Ms. Jordan - PLM-II

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Transportation Allowances for Children Born After the Effective Date of Orders

File: B-222942

Date: June 1, 1987

DIGEST

There has been recognized only a narrow exception to the general rule that only persons who are a uniformed service member's dependents on the effective date of his change-of-station order are entitled to transportation to the new station at government expense. This exception applies to children who are unborn on the effective date of the order where the mother's travel is delayed by service regulations prohibiting her travel due to her advanced pregnancy. Upon further consideration and in accordance with a broader exception authorized civilian employees, no objection is raised to a proposed amendment to the uniformed services regulations to include as a dependent, for transportation allowance purposes, infants born after the effective date of orders because their mothers' travel was delayed for any official reason. 50 Comp. Gen. 220 is modified accordingly.

DECISION

This is in response to a request from the Per Diem, Travel and Transportation Allowance Committee for our opinion concerning a proposed amendment to the travel regulations applicable to members of the uniformed services. The amendment would broaden the definition of dependent for travel purposes to include an infant, unborn as of the effective date of a permanent change-of-station (PCS) order, whose mother's travel to the new duty station is delayed because of any official reason. The proposed change would make the uniformed services travel regulations similar in this regard to the civilian travel regulations. As is explained below, we do not object to the proposed amendment.

BACKGROUND

The statutory provision authorizing payment of the travel expenses to a new duty station of a uniformed service member's dependents is 37 U.S.C. § 406(a)(1) (Supp. IV 1985) which reads in part:

> "(a)(1) * * * a member of a uniformed service who is ordered to make a change of permanent station is entitled to transportation * * * for the member's dependents * * *."

A similar statute, 5 U.S.C. § 5724(a), authorizes payment for the travel costs of a civilian employee's family from one official station to another. It provides in part that:

> "(a) Under such regulations as the President may prescribe * * * the agency shall pay from Government funds--
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> (1) the travel expenses of an employee transferred in the interest of the Government from one official station or agency to another for permanent duty, and the transportation expenses of his immediate family * * *."

At present, the military and civilian travel regulations promulgated under these statutes differ with regard to whether an infant, unborn on the effective date of the travel orders, is an eligible dependent for travel purposes when travel is performed after the infant is born. The uniformed services regulations allow expenses to be paid for an infant, unborn as of the effective date of travel orders, only if the mother's travel to a new duty station is delayed by an agency regulation prohibiting her from traveling because of the advanced stage of her pregnancy.1/ The Federal Travel Regulations (FTR), which implement the civilian statute, authorize the newborn's travel expenses to be paid when the mother's travel is delayed because of the advanced stage of pregnancy, or other reasons acceptable to the agency.2/

In 50 Comp. Gen. 220 (1970), we addressed the question of whether the government may pay transportation expenses of a service member's child en ventra sa mere (conceived but not yet born) on the effective date of a PCS order, who is subsequently born and travels after the effective date of the order. In that case we held that, generally, such a

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1/ Definition of "dependent" in Appendix A, Joint Federal Travel Regulations, Volume 1, which, effective January 1, 1987, superseded Volume 1 of the Joint Travel Regulations, Appendix J of which contained the same definition.

2/ Federal Travel Regulations, para. 2-4.4d(1)(b) (Supp. 4, Aug. 23, 1982).

child may not be considered a dependent under 37 U.S.C. § 406, because the statute had been long considered to apply only to such persons as are dependent upon the member on the effective date of the orders. Thus, it was held that a child born after the effective date of travel orders, but prior to its mother's relocation to the new installation, generally would not qualify. The only exception allowed was in cases where the mother's delay in travel was due to departmental regulations prohibiting her from traveling at government expense because of her advanced stage of pregnancy. This exception was incorporated into the regulations effective in June 1971.

Subsequently, in a decision denying payment of the travel of a civilian employee's newborn child, we noted the civilian regulations made no provision for such children born after the effective date of the travel order. We there suggested that the regulations be amended to authorize an exception to civilian employees' unborn children similar to the exception made for military members. B-191230, April 24, 1978.

The General Services Administration (GSA) subsequently amended the Federal Travel Regulations to permit agencies to pay the travel expenses of an employee's child born after the effective date of a transfer "when the travel of the employee's expectant spouse is prevented at the time of the transfer because of the advanced stage of pregnancy or other reasons acceptable to the agency concerned, e.g., awaiting completion of the school year by other children." Although it is broader than our initial suggested amendment, we have not objected to the GSA language.

The Per Diem Committee now requests that we authorize an amendment to the uniformed services' regulations to permit payment of a newborn's transportation in these cases for any official reason, such as limited availability of housing, not limited to the mother's advanced stage of pregnancy. The Committee notes that this would be similar to the amendment incorporated by GSA in the current FTR.

Based on the similarity of the language in the civilian and military authorizing statutes, we do not feel required to make a distinction between military and civilian entitlements in this area. In addition, considering the beneficial purpose of the statutes involved and the fact that the child has been conceived although not yet born at the time the orders are effective, we think our previous decision may have been more restrictive than necessary. Thus, it is now our view that the proposed change would serve the purpose of the military dependents' travel allowances, which is to

relieve service members of the burden of personally defraying the expenses of moving dependents between stations when such a move is made necessary by an ordered change of station. See 50 Comp. Gen. 220, supra.

We, therefore, would not object to the proposed amendment. Our decision, 50 Comp. Gen. 220, supra, is modified accordingly.

for Milton J. Socolar
Comptroller General
of the United States