

PLM II

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DECISION



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

[Entitlement to BAQ at With-Dependent Rate]

FILE: B-196840

DATE: August 25, 1980

MATTER OF: Sergeant Harold L. Sandkulla, Jr., USAF *PN*

DIGEST: A military member married to a military member occupies Government quarters with their dependent child. Upon a permanent change of station of the male member, the female member remains in Government quarters with the dependent child. Male member is not provided Government quarters at new station and claims a basic allowance for quarters (BAQ) at the with-dependent rate since he is paying child support to a former non-military spouse not residing in Government quarters with dependent children. The male member is entitled to BAQ at the with-dependent rate since his BAQ entitlement is determined independent of his military spouse where they do not reside in the same household.

In this case a military member married to a military member occupied Government family quarters with their dependent child. The male member also has a child by a previous marriage for whom he pays child support and who is in the custody of the former spouse who is a civilian not occupying Government quarters. The male member upon a permanent change of station vacates Government family quarters. The female member remains in the Government family quarters with their dependent child. The question presented is may the male member be paid basic allowance for quarters (BAQ) at the with-dependent rate based on the dependency of the child of his former marriage. In the circumstances described we find that the male member should be paid BAQ at the with-dependent rate.

The question was presented upon a request for an advance decision from an Air Force Accounting and Finance Officer, 24th Composite Wing, APO Miami, on a claim by Sergeant Harold L. Sandkulla, Jr., assigned submission number DO-AF-1335 by the Department of Defense Military Pay and Allowance Committee, and forwarded here by Headquarters Air Force.

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Under 37 U.S.C. 403 (1976) entitlement to BAQ accrues to every member regardless of sex or grade by virtue of his or her

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status as a member of the uniformed services if quarters are not provided by the Government. 56 Comp. Gen. 46, 48 (1976).

Where a member is married to a member and they are living in the same household, we have determined that if one of the members is receiving BAQ at the with-dependent rate on account of minor children from a previous marriage not residing in the household, a child born of the marriage of the two service members does not authorize the payment of another BAQ at the with-dependent rate, since the child of the present marriage is automatically included in the class of dependents for which one of the members is already receiving BAQ at the with-dependent rate. 54 Comp. Gen. 665, 667 (1975). Both members are not permitted to claim the same dependent to qualify for BAQ at the with-dependent rate and where a member is married and residing with a member only one may draw BAQ at the with-dependent rate even though some dependents may live outside the household and others live within the household. 54 Comp. Gen. 665, supra.

However, as in the present case, where married members are living separate and apart due to their military assignments, though married to each other, BAQ entitlement should be determined on an individual basis. In this case, the female spouse and dependent child occupy Government quarters. Therefore, she is not entitled to BAQ. The male member is living in non-Government quarters and therefore qualifies for BAQ. Since the male member, Sergeant Sandkulla, has a dependent for whom he provides support who is not residing in Government quarters, he is entitled to BAQ at the with-dependent rate.

Accordingly, the Military Pay Order submitted is being returned for payment, if otherwise correct.

Harry D. Jan Cleve
For the Comptroller General
of the United States