

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

120494

**FILE:** B-209744**DATE:** February 1, 1983**MATTER OF:** Basic Allowance for Quarters  
(With-Dependent Rate)

**DIGEST:** Military member claims basic allowance for quarters at the with-dependent rate on account of her husband, a military member who is not entitled to pay and allowances due to his being in confinement under a 15-year prison sentence. The quarters allowance at the with-dependent rate is not authorized. The member may no longer be considered to have a dependent for quarters allowance purposes since the dependent will be absent for an extended period of time and the member is for all practical purposes absolved of the responsibility of providing quarters for her husband for the duration of his confinement.

In this case a military member claims her husband as a dependent for basic allowance for quarters at the with-dependent rate. Her husband, a military member who is not entitled to pay and allowances because of civil confinement, has been sentenced to 15 years imprisonment. The question presented concerns the wife's entitlement to the quarters allowance at the with-dependent rate during the period of her husband's confinement. We find that the wife is not entitled to the allowance at the with-dependent rate.

This question was presented upon a request for an advance decision from an Air Force Accounting and Finance Officer, Detachment 1, 76th Airlift Division, Bolling Air Force Base, Washington, D.C., and forwarded here by Headquarters Air Force. It has been assigned submission number DO-AF-1409 by the Department of Defense Military Pay and Allowance Committee.

Under 37 U.S.C. § 403 (Supp. IV, 1980), entitlement to basic allowance for quarters accrues to every member regardless of sex or grade by virtue of his or her status as a member of the uniformed services provided the member is not furnished Government quarters. Matter of Sandkulla, 59 Comp. Gen. 681 (1980); Matter of Dislocation Allowance, 56 Comp. Gen. 46, 48 (1976). A member

with dependents who is entitled to basic pay is entitled to an increased quarters allowance when not assigned to appropriate Government quarters. The increased allowance for members with dependents is intended to at least partially reimburse the members concerned for the expense of providing private quarters for their dependents when adequate Government quarters are not available. However, a quarters allowance at the with-dependent rate is not paid as a bonus merely for the technical status of being married. 52 Comp. Gen. 454 (1973); 42 Comp. Gen. 642, 644 (1963).

In this case, the quarters allowance at the with-dependent rate is being claimed on account of a dependent who is serving an extended prison term. In 36 Comp. Gen. 199 (1956), we considered the effect of a dependent's incarceration on a member's entitlement to a quarters allowance on account of that dependent. We stated that confinement should not affect the member's entitlement to the increased allowance in the ordinary case. However, that decision recognized that the member's right to the allowance at the with-dependent rate did not extend to all situations and left open for future decision those cases involving protracted confinement.

We have held that the statutory provisions generally relieve a member claiming a quarters allowance on account of a lawful spouse or an unmarried child of the burden of proof that the spouse or child is in fact dependent upon the member for support. See 23 Comp. Gen. 71 (1943), and 22 Comp. Gen. 1145 (1943). That general rule, however, is not free from exceptions and, in light of the basic purpose of the quarters allowance, we have consistently held that in the absence of a showing of contributions by the member to the support of his spouse or children, entitlement to quarters allowance as a member with dependents is not authorized where the member has been absolved of responsibility to support them. 38 Comp. Gen. 89 (1958) and 23 Comp. Gen. 71 (1943).

The theory behind the quarters allowance is reimbursement for something paid out. Byrne v. United States, 87 Ct. Cl. 241 (1938). Consistent with this purpose we have held that there must be a showing that

the increased sum is being used for the support of the dependents, 52 Comp. Gen. 454 (1973); Matter of Ranazzi, B-195383, November 6, 1979. In this regard we have held that where a dependent is unexplainedly absent for an extended period of time, the payment of a quarters allowance at the with-dependent rate must be terminated since the member may no longer be considered to have a dependent for quarters allowance purposes, 43 Comp. Gen. 249 (1963). It is our view that the incarceration of a dependent for an extended period of time is analogous. We do not believe Congress intended that a member be credited with an increased allowance where, as in this case, the dependent will be absent for an extended period of time and where the member is for all practical purposes absolved of the responsibility of providing quarters for the dependent for the duration of the dependent's confinement.

Accordingly, we find that the payment of basic allowance for quarters at the with-dependent rate is not warranted on account of a spouse serving an extended prison sentence, and such payment may not be made in this case. Of course, if the member's spouse is released from confinement and all other requirements are otherwise satisfied, the member would become entitled to the quarters allowance at the with-dependent rate on account of her husband.

*for* Milton J. Acosta  
Comptroller General  
of the United States