

DECISION



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

FILE: B-199233

DATE: JAN 7 1981

MATTER OF: Gunnery Sergeant

X USMC

- DIGEST:
1. The statutory purpose of the Basic Allowance for Quarters authorized by 37 U.S.C. 403 is to reimburse a service member for personal expenses incurred in acquiring non-Government housing when rent-free Government quarters "adequate for himself, and his dependents," are not furnished. The Family Separation Allowance, Type II-R, authorized by 37 U.S.C. 427(b)(1) has a separate and distinct purpose, i.e., to provide reimbursement for miscellaneous expenses involved in running a split household when a member is separated from his dependents due to military orders, and it is payable irrespective of the member's eligibility for a quarters allowance.
 2. When two service members marry, neither may claim the other as a "dependent" for military allowance purposes, but if they have a child, that child becomes their joint "dependent" for purposes of establishing entitlement to allowance payments. Although both parents may not claim their child as a dependent for the same allowance payment where dual payments would result, it is permissible for one parent to claim the child as a dependent for the purpose of one allowance and for the other parent to claim the child for other allowances. 37, U.S.C. 401, 420.
 3. Marine Corps member separated from her child and husband while serving an unaccompanied tour of duty overseas may properly be regarded as a "member with dependents" under 37 U.S.C.

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427(b)(1) and is entitled to a Family Separation Allowance, Type II-R, notwithstanding that her husband is also a Marine and is drawing a Basic Allowance for Quarters at the "with dependent" rate on behalf of the child, since their child is their joint dependent and since payment of the two allowances--each for a separate purpose--would not improperly result in dual payments of the same allowance for the same dependent.

This action is in response to a request for an advance decision from the Disbursing Officer, Marine Corps Base, Camp Pendleton, California, concerning the propriety of crediting Gunnery Sergeant [redacted], USMC, [redacted], with a Family Separation Allowance, Type II-R (FSA-R), while she is serving an overseas tour of duty away from her child and her husband, who is also a Marine and who is receiving a quarters allowance on behalf of their dependent child. The question has been assigned Control Number DC-MC-1346, by the Department of Defense Military Pay and Allowance Committee. We have concluded that Sergeant [redacted] is entitled to FSA-R in these circumstances.

It is indicated that Sergeant [redacted] has been required by military orders to serve a tour of duty overseas unaccompanied by her husband and child. Her husband is stationed in the United States and is residing in off-post non-Government housing with their child. He is receiving a Basic Allowance for Quarters at the "with dependent" rate on account of their child.

The Disbursing Officer questions whether Sergeant [redacted] may be credited with FSA-R in these circumstances. Essentially, he notes that the law authorizes FSA-R to be paid only to a "member with dependents." He notes that Sergeant [redacted] may not claim her husband as her "dependent" for military allowance purposes, since her husband is also an active duty

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member of the uniformed services. The Disbursing Officer points out that Sergeant is therefore eligible for FSA-R only if her child may properly be regarded as her "dependent." He indicates that doubt has arisen in the matter because the child is already the "dependent" of her husband for quarters allowance purposes, and he therefore questions whether Sergeant may also claim the child as her "dependent" for other military allowance purposes, including entitlement to FSA-R.

Provisions of law governing the payment of allowances to members of the uniformed services are contained in chapter 7 of title 37, United States Code. Generally, a member's eligibility for a particular allowance, and the rate at which an allowance is payable, may vary depending upon whether or not the member has any dependents. Concerning the definition of a "dependent," 37 U.S.C. 401 provides in pertinent part that:

"In this chapter, 'dependent,' with respect to a member of a uniformed service, means--

"(1) his spouse;

"(2) his unmarried child * * *."

However, 37 U.S.C. 420 provides that:

"A member of a uniformed service may not be paid an increased allowance under this chapter, on account of a dependent, for any period during which that dependent is entitled to basic pay under section 204 of this title."

The Basic Allowance for Quarters authorized by 37 U.S.C. 403 is designed to reimburse a service member for personal expenses incurred in acquiring non-Government housing when rent-free Government living quarters "adequate for himself, and his dependents," are

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not furnished. The quarters allowance is paid at "without dependent" and higher "with dependent" rates. When two service members marry, neither may claim the other as a dependent for quarters allowance purposes due to the operation of 37 U.S.C. 420. See 53 Comp. Gen. 148, 152 (1973); 41 Comp. Gen. 334 (1961). If those married service members have a child, either one of the members--but not both of them--may claim the child as a dependent for quarters allowance purposes. 54 Comp. Gen. 665 (1975); B-180328, October 21, 1974.

The Family Separation Allowance, Type II-R (FSA-R) here in question, is authorized by 37 U.S.C. 427(b)(1), which provides in pertinent part that:

"(b) Except in time of war or of national emergency hereafter declared by Congress, and in addition to any allowance or per diem to which he otherwise may be entitled under this title * * * a member of a uniformed service with dependents * * * is entitled to a monthly allowance equal to \$30 if--

"(1) The movement of his dependents to his permanent station or a place near that station is not authorized at the expense of the United States * * * and his dependents do not reside at or near that station."

We have previously expressed the view that FSA-R under 37 U.S.C. 427(b)(1) is, in effect, an additional quarters allowance authorized under specified conditions and, in similar circumstances, the rules applicable to payment of the Basic Allowance for Quarters are for use in determining entitlement to FSA-R. See 51 Comp. Gen. 116, 118 (1971); B-185813, July 13, 1976. We have therefore previously concluded that when two service members marry, neither can claim the other

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as a dependent for FSA-R purposes--just as neither can claim the other as a dependent for quarters allowance purposes--due to the operation of 37 U.S.C. 420. See 51 Comp. Gen. 116, supra.

However, although we may have previously referred to FSA-R on occasion as an "additional quarters allowance," we have also recognized that FSA-R authorized by 37 U.S.C. 427(b)(1) and the Basic Allowance for Quarters authorized by 37 U.S.C. 403 are separate and distinct. As mentioned, the Basic Allowance for Quarters is intended to reimburse a member for the costs of private living quarters when he is not furnished with Government quarters adequate for himself and his dependents. On the other hand, FSA-R is intended to reimburse service families to some extent for miscellaneous extra out-of-pocket expenses incurred for running a split household when a member is separated from his dependents due to military orders. Such miscellaneous expenses include duplicatory expenses for magazines and newspapers; extra postage, local transportation, and laundry expenses; baby-sitting fees; etc. See Senate Report No. 91-1347, dated November 19, 1970, concerning the purpose of Public Law 91-533, approved December 7, 1970, 84 Stat. 1392. This act amended 37 U.S.C. 427(b) to remove the requirement that a member be entitled to a Basic Allowance for Quarters in order to be eligible for FSA-R. Hence, FSA-R is payable to a member separated from his dependents by military orders under the circumstances set forth in 37 U.S.C. 427(b)(1), regardless of the residence of the primary dependents and independent of the member's eligibility for a Basic Allowance for Quarters on their behalf. 51 Comp. Gen. 974100 (1971).

Furthermore, we have previously recognized that if two service members marry and have a child, then it may be entirely proper for one member-parent to claim the child as a dependent for the purpose of one allowance, and for the other parent to claim the same child as a dependent for purposes of establishing

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entitlement to other military allowances. See, e.g., B-183176, November 18, 1975, involving one member receiving Basic Allowance for Quarters at the with dependent rate and the other receiving a dislocation allowance at the with dependent rate. Also in 54 Comp. Gen. 665 supra, at page 667, we held that a child of two service members properly claimed by one member-parent as a dependent for quarters allowance purposes may be claimed by the other parent as a dependent for travel allowance purposes. It is only objectionable for both parents to claim their child as a dependent for the same allowance payment since that would improperly result in dual payments of the same allowance being made on behalf of the same dependent. See, e.g., B-180328 supra.

In the present case, Sergeant _____ and her husband may not claim one another as "dependents" for military allowance purposes due to the operation of 37 U.S.C. 420, since both of them are active duty members of the uniformed services. They do, however, have a child who qualifies as their joint dependent for military allowance purposes under 37 U.S.C. 401. Sergeant _____ husband has claimed their child as his dependent for quarters allowance purposes, and Sergeant _____ is therefore precluded from also drawing a quarters allowance on behalf of the child since as mentioned, dual payments of the same allowance for the same dependent may not be permitted. Nevertheless, in our view it would be consistent with the statutory purpose of the military allowance system and permissible under 37 U.S.C. 401 for Sergeant _____ to claim their child as her dependent for the purpose of establishing her eligibility for and entitlement to other military allowances, including FSA-R. In that connection, we note that the quarters allowance paid to her husband on account of the child is for the purpose of providing shelter for the child; FSA-R paid to her because of her separation from the child would serve the separate and distinct purpose of defraying

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in some measure the extra miscellaneous split-household expenses resulting from her involuntary separation from her family. We therefore conclude that Sergeant [redacted] is entitled to FSA-R as a "member with dependents" on the basis of her involuntary separation from her dependent child due to military orders.

Payment may issue accordingly.

Milton J. Fowler

For the Comptroller General
of the United States