

**DECISION**



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

**FILE:** B-216022  
B-215284

**DATE:** December 3, 1984

**MATTER OF:** Sergeants Mason and Smith

**DIGEST:**

Where two military members are divorced, or legally separated, the children of the marriage are in the legal custody of a third party, and each member is required to pay child support to the third party, only one of the members may receive the increased basic allowance for quarters ("with-dependent" rate) based upon these common dependents. If the members are unable to agree as to which should claim the children as dependents, the parent providing the greater or chief support should receive the increased allowance, unless both members provide the same amount of support, in which case the senior member should receive the increased allowance.

This action responds to questions concerning the entitlement to basic allowance for quarters at the "with-dependent" rate of Staff Sergeant Kathleen Smith, USAF, and Staff Sergeant Bradley Smith, USAF, based on their dependent children, and Staff Sergeant Mary A. Mason, USAF, and Sergeant James E. Mason, Jr., USAF, based on their dependent children.<sup>1/</sup> The matter involves the situation where two service members having been married to each other, are separated or divorced, and their dependent children are in the legal custody of a third party to whom the members must pay child support.

---

<sup>1/</sup> The questions concerning the Smiths were submitted by the Accounting and Finance Officer, 354th Tactical Fighter Wing, Myrtle Beach Air Force Base, South Carolina, and the questions concerning the Masons were submitted by the Accounting and Finance Officer, United States Air Force Academy, Colorado. Since they involve similar questions, the two separate requests were approved and consolidated by the Department of Defense Military Pay and Allowance Committee and assigned control number DO-AF-1441.

We find that since the children of each couple are one class of dependents, only one parent may claim the children of each couple for purposes of entitlement to basic allowance for quarters at the "with-dependent" rate. Absent an agreement between the parents, the increased "with-dependent" allowance should go to the member providing greater support. If the support payments are the same, the increased allowance should go to the senior member.

#### Background Facts--Smith

Staff Sergeant Kathleen Smith is legally divorced from Staff Sergeant Bradley Smith. Two children were born of their marriage. The divorce decree, issued April 4, 1983, requires both members to pay child support to the paternal grandparents, who have legal custody of the children. Bradley Smith was ordered to pay \$150 per month, Kathleen Smith, \$100 per month. Bradley had been receiving basic allowance for quarters at the "with-dependent" or increased allowance rate, and Kathleen at the "without-dependent" rate. As a result of the divorce and the decree, Kathleen has requested that she be paid at the "with-dependent" or increased allowance rate, since she is also a non-custodial parent required to pay child support. Both members are at the same pay grade (E-5) and cannot agree upon who should receive the quarters allowance at the increased rate.

#### Background Facts--Mason

Staff Sergeant Mary A. Mason and Sergeant James E. Mason, Jr. were married members residing with the two dependent children of their marriage in military family housing. The two members separated and filed a legal separation agreement dated January 23, 1984. The agreement gives custody of both children to their paternal grandmother, Mrs. Betty H. Mason. It also requires each member to pay \$200 per month to Mrs. Mason for child support which both members are doing by allotments from their pay.

Mary Mason terminated use of Government quarters on January 11, 1984, and was authorized to reside in off-base housing and to receive basic allowance for quarters at the "without-dependent" rate. After providing additional information, apparently concerning her child support obligation, she was authorized basic allowance for quarters at the "with-dependent," or increased allowance rate. However, due to James Mason's claim for the increased allowance also, Mary Mason's quarters allowance rate was reduced pending our decision on the matter.

B-216022  
B-215284

James Mason is currently residing in Government single quarters, and he is receiving only the partial rate quarters allowance payable to a member in such circumstances.

#### Discussion

If adequate Government quarters are not provided for the dependents of a member of the uniformed services entitled to basic pay, that member is entitled to an increased basic allowance for quarters, based upon his or her dependents. 37 U.S.C. § 403 (1982). The purpose of the increased allowance is to reimburse the member for part of the expense of providing private quarters for his or her dependents. 60 Comp. Gen. 399 (1981). See also, Airman Donna L. McCoy and Sergeant Marty L. Cooper, 62 Comp. Gen. 315 (1983). As the Air Force has pointed out in its submission, the implementing regulations in the Department of Defense Military Pay and Allowances Entitlements Manual do not address which member is entitled to basic allowance for quarters at the "with-dependent" or increased allowance rate, when neither member has custody, yet both are required to pay child support equal to or greater than the difference between the "with-dependent" rate and the "without-dependent" rate.

When two members are married to each other and have one or more children born of their marriage, only one member is entitled to an increased basic allowance for quarters based on their common dependents, even though one of the members may already receive an increased allowance on behalf of dependents acquired prior to the present marriage. McCoy and Cooper, 62 Comp. Gen. at 317; Chief Warrant Officer Ronald G. Hull and Petty Officer Doris H. Hull, 62 Comp. Gen. 666 (1983); and 54 Comp. Gen. 665 (1975).

If the two members subsequently divorce, generally only one of the members may receive the increased quarters allowance for their common dependents. For example, the regulations provide that, when a non-custodial member supports the common dependents, the member paying the court-ordered support is entitled to claim the increased quarters allowance for the common dependents. See Department of Defense Military Pay and Allowances Entitlements Manual (DOD Pay Manual) para. 30236a; and McCoy and Cooper, 62 Comp. Gen. at 317. The rules in the DOD Pay Manual are based on the assumption that the non-custodial member is providing support pursuant to a legal obligation to common dependents not residing with him or her. In addition, the amounts being paid must be in excess of the difference

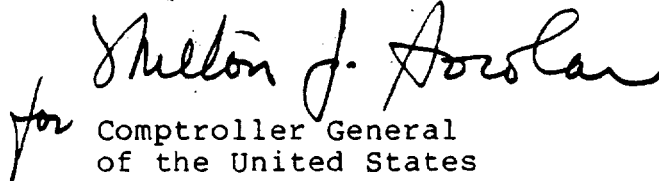
B-216022  
B-215284

between the quarters allowance at the "with-dependent" rate and at the "without-dependent" rate. DOD Pay Manual para. 30236.

Whether or not the allowance may be paid to both members depends upon whether the dependents are common dependents and are living in one household. When there are separate dependents or classes of dependents, each member may be allowed an increased allowance for his or her dependents. For example, in McCoy and Cooper, 62 Comp. Gen. 315, supra, each member was allowed to receive the increased allowance when each member had custody and support of one or more of the children born of the marriage and no support was to be paid by the other member. In that case, the members had, in essence, set up two families, two separate households and legally divided the common dependents.

In the present cases, neither member-parent has custody of the children, and both are required to pay child support. The dependents are in a common household in the custody of a third person. Thus, only one of the members may receive the increased allowance based upon their common dependents.

The question of who should receive the "with-dependent" allowance should be decided between the members. If necessary, the members may seek to have the child support payments adjusted accordingly. However, when the members cannot agree between them, we suggest that as in the case with illegitimate children (DOD Pay Manual para. 30238(d)), the parent "providing the chief support," or the majority of support, receive the increased allowance. In situations where the members pay equal amounts, and cannot agree, the increased allowance should, as is the general rule, go to the senior member (DOD Pay Manual para. 30232(a)). Thus, in the Smith case, Bradley is entitled to the quarters allowance at the "with-dependent" rate since he is providing the chief support. In the Mason case since they are both providing the same amount of support, the quarters allowance at the "with-dependent" rate should be paid to the senior member as determined by the service.

  
for Comptroller General  
of the United States