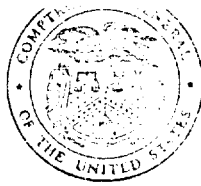


**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

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**FILE:** B-210437**DATE:** September 20, 1982**MATTER OF:** Chief Warrant Officer Ronald G. Hull,  
USCG, and Petty Officer Doris H. Hull,  
USCG**DICEST:**

1. Both of two uniformed service members, who are married to each other, and had dependent children in their own right prior to their marriage, may be paid an increased basic allowance for quarters on account of their respective dependents, when the spouses do not reside together as a family unit because of their duty assignments. Whether the dependents reside with one, both, or neither of them would not affect their entitlement, provided that each member individually supports his or her dependent and is not assigned to Government family quarters.
2. When two uniformed service members who are married to each other and who had dependent children in their own right prior to their marriage, are assigned to the same or adjacent bases, are not assigned Government quarters, and live together as a family unit, only one member may receive a quarters allowance at the increased "with-dependents" rate, and the other member may receive it at the "without-dependents" rate. Only one set of family quarters is required and all the dependent children belong to the same class of dependents upon which the increased allowance is based whether the children live with the members or not. To the extent that 60 Comp. Gen. 399 (1981) may be understood to contradict this holding, it is hereby modified.

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3. When a uniformed service member's child meets the qualifications for becoming the member's dependent following the member's marriage to another member who is not the child's natural parent and the members have other dependent children, the child joins the class of dependent children upon which the member-parent's increased basic allowance for quarters entitlement is determined.
4. Under 37 U.S.C. § 403(h) the Secretary of the service concerned may make dependency and relationship determinations for enlisted members' quarters allowance entitlements and the determinations are final and may not be reviewed by the General Accounting Office. However, that provision does not apply to officers and the Comptroller General renders decisions in officers' cases and also in enlisted members' cases when requested by the service. In the interest of uniformity it seems appropriate to forward doubtful cases to the Comptroller General for decision particularly where an officer is married to an enlisted member.

This action responds to questions submitted by an authorized certifying officer of the United States Coast Guard concerning the propriety of payment of increased basic allowance for quarters on account of dependents, as claimed by Chief Warrant Officer Ronald G. Hull, USCG, and Petty Officer Doris H. Hull, USCG, who are married to each other and are not assigned to Government quarters. When the members reside together as a family unit, one is entitled to basic allowance for quarters at the with-dependent rate and one at the without-dependent rate. When the members are prevented from residing together as a family unit by their duty assignments, they both may be entitled to the allowance at the with-dependent rate.

The submission has been assigned control number ACO-CG-1411 by the Department of Defense Military Pay and Allowance Committee.

Facts and Questions Presented

Ronald and Doris Hull were married in January 1982. Prior to their marriage Mr. Hull received an increased allowance on account of his daughter of a previous marriage (to a non-member), and a son for whom he provided judicially ordered support. Mrs. Hull received an increased allowance on account of her daughter of a previous marriage (to a non-member).

It appears that both of Mr. Hull's children reside with their mother, and Mrs. Hull's daughter resides with her. The record further indicates that since their marriage, Mr. and Mrs. Hull and her daughter have at times resided together as a family unit, but presently the two members are residing in different geographical areas. Both Mr. and Mrs. Hull claim an increased basic allowance for quarters on behalf of their dependent(s), each in his or her own right.

Concerning the propriety of payment of their claims, the certifying officer asks the following questions:

1. Are both members entitled to basic allowance for quarters at the with-dependent rate?
2. Would your answer be the same if the children were in the custody of another (not a member)?
3. If the answer to question 1 is affirmative, would the answer be the same if the members were living together as a family unit at the same or adjacent duty stations, under each of the following situations:
  - a. all children resided with the family unit.
  - b. only one member's child (children) resided with the family unit.

- c. none of the children resided with the family unit.

4. If both members had a child prior to the marriage but one of these children had not been approved as a dependent, could that child subsequently be approved after the marriage to entitle that member to basic allowance for quarters at the with-dependent rate?

#### Discussion

If adequate Government quarters are not provided for the dependents of a service member entitled to basic pay, that member is also entitled to an increased basic allowance for quarters on account of his or her dependents. 37 U.S.C. § 403 (1976), and Coast Guard Comptroller Manual (CG-264), Volume 2, para. 2B01031-F. The increased quarters allowance is paid at a single rate based on the member's pay grade regardless of the number of dependents. When two members are married to each other, only one of them may claim an increased allowance on account of the child or children of their marriage. Comptroller Manual, Table 2B01031-6, Rule 11; and 54 Comp. Gen. 665, 667 (1975). If one of the spouses is receiving an increased allowance for his or her children not born to the present marriage, any children born to, or adopted by, them are a part of the class of dependents for which the increased allowance is already being paid. 54 Comp. Gen. 665 (1975); 51 Comp. Gen. 413 (1972); Matter of Cruise, B-180328, October 21, 1974.

When a member has or acquires a stepchild as a consequence of a marriage to another member, the stepchild may qualify as a dependent child for increased basic allowance for quarters purposes. 37 U.S.C. § 401, and Comptroller Manual, para. 2B01033-B4.

Ordinarily, when a member is married to a member and they are assigned to the same or adjacent duty stations, but are not assigned Government quarters, only one member is entitled to the quarters allowance at the higher with-dependents rate based on the dependency of their children. The other member receives the allowance at the without-dependents rate. 51 Comp. Gen. 413

(1972), and Comptroller Manual, Table 2B01031-6, Rule 11. Also, generally when a member is married to a member and they are living in the same household and one of the members is receiving a quarters allowance at the with-dependents rate because of minor dependent children from a previous marriage not residing in the household, a child born of the two service members does not authorize the payment of another quarters allowance at the with-dependent rate. That is because the child of the present marriage is automatically included in the class of dependents (children) for which one of the members is already receiving the allowance. Matter of Cruise, B-180328, October 21, 1974; 54 Comp. Gen. 665 (1975); and Matter of Sandkulla, 59 Comp. Gen. 681 (1980). However, where married members are living separate and apart due to their military assignments, though married to each other, quarters allowance entitlement is to be determined on an individual basis. Matter of Sandkulla, cited above. The answers to the questions concerning Mr. and Mrs. Hull's quarters allowance entitlements should be based on the rules set out above.

#### Answers to Questions 1 and 2

Regarding questions 1 and 2, when Mr. and Mrs. Hull are residing separate and apart due to their duty assignments, their quarters allowance entitlements should be determined on an individual basis. Since each member has children of his or her own from previous relationships, when the members are living separately, they must provide separate sets of quarters, that is assuming that all the children do not live with one member. In such circumstances each is entitled to a quarters allowance at the with-dependents rate. This is the case whether each member's children are in the member's custody or in the custody of another. However, in the latter case, the member must be providing the required child support payments. In the case of an illegitimate child, the member-father must have been judicially decreed to be the father of the child or judicially ordered to contribute to the child's support. 37 U.S.C. § 401. Accordingly, subject to the conditions set out above, questions 1 and 2 are answered, yes.

#### Answer to Question 3

As to question 3, when the members live together as a family unit, at the same or adjacent duty stations,

they only need provide one set of quarters for the family unit and their quarters allowance entitlement is determined accordingly. That is, only one member may receive the quarters allowance at the with-dependents rate based on the single class of dependents (children) whether all, some, or none of the children reside with the members.

In Matter of Dependency Determination, 60 Comp. Gen. 399 (1981), a member married to another member was held to be entitled to a basic allowance for quarters at the "with-dependents rate" on account of her child of a previous marriage, even though she was then married to a member also receiving a with-dependents quarters allowance on behalf of his children. Such dual with-dependents rate entitlements are proper when the two member-spouses live separate and apart due to the location of their duty assignments. To the extent that Matter of Dependency Determination may be read to mean that two members living in the same household may both be paid a "with-dependents rate" basic allowance for quarters on account of their dependent children born to previous relationships, the holding in that decision is hereby modified.

#### Answer to Question 4

Concerning question 4, if a child of one of the members had not qualified as a dependent prior to that member's marriage to the other member but subsequently met the requirements for a dependent, it would become one of the dependent children. That is, it would join the class of dependent children upon which the member's quarters allowance entitlement is based, as discussed in regard to questions 1, 2, and 3.

#### Authority to Make Dependency Determinations

In addition to the four questions discussed above, the certifying officer also asks whether the Secretary of the service concerned should make dependency determinations under 37 U.S.C. § 403(h) for the enlisted member in cases involving enlisted members married to officers. Under 37 U.S.C. § 403(h) the Secretary concerned may make determinations of "dependency and relationship" for quarters allowance entitlements for enlisted members

only, and such determinations are final and not subject to review by "any accounting officer of the United States or a court, unless there is fraud or gross negligence." Thus, we are precluded from reviewing such determinations in most cases. However, as the certifying officer recognizes, we are not precluded from reviewing similar determinations regarding officers' dependents, and we also do render decisions determining the status of enlisted members' dependents when we are requested to do so by the services. See, for example, Matter of Ranazzi, B-195383, November 6, 1979; and Matter of McCoy and Cooper, B-208598, April 15, 1983, 62 Comp. Gen. \_\_\_\_\_. In the interest of uniformly applying the rules to officers and enlisted members, particularly in cases such as the present case where an officer is married to an enlisted member, it seems appropriate to forward doubtful cases to us for advance decision.

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