As a result, the Committee notes that it would be reasonable that all of the State of Hawaii be similarly regarded as the same country when determining whether a member's dependents are residing in the vicinity of his permanent duty station under the provisions of 1 JTR M4300-3. Thus, the view is expressed that in this case, the member's dependents should be considered as residing in the vicinity of his permanent station and the member should be entitled to station allowances at the "with-dependents" rate prescribed for the Island of Hawaii.]

Under the provisions of 37 U.S.C. § 405 (1976), [station allowances, including housing and cost-of-living allowances, are authorized to be paid to members of the uniformed services on permanent duty outside the United States or in Hawaii or Alaska. Implementing regulations are contained in 1 JTR, Chapter 4, Part G. For a member to be entitled to station allowances at the "with-dependent" rate, the dependents must be authorized travel and transportation at Government expense and

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must be authorized to and actually reside in the vicinity of the member's duty station in a military dependent status. 1 JTR, paragraph M4300-1-1; 55 Comp. Gen. 135 (1975); 53 Comp. Gen. 339 (1973); and 49 Comp. Gen. 548 (1970).

Sergeant Sims' entitlement to station allowances at the "with-dependent" rate while he lived with his family on Oahu is not challenged. The only question presented is whether the member's residence on the Island of Hawaii apart from his family means that his dependents no longer reside in the "vicinity" of the member's duty station.

Dependents are considered as residing in the vicinity of a member's duty station for any period during which they actually reside in the country within which the member's permanent duty station is located. 1 JTR, M4300-3. Since Hawaii and Alaska are regarded as separate entities for purposes of the station allowance regulations in 1 JTR, it is our view that the various islands composing the State of Hawaii should be considered as the "vicinity" when a member is assigned to a permanent duty station in Hawaii.

The Finance Officer is of the view that "vicinity" encompasses only those situations in which the member resides with his dependents in one household. However, it is our opinion that station allowances may be authorized if the dependents reside in the vicinity of the member's duty station regardless of whether separate residences are maintained so long as they are in the vicinity in a military dependent status. Cf. B-182098, October 9, 1975.

In support of this position, we invite attention to the fact that the pertinent regulations in a much earlier edition provided that a member with dependents must have his dependents reside with him to qualify as such. See 1 JTR M4301-2, change 5, November 1, 1952. However, change 8 to these regulations issued February 1, 1953, deleted the language indicating a member's dependents must reside with him. Furthermore, the definition

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of "vicinity" was broadened at that time to the extent that it coincides with the current definition.

In view of the above it is our position and apparently that of the Per Diem, Travel and Transportation Allowance Committee that there was specific intent at the time the above changes were made to authorize entitlement to station allowances in circumstances similar to those of the instant case.

Accordingly, Sergeant Sims is entitled to station allowances at the "with-dependent" rate for the period of his tour on the Island of Hawaii.

The Army has also asked if Sergeant Sims is entitled to station allowances, which "with-dependent" rate applies, the allowance rate for Hawaii or Oahu.

Paragraph M4301-2 of 1 JTR provides that "the rate payable is based upon the location of the member's permanent duty station, except as prescribed in paras. M4304 [members assigned to ships or fleet units] and M4305 [members assigned to duty in restricted areas] and Chapter 12 [evacuation allowances]." Thus, Sergeant Sims is entitled to station allowances payable at the rate prescribed for the Island of Hawaii, where his permanent duty station is located.

Finally, a question has been presented concerning whether a Maui resident who enters active duty and who is assigned to duty on Oahu is entitled to station allowances at the "with-dependent" rate if his wife continues to reside on Maui and the distance is too great to commute on a daily basis; the answer is no.

Paragraph M4300-1-2, 1 JTR, provides that the term "member with dependents" means 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. However, paragraph M4300-1 also provides that the requirements are not applicable to members stationed in Hawaii, Alaska, the Commonwealth of

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Puerto Rico, or a territory or possession of the United States if the dependents who join or are acquired are bona fide residents of the respective state, commonwealth, or a territory or possession or are officers or employees of the United States and are stationed in those places.

Thus, when the member is ordered to active duty in Hawaii, it is our view that such case should be viewed as tantamount to the member being joined or acquiring a dependent who is a bona fide resident of the State of Hawaii and as a result the member must be considered a member without dependents under the regulations.

Furthermore, in our decision 38 Comp. Gen. 531 (1959), we concluded that the entitlement to station allowances is conditioned on not only the dependents' residence in the vicinity of the overseas station but also on the purpose for which the allowance is authorized, namely, to defray the average excess cost of living as a result of the assignment. Thus, where dependents already reside in the vicinity prior to a member's transfer there, no entitlement to station allowances is authorized.

Accordingly, the Maui resident who is ordered to duty on Oahu is not entitled to station allowances at the with-dependent rate for his dependent who continues to reside on Maui.

Harry D. Jan Cline
For The Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON D.C. 20548

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September 4, 1980

The Honorable Daniel K. Inouye
United States Senator
Prince Kuhio Federal Building
Room 6104
300 Ala Moana Boulevard
Honolulu, Hawaii 96850

Dear Senator Inouye:

Further reference is made to a letter dated November 15, 1979, with enclosures, and subsequent correspondence of April 21 and July 31, 1980, from Mr. David M. Peters of your office, concerning the payment of station allowances to Sergeant First Class Jerry D. Sims, United States Army, incident to his duty assignment on the Island of Hawaii while his family remained on the Island of Oahu.

The matter was formally referred to our Office for advance decision on February 1, 1980, by the Per Diem, Travel and Transportation Allowance Committee.

By decision B-196603 of today, copy enclosed, we have concluded that Sergeant Sims is entitled to the claimed allowances. He should receive payment in due course from the Army for the amount due him.

We trust the foregoing is responsive to your inquiry and we regret the delay in processing this matter.

Sincerely yours

Narry. J. Van Cleave

For The Comptroller General
of the United States

Enclosure