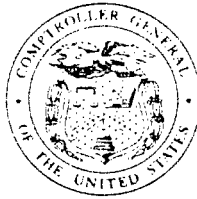


15855

DECISION



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

FILE: B-198661

DATE: January 8, 1981

MATTER OF: Lieutenant Charles Tyahur, Jr., USN, and
Lieutenant Commander Per L. Okey, USNR

DIGEST: Where children are placed with a member of
the uniformed services for adoption in the
State of California by an agency of the
State, the effective date for determining
entitlement to dependency benefits is the
date an order of adoption has been entered
by a court of competent jurisdiction.

[Effective Date of

For Adopted Child]

This case involves the question of the effective date for entitlement to quarters allowance at the with-dependent rate for members of the uniformed services on account of children who have been placed with them for adoption in the State of California but where a final order of adoption has not been entered. Under California law the parents' assumption of full financial responsibility and care of the child after entering into the adoption placement agreement without court sanction is not sufficient to meet the dependency definition of 37 U.S.C. 401(2) (1976).

The Director, Navy Family Allowance Activity, Cleveland, Ohio, requested a decision concerning the effective date for entitlement to increased quarters allowance on account of children placed for adoption in the State of California in the cases of Lieutenant Charles Tyahur, Jr., USN, and Lieutenant Commander Per L. Okey, USNR. The matter was referred here through the Department of Defense Military Pay and Allowance Committee and was assigned submission number DO-N-1344.

The factual situation in each case is very similar. In the case of Lieutenant Tyahur, a child born September 15, 1979, was placed for adoption in the member's home on November 1, 1979, by the Adoption Services of San Diego County, California.

An adoption placement agreement was entered into by Lieutenant Tyahur and his wife on November 1, 1979, in which they agreed to assume full financial responsibility and care of the child.

~~OH 1070~~ 114122

B-198661

An adoption placement agreement was entered into by Commander Okey and his wife on July 15, 1976, for a child "Jonathan" born May 29, 1976. On the same date, the member and his wife signed an "Addendum to Adoptive Placement Agreement" which contains a statement that "possible potential rights of the father have not been legally terminated and a court action may be necessary. Final decision in this regard has not been made and a certain risk exists." A final adoption decree has not been submitted. On September 6, 1979, Commander Okey entered into another adoption placement agreement for another child "Benjamin Shane" born on May 11, 1977. To date, a copy of the final adoption decree for Benjamin has not been submitted.

In both Lieutenant Tyahur's and Commander Okey's case it appears that the children were placed in their custody for adoption purposes by the San Diego County Department of Public Welfare and that during the placement period the adoptive parents share joint custody with the San Diego County Department of Public Welfare. While that agency may terminate the agreement at any time prior to the final adoption decree, the adoptive parents provide full financial support and care, the agency being there for family counseling and guidance.

It appears that under California law the prospective adoptive parents obtain certain rights to the continued custody of the child after entering into an adoption placement agreement. However, no interlocutory order of adoption is issued in California and the child may be removed at anytime prior to the entry of a final order of adoption. See Deerings California Codes, C.C.A. Sections 221-230.5.

Section 401, Title 37, United States Code, provides that "dependent" with respect to a member of a uniformed service, includes his unmarried legitimate child, including a stepchild, or an adopted child, who is in fact dependent on the member.

In 30 Comp. Gen. 210 (1950), we held that in order for an officer to be entitled to increased allowances

B-198661

authorized to be paid to him on account of "adopted children" there must be shown to be a legal adoption, that is, one accomplished according to statute.

In 44 Comp. Gen. 417 (1965), we held that basic allowance for quarters as a member with dependents was authorized on account of an adopted child effective upon the issuance of an interlocutory order of adoption. The pertinent statute provided that subject to a probationary period and the provisions of the final order of adoption, the adopted child would be for all intents and purposes the child of the adopting parent from the date of entry of the interlocutory order.

The rule was further extended in 52 Comp. Gen. 675 (1973) where we held that children provisionally adopted by a Navy member while stationed in Great Britain are considered dependents of a member under 37 U.S.C. 401, so as to entitle him to a dependent's allowance and all other benefits incident to the dependency status while the member resides in Britain. This is based on the fact that although the provisional adoption order only authorizes custody and removal of the children from Great Britain for adoption elsewhere, the law also provided that the rights, duties, obligations, and liabilities prescribed in other sections of the Act for an adopter shall equal those of natural parents or those created by an adoption order.

In each of the cases cited above the children were placed in a home by an order of a court of competent jurisdiction pursuant to the state laws involved.

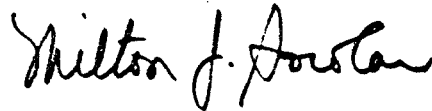
Section 224n, Deering's California Codes, C.C.A. provides for the placement of potentially adoptable children in homes without court action. This action may lead to a legal adoption but it does not have the sanction of a court.

In the present cases, the placement of the children in the members' homes by an agency of the State of California government and the assumption by them of the full financial support and care during a temporary period before adoption gave the prospective adoptive

B-198661

parents certain parental rights. However, this is done without any court approval. (It is our view that without court approval or sanction such placement does not constitute an adoption for the purposes of 37 U.S.C. 401(2) nor is such action tantamount to an interlocutory adoption decree entered by a court.)

Accordingly, Lieutenant Charles Tyahur, Jr. and Commander Per L. Okey are not entitled to basic allowance for quarters at the with-dependent rate until an order of adoption has been issued by a court of competent jurisdiction.



For the Comptroller General
of the United States