

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

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FILE: B-186628

DATE: SEP 17 1976

MATTER OF: Sergeant , USMC

DIGEST:

Payment of temporary lodging allowance is not authorized where member marries after being transferred to Hawaii and new wife travels to his duty station at his personal expense, since the member had no dependent on the effective date of his transfer to Hawaii and his vacating of the lodgings he originally occupied while looking for family quarters was not for reasons beyond the control of the member within contemplation of paragraph N4303-1, item 2, Volume 1, Joint Travel Regulations.

This action is in response to letter dated March 23, 1976, with enclosures, file reference CRD/HBW/cag 7220, from the Disbursing Officer, Marine Corps Air Station, Kaneohe Bay, Hawaii, FPO San Francisco 96615, requesting an advance decision concerning the entitlement of Sergeant

, USMC, to receive temporary lodging allowance (TLA) for the period February 19 through 28, 1976, in the circumstances described. The letter was forwarded to our Office by endorsement dated May 20, 1976, from the Per Diem, Travel and Transportation Allowance Committee and assigned PDTATAC Control No. 76-12.

The record submitted here shows that by Division Special Order No. 176-75, Headquarters 3d Marine Division (Reinf) FMF, a permanent change of station (PCS) was directed for Sergeant to the 1st Marine Brigade, FMF (Kaneohe Bay, Hawaii), and that pursuant to these PCS orders, the member reported to his new station on June 17, 1975. At this time the member was a bachelor, and was classified as a member without dependents on the effective date of his PCS orders.

On January 10, 1976, the member was married in Los Angeles, California. Thereafter, by letter dated February 9, 1976, to his commanding officer, the member requested military dependent status recognition for his wife, and that she be approved

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as "command sponsored." By endorsement dated February 10, 1976, such request was approved, and it appears that the member's wife traveled to Hawaii on February 19, 1976, at the member's expense.

The record further shows that on February 26, 1976, the member filed a certificate claiming TLA for the period February 19 through 28, 1976, stating that no Government quarters or messing facilities were available for the member and his dependent and that they were required to secure temporary lodgings pending completion of arrangements for permanent living accommodations. In support of that request, the member submitted a receipt from the Pali Palms Motel showing his payment for lodgings during the period February 19 through March 2, 1976.

Since Sergeant [redacted] became a "member with dependents" subsequent to the effective date of his orders to the First Marine Brigade, Kaneohe Bay, Hawaii, the disbursing officer questions whether there is entitlement to TLA for the member and his dependent in connection with their use of temporary lodging facilities upon his dependent's arrival in Hawaii.

In his discussion of the matter, the disbursing officer says that inasmuch as the member's need for TLA is associated with the search for family-type quarters upon his dependent's arrival, his need is identical to that of members for whom TLA is payable under paragraph M4303-1c(5) of Volume 1, Joint Travel Regulations (1 JTR). However, he expresses doubt as to whether such authority is applicable to members whose dependents arrived subsequent to the member's arrival because the member was a "member without dependents" upon his arrival, as opposed to a member who arrived prior to his dependents for other reasons.

The disbursing officer points out that paragraph M4303-1, item 2, 1 JTR, provides for TLA in connection with the vacation of quarters not the direct result of PCS orders. However, the disbursing officer expresses doubt as to whether the member's vacation of bachelor enlisted quarters to accompany his wife

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in temporary lodging facilities during his search for family-type quarters, and his dependent's use of the same facilities, was "for reasons beyond the control of the member."

In forwarding the matter here for decision, the Executive, Per Diem, Travel and Transportation Allowance Committee, indicates that the need for TLA does not appear to have been for reasons beyond the control of the member as contemplated by paragraph M4303-1, item 2, 1 JTR, since the member had sufficient time to locate family-type quarters for himself and his wife prior to her arrival in Hawaii.

Section 403 of title 37, United States Code (1970), provides that the Secretaries concerned may authorize the payment of a per diem, considering all elements of the cost of living to members of the uniformed services under their jurisdiction and their dependents, including the cost of quarters, subsistence, and other necessary incidental expenses, to such member who is on duty outside the United States or in Hawaii or Alaska, whether or not he is in a travel status. Regulations providing for payment of the TLA promulgated under this authority, are contained in paragraph M4303, 1 JTR.

The purpose of TLA, as stated in subparagraph M4303-1 of those regulations, is to partially reimburse a member for the "more than normal expenses" incurred at hotels or hotel-like accommodations and public restaurants, including upon initial arrival (reporting) at a permanent duty station outside the United States and pending assignment of Government quarters, or pending completion of arrangements for other permanent living accommodations when Government quarters are not available. The allowance is also payable if approved by the overseas commander when a member must vacate quarters for reason beyond his control. Subparagraph M4303-1 also provides that the uniformed services concerned may issue such regulations as are necessary to implement and judiciously administer this allowance. Subparagraph M4303-2a provides that TLA is payable when a member, his dependents, or both are required to and do occupy hotel or hotel-like accommodations at personal expense.

While paragraph M4303-2c(5), 1 JTR, provides for authorization of TLA in the case of certain members arriving at an overseas station prior to the arrival of their dependents, such

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authorization relates to members who have dependents on the effective date of transfer to his overseas station, who are not able to have their dependents accompany them at the time of initial assignment.

No provision in 1 JTR specifically covers the case of a command sponsored dependent wife acquired by a member after the effective date of his PCS orders. However, Fleet Marine Force Pacific Order 7220.1H, dated January 2, 1973, prescribing procedures for the administration of TLA in Hawaii, specifically provides that "Payment of arrival TLA is not authorized for a new dependent acquired by marriage after the effective date of the member's PCS orders which direct him to duty in Hawaii." This service regulation parallels the rule that members are entitled to PCS transportation allowances authorized for dependents only as to dependents in existence on the effective date of the PCS orders. Cf. 47 Comp. Gen. 710, 712 (1968).

Further, the member's vacation of bachelor enlisted quarters to accompany his new wife in temporary lodging facilities during his search for family-type quarters, may not be considered as being covered by paragraph M4303-1, item 2, 1 JTR. This provision and the instruction in subparagraph M4303-2d, indicate that payment of this allowance when not incident to arrival or departure of the member will be limited to unusual situations beyond the member's control. In keeping with those regulations the examples given in Fleet Marine Force Pacific Order 7220.1H, January 2, 1973, of circumstances which are considered to be beyond the control of the member are a sudden withdrawal of the housing from the market by the landlord, or extensive damage from fire or flood which renders permanent quarters uninhabitable. Eviction for cause or personal preferences for different quarters are not considered beyond the control of the member. The member's marriage after assignment to Hawaii is not a situation covered by those provisions.

Accordingly, payment of TLA is not authorized in the circumstances presented.

R. E. KELLER

(Deputy) Comptroller General
of the United States