

**DECISION**



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

27508

**FILE:** B-214017

**DATE:** February 23, 1984

**MATTER OF:** Major Ora J. Williams, USA

**DIGEST:**

An Army officer claims basic allowance for quarters and variable housing allowance at the with-dependents rates on account of her adopted son during the probationary pre-adoption period (prior to the court's entry of a final adoption order), as the child resided in her household during that time. She is not entitled to the allowances claimed because under the controlling state (Alabama) adoption statutes, a legal adoption had not been effected during that period.

This action responds to a request for an advance decision as to whether a voucher for basic allowance for quarters and variable housing allowance at the with-dependents rates may be paid to an Army officer on account of her adopted child during the probationary or pre-adoption period of the adoption procedure.<sup>1</sup> We conclude that the member is not entitled to payment as claimed because during the period covered by the claim, the child was not her dependent as defined in the statutes that authorize an increased basic allowance for quarters and variable housing allowance on account of dependents.<sup>2</sup>

On November 15, 1982, a petition for the adoption of a minor child by Major Ora J. Williams was filed in the Probate Court of Tuscaloosa County, Alabama. On December 9, 1982, that Court issued an interlocutory order, by which Major Williams' petition for adoption was conditionally granted. That order also provided that, barring the

---

<sup>1</sup>The request for advance decision was submitted by Major Patrick T. Shine, Finance and Accounting Officer, Fort Leavenworth, Kansas. The request was approved by the Department of Defense Military Pay and Allowance Committee and assigned control number DO-A-1430.

<sup>2</sup>Since the accompanying voucher may not be certified for payment, it will be retained in this Office.

028106

showing of just cause to the contrary, the adoption "shall be made final" after the expiration of 6 months from the date of the interlocutory order, and the child "be adopted" by Major Williams. During the interim period, the child resided in Major Williams' home. The final decree of adoption was issued by the Probate Court of Tuscaloosa County, Alabama, on June 17, 1983, by which the child was decreed to be "legally adopted" by Major Williams, and "to all legal intents and purposes" her child.

Major Williams claims quarters allowances at the with-dependents rates for the period between the filing of her petition for adoption and the issuance of the final order.

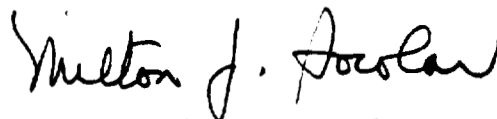
Basic allowance for quarters and variable housing allowances are authorized by chapter 7 of title 37, United States Code. For purposes of payment of allowances authorized by this chapter, a member's dependent is defined to include the member's unmarried adopted child who is in fact dependent on the member. 37 U.S.C. § 401(2). In order for a member to be entitled to dependency benefits on account of an adopted child, a legal adoption must have been accomplished so that, under the applicable state statutes, the child was for all intents and purposes the child of the adopting member during the entire period for which the benefits are claimed. Matter of Tyahur and Okey, 60 Comp. Gen. 170 (1981); 52 Comp. Gen. 675 (1973).

The question as to whether, during the period of probationary or pre-adoption residence, a member's adopted child may be considered a dependent as defined in 37 U.S.C. § 401(2) is determined by the provisions of the adoption laws of the state having jurisdiction over the adoption proceedings. 30 Comp. Gen. 210 (1950). Thus, where an adoption is governed by state laws which provide that upon the entry of an interlocutory order of adoption, the adoptee shall be legally the child of the adoptive parent(s) unless and until the interlocutory order is revoked, we have held that a member is eligible to receive dependent allowances on account of the adoptee from the date of the interlocutory order. In such instances the adoption is then complete, although temporarily subject to revocation. See 44 Comp. Gen. 417 (1965), and 52 Comp. Gen. 675 (1973). In other cases where the applicable adoption laws provide that the adoption is final and the adoptee is legally the child of

the adoptive parents only after the entry of the final order of adoption, an adoptee may not be considered a member's dependent under 37 U.S.C. § 401(2) prior to the effective date of the final order. See Matter of Douglas, B-209495, April 22, 1983; and 37 Comp. Gen. 451, 454-455 (1958) (Question 4).

In this case the Alabama State Department of Pensions and Security investigated the placement of the child in Major Williams' custody and consented to the adoption. Both the interlocutory order and the final order of adoption were issued by the Probate Court of Tuscaloosa County, Alabama. Thus, it appears that it is Alabama law which is applicable in this case. Under the laws of Alabama, upon approval by the appropriate court of a petition to adopt, an interlocutory order is issued, and the adoptive child is placed in the home of the prospective parent or parents for a 6-month probationary period. After the expiration of this period, upon entry by the court of a final order of adoption, the adoptive child then becomes, to all intents and purposes, the child of the petitioner(s), and not until then. Code of Alabama, §§ 26-10-4, 26-10-5(b) (1975); and Rivers v. Rivers, 200 So. 764 (Ala. 1941).

Since the law of Alabama which governs the adoption in this case provides that a legal adoption is effected when the final order is entered, under the definition of the term "dependent" as used in the statute which authorizes the claimed allowances, the child was not Major Williams' dependent during the period of her claim because the final order had not yet been entered. Accordingly, she is not entitled to basic allowance for quarters or variable housing allowance at the with-dependents rates during the period covered by this claim.



Acting Comptroller General  
of the United States