



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

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B-178966

January 10, 1974

The Honorable  
The Secretary of Defense

Dear Mr. Secretary:

Reference is made to a letter dated October 24, 1973, from the Assistant Secretary of Defense (Comptroller), requesting an advance decision on several questions concerning whether a grandchild qualifies as a dependant child under the Survivor Benefit Plan, 10 U.S.C. 1447-1455, as added by Public Law 92-425. A copy of the Department of Defense Military Pay and Allowance Committee Action No. 493 setting forth and discussing the questions was attached.

The questions posed in the Committee Action are as follows:

"A member and his wife, by court order, have care and custody of a 10-year old dependent grandchild. The court order does not stipulate that support be paid for the care of the child.

"a. Does the grandchild qualify as a dependent child under the Survivor Benefit Plan?

"b. If the answer to the above question is in the affirmative would it be the same if the court order stipulates an amount of support to be paid?"

As background the Committee Action states that 10 U.S.C. 1447(5) and Section 1021 of Department of Defense Regulations for the Survivor Benefit Plan, define dependent child as including adopted children, stepchildren, foster children and recognized natural children who lived with the retiree in a regular parent-child relationship. The Committee also states its belief that since Congress included foster child in the definition of dependant child, there appears to be sufficient latitude to permit [recognition of ~~the~~ grandchild as a dependant] for the purposes of the Survivor Benefit Plan.

Subsection 1447(5), title 10, United States Code, provides that a "dependent child" means a person who is—

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"(A) unmarried;

"(B) (i) under 18 years of age; (ii) at least 18, but under 22, years of age and pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution; or (iii) incapable of supporting himself because of a mental or physical incapacity existing before his eighteenth birthday or incurred on or after that birthday, but before his twenty-second birthday, while pursuing such a full-time course of study or training; and

"(C) the child of a person to whom the Plan applies, including (i) an adopted child, and (ii) a stepchild, foster child, or recognized natural child who lived with that person in a regular parent-child relationship."

The subsection concludes by listing certain requirements for a foster child to qualify for the Plan:

"\* \* \* Under this clause, a foster child, to qualify as the dependent child of a person to whom the Plan applies, must, at the time of the death of that person, also reside with, and receive over one-half of his support from, that person, and not be cared for under a social agency contract. The temporary absence of a foster child from the residence of that person, while he is a student as described in this clause, will not be considered to affect the residence of such foster child."

The definitions of "foster child," and "foster parent" in the cases and law dictionaries tend to be broad and all-encompassing. For example, Ballentine's Law Dictionary (3 ed. 1969) defines "foster child" as "the child of another who is being reared by a person as his or her own." Case law generally defines a "foster parent" as "one who has performed the duties of a parent to the child of another by rearing the child as his own child." People v. Parrin, 267 N.E.2d 39, 42 (1971); Cicchino v. Diaroky, 61 A.2d 163, 165 (1948).

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By the facts stated, a member and his wife, by court order, have care and custody of a 10-year old dependent grandchild. This situation would appear to fall within the above definitions of "foster child" and "foster parent" and would result in the appropriate parent-child relationship described in the submission.

As to the requirements listed in 10 U.S.C. 1447(5) as they relate to the concept of a "foster child", which must be satisfied before a foster child can qualify as a dependent child, we expressed the view in our decision B-178966, December 6, 1973 (53 Comp. Gen. \_\_\_), that actual dependency must be shown in such cases. Thus, in situations where a grandchild resides with a member to whom the Plan applies, under a court order which does not stipulate that support be paid for the care of the child, it is our view that such dependency is shown and that the child would qualify as the dependent child of the member under the Plan. Accordingly, your first question is answered in the affirmative, subject to the general limitations on dependency contained in 10 U.S.C. 1447(5)(A) and (E).

As to the second question, the statute requires that in order for a foster child to qualify as a dependent child under the law, the child must at the time of the member's death receive over one-half of his support from the member. Therefore, if a court orders an amount of support to be paid, this amount would have to be compared with a dollar amount placed on the total support given by the foster parents to the foster child, which would include housing, clothing, food, educational and other costs.

Your second question is answered by saying that should the amount of support ordered by the court exceed one-half of the total cost of the foster parent's support of the foster child, the foster child would not qualify as a dependent child under the Survivor Benefit Plan.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General  
of the United States