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Sergeant Dori L. Stover, USAF
48 OMS, PSC Box 3762
APO New York 09179

DEC 23 1980

Dear Sergeant Stover:

Reference is made to your undated letter received here on June 17, 1980, in which you raised several [questions concerning your quarters allowance entitlements].

You say that you are serving on active duty with the Air Force and that you are living in off-base quarters with your daughter. Nevertheless, you are only being paid a Basic Allowance for Quarters (BAQ) at the "without dependent" rate. You indicate this is because your former husband is also a member of the Air Force and is required to make child support payments under the terms of your divorce decree. Since he is making child support payments, he is the one who is allowed to draw BAQ at the higher "with dependent" rate on behalf of the child. However, you also note that if you and your daughter were to be assigned Government quarters, his entitlement to BAQ at the "with dependent" rate would cease, even though the amount of court-ordered child support would remain unchanged.

You question whether this is fair. You say that the BAQ you are receiving at the "without dependent" rate is inadequate to cover the costs of housing for yourself and your daughter, and you feel that you ought to be the parent who should rightfully be paid the allowance at the higher "with dependent" rate. You also question whether there is any reason why your former husband's BAQ entitlements should vary depending upon whether you and your daughter are assigned Government quarters. You therefore ask that we review the matter.

Although a decision of the Comptroller General will not be issued on the basis of your letter, the following information may be of use to you.



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Provisions of statutory law enacted by Congress which govern the military pay and allowance entitlements of members of the uniformed services are contained in title 37 of the United States Code. Section 403 of title 37 authorizes payment of a "Basic Allowance for Quarters" to service members who are not assigned Government quarters adequate for themselves and their dependents. The allowance is payable at different rates depending upon the member's rank and whether the member has any dependents.

The statutory purpose of the Basic Allowance for Quarters, as the name plainly implies, is to reimburse service members for their personal expenses in acquiring suitable private housing for themselves and their families when rent-free Government quarters are not made available to them. It is not specifically designed or intended to reimburse a divorced service member for child support payments. However, the Comptroller General has for more than half a century-- in conformity with still earlier rulings of the United States Court of Claims--recognized that a divorced service member who does not have custody of the children of the prior marriage, but who contributes toward paying for their private living quarters through child support payments, has a statutory right to be paid BAQ at the "with dependent" rate on their behalf. See, for example, 24 Comp. Gen. 233 (1944) and 9 Comp. Gen. 299 (1930).

When 2 service members marry, have children, and then divorce, a problem is presented with respect to the matter of who should be allowed to claim the children as dependents for BAQ purposes. In such circumstances, only one of the members may properly claim the children as dependents, since duplicate quarters allowance payments to both parents for the same children would be impermissible. The principle established to cover this particular situation is that the service member paying court-ordered child support is entitled to claim the children for BAQ purposes,

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provided the monthly support decreed is equal to or greater than the difference between that member's "with" and "without" dependents BAQ rate. See paragraphs 30236 et seq. of the Department of Defense Military Pay and Allowances Entitlements Manual. However, in decision 58 Comp. Gen. 100 (1978), copy enclosed, it was also ruled that under 37 U.S.C. 403 the member's entitlement to BAQ at the "with dependent" rate on behalf of the children would terminate when the children moved from private living quarters into rent-free Government quarters even though the amount of court-ordered child support remained unchanged. Service members were cautioned that when they become involved in divorce proceedings, it is incumbent upon them to have child support agreements or orders written which will properly take the military pay and allowance system into account, and which will among other things provide for appropriate adjustments in the rate of support payments to be made during periods when the children are living in rent-free Government quarters.

In your own case, therefore, your ex-husband is being paid BAQ at the "with dependent" rate because the child support payments he makes contribute towards providing private living quarters for the child of the marriage. You are not entitled to BAQ at the "with dependent" rate even though you have custody of the child, since you and your ex-husband may not both properly claim the child as a dependent for quarters allowance purposes and draw dual allowances on her behalf. If you and the child were to be assigned rent-free Government family quarters, your ex-husband's entitlement to BAQ at the "with dependent" rate on the child's account would cease even though the amount of court-ordered child support might remain unchanged, since he would then no longer be paying for the child's living quarters.

If you feel that the child support provisions in your divorce decree are inadequate in view of the

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rules governing payment of BAQ, it would appear that your proper recourse now would be to apply for a modification of the divorce decree.

In addition, if you still feel that you rather than your ex-husband should be entitled to claim your daughter as a dependent for BAQ purposes, it appears that this would be a matter for consideration by the concerned Air Force authorities. In that connection, the statutory provisions of 37 U.S.C. 403(h) direct that the authority to make dependency determinations for BAQ purposes in particular cases is reserved to the concerned service Secretary, or his designee, and any such determination made with respect to enlisted members "is final and is not subject to review by any accounting officer of the United States or a court, unless there is fraud or gross negligence." Thus, any dependency determination to be made in your particular case would be a matter primarily within the jurisdiction of the Air Force, and not our Office.

We trust this will serve the purpose of your inquiry and we regret our delay in responding to your letter.

Sincerely yours,

Edwin J. Monsma

Edwin J. Monsma
Assistant General Counsel

Enclosure