

DECISION



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

FILE: B-217948

DATE: September 17, 1984

MATTER OF: Staff Sergeant William D. Payne, USMC

DIGEST:

1. Authority for service members to travel at public expense to serve as escorts for their dependents who are undergoing medical treatment is limited by statute and regulation to the situation of a dependent of a service member stationed outside the United States when the dependent requires medical care not locally available in the overseas area. Hence, a Marine Corps sergeant stationed in the United States may not be allowed reimbursement of his traveling expenses incurred in escorting his son to a hospital for medical treatment.
2. It is a fundamental rule that provisions of travel orders which do not conform to the applicable statutes and regulations are ineffective and cannot create an otherwise unauthorized entitlement to travel allowances. Entries in a Marine Corps sergeant's travel orders are consequently ineffective to the extent they purport to authorize reimbursement of the expense of escorting his son for medical treatment from their residence in Cherry Point, North Carolina, to a hospital in Portsmouth, Virginia, since the governing provisions of statute and regulation do not allow such escort travel to be undertaken at public expense.

The issue presented in this case is whether service members who are stationed in the United States may be allowed reimbursement of their traveling expenses for travel they perform under orders to escort their dependents to

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hospitals for necessary medical treatment.^{1/} We conclude that those expenses are not reimbursable.

Background

In November 1984 Staff Sergeant William D. Payne, USMC, was stationed at Marine Corps Air Station, Cherry Point, North Carolina. Navy medical officers determined that his infant son should be admitted to the Naval Hospital at Portsmouth, Virginia, that month for necessary surgery. They recommended that Sergeant Payne escort his son to and from Portsmouth and remain immediately available there throughout the period of his son's hospitalization. On the basis of this recommendation, Sergeant Payne's commanding officer at Cherry Point executed written orders directing him to proceed to Portsmouth, Virginia, to act as an escort for his son. Entries in the orders indicated that travel would be at Government rather than personal expense.

In compliance with these orders Sergeant Payne traveled from Cherry Point to Portsmouth with his son on November 13, 1984. He remained in Portsmouth until his son was released from the hospital on November 29, and they then returned to Cherry Point. Sergeant Payne subsequently submitted a travel voucher to his disbursing office for reimbursement of his transportation and subsistence expenses between November 13 and 29.

In requesting a decision on the propriety of making payment on Sergeant Payne's travel voucher, the concerned disbursing officer questions whether he qualifies for reimbursement under paragraph M6400, Volume 1 of the Joint Travel Regulations, which prescribes circumstances in which travel allowances may be paid to persons acting as escorts or attendants for service members' dependents. In that connection, the disbursing officer observes that casualty

^{1/} This action is in response to a request from the Disbursing Officer, Marine Corps Air Station, Cherry Point, North Carolina, for an advance decision on the propriety of issuing payment on a travel voucher submitted by Staff Sergeant William D. Payne, USMC, 441-66-4118. The request was forwarded here by the Per Diem, Travel and Transportation Allowance Committee after it was assigned PDTATAC Control No. 85-7.

assistance procedures prescribed by regulation appear to have been used as the basis for the orders in this case. The disbursing officer also refers to CHAMPUS, that is, the Civilian Health and Medical Program of the Uniformed Services, and asks if that program might have any effect on Sergeant Payne's claim. In addition, if it is concluded that payment of the travel expenses at issue is not authorized by the applicable statutes and regulations, the disbursing officer questions whether payment might nevertheless be allowed on the basis of the entries in Sergeant Payne's orders indicating that expenses would be reimbursed.

Joint Travel Regulations

Paragraph M6400, Volume 1 of the Joint Travel Regulations, provides that transportation and travel allowances may be paid for travel performed under competent orders to persons who serve--

- "1. as escorts for dependents of members of the Uniformed Services if the travel is performed not later than one year after the member dies, is missing, is injured * * * or is otherwise unable to accompany his dependents;
- "2. as attendants for dependents who are accompanying a member stationed outside the United States when the dependents are authorized transportation to or from a medical facility for required medical attention which is not available in their locality * * *."

Subparagraph 1 is predicated on the governing provisions of statute contained in section 1036 of title 10, United States Code, as added by Public Law 86-160, approved August 14, 1959, 73 Stat. 358. Through the enactment of Public Law 86-160, Congress intended to authorize travel allowances for escorts "(o)n rare occasions [when] dependents must be moved from one location to another in circumstances where they require accompaniment but their military

sponsor or parent is unable to accompany them."^{2/} In submitting the proposed legislation to the Congress in 1958, the Acting Secretary of Defense did not describe every circumstance in which it was envisioned that escorts might be needed, but indicated generally that the proposal was designed to assist primarily in the permanent relocation of the dependents of a service member in the event of the member's death or placement in a missing status.^{3/}

Subparagraph 2 of the quoted regulations implements section 1040 of title 10, United States Code, as derived from Public Law 89-140, approved August 28, 1965, 79 Stat. 579. By the enactment of Public Law 89-140, Congress intended to authorize transportation at Government expense for dependents accompanying service members stationed outside the United States, when the dependents required medical care not locally available, and to allow reimbursement of travel and transportation expenses of necessary attendants.^{4/}

Our view is that these provisions of statute and regulation contain no authority for the travel of Sergeant Payne at public expense in the circumstances presented. In particular, while 10 U.S.C. § 1040 and subparagraph M6400-2 of the Joint Travel Regulations now authorize reimbursement of expenses for the escorts of service members' dependents who require transportation for medical reasons, that authority is limited to cases of dependents residing with military sponsors stationed outside the United States and does not extend to circumstances such as those presented here involving service members stationed in the United States. Moreover, it does not appear that payment of travel expenses may otherwise be allowed in this case under 10 U.S.C. § 1036 and subparagraph M6400-1 of the Joint Travel Regulations, which

^{2/} See S. Rep. No. 581, 86th Cong., 2d Sess., reprinted in 1959 U.S. Code Cong. and Ad. News 2116.

^{3/} S. Rep. No. 581, supra.

^{4/} See S. Rep. No. 585, 89th Cong., 2d Sess., reprinted in 1965 U.S. Code Cong. and Ad. News 2864. Prior to the enactment of Public Law 89-140 in 1965, the travel of such attendants was held to be a matter of personal rather than public business, and reimbursement of expenses was not authorized. Compare 47 Comp. Gen. 743 (1968) with 39 Comp. Gen. 495 (1960).

provide limited authority for the payment of escorts' expenses in cases involving service members who die, suffer injury, are placed in a missing status, or are otherwise unable to accompany their dependents. Since Sergeant Payne was able to accompany his dependent, and did so, this statutory provision does not provide authority to pay the travel expenses claimed.

Civilian Health and Medical Program
of the Uniformed Services

Provisions of statute governing the Civilian Health and Medical Program of the Uniformed Services, or CHAMPUS, are codified in chapter 55 of title 10, United States Code (10 U.S.C. §§ 1071-1093). CHAMPUS is designed generally as a uniform program of medical and dental care for active duty and retired service members, and for their dependents. 10 U.S.C. § 1071. The benefits enumerated under CHAMPUS do not include provision for reimbursement of the traveling expenses of escorts for dependents, and consequently it is our view that CHAMPUS contains no authority for the payment of Sergeant Payne's claim.^{5/}

Travel Orders

As indicated, Sergeant Payne's orders purport to authorize reimbursement of his travel expenses. Nevertheless, the rule is fundamental that provisions of travel orders which do not conform to the applicable statutes and regulations are ineffective and cannot create an otherwise unauthorized entitlement to travel allowances.^{6/} Hence, we conclude that the entries in Sergeant Payne's orders relating to reimbursement of expenses are ineffective, and that his orders are otherwise to be considered of a permissive nature as contemplated by paragraph M6453 of the Joint Travel Regulations.^{7/}

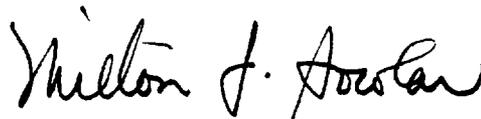
^{5/} Compare 47 Comp. Gen. 743, supra, at page 746; and 39 Comp. Gen. 495, supra; to the same effect concerning the medical and dental care benefits authorized for dependents under 10 U.S.C. §§ 1071 and 1076 (1958 ed.).

^{6/} See, e.g., Warrant Officer John W. Snapp, USMC, 63 Comp. Gen. 4, 7 (1983).

^{7/} See 39 Comp. Gen. 495, supra, at page 498.

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The questions presented are answered accordingly. The voucher, which may not be approved for payment, will be retained here.

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General
of the United States