

DOCUMENT RESUME

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[Transportation Expenses of Minor Children]. B-187241. July 5, 1977. 6 pp.

Decision re: John C. Raynor; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Forest Service.

Authority: 5 U.S.C. 5728. 48 Comp. Gen. 457. 52 Comp. Gen. 878. F.T.R. (FPMR 101-7), subpara. 2-1.5h. F.T.R. (FPMR 101-7), subpara. 2-1.4d. Executive Order 11609. 36 Fed. Reg. 13747. Crossfield v. Phoenix Insurance Co., 187 A. 2d 20 (1962). Cal-Farm Insurance Co. v. Boisseranc, 312 P. 2d 401 (1957).

Orris C. Huet, Authorized Certifying Officer, Department of Agriculture, requested a decision on travel expenses of divorced employee's minor children who reside with mother 11 months of year and who visit father for one month. The claim was disallowed since the time the children lived with claimant was of insufficient duration to warrant determination they were "members of employee's household." (Author/DJM)

B-187241

the geographical locations, the employee and children are often together and plans are for the children to live in the employee's home for approximately one month during the summer. Under the divorce decree the employee is financially responsible for the support of the children, and the employee and his former spouse have joint custody of the minor children with the mother having physical custody. The employee is claiming reimbursement of \$555.30 air fare for the minor children from Juneau to Seattle and return.

Title 5, section 5728, United States Code, provides, in pertinent part, as follows:

"(a) Under such regulations as the President may prescribe, an agency shall pay from its appropriations the expenses of round-trip travel of an employee, and the transportation of his immediate family, but not household goods, from his post of duty outside the continental United States to the place of his actual residence at the time of appointment or transfer to the post of duty, after he has satisfactorily completed an agreed period of service outside the continental United States and is returning to his actual place of residence to take leave before serving another tour of duty at the same or another post of duty outside the continental United States under a new written agreement made before departing from the post of duty."

The authority of the President to prescribe the aforementioned regulations has been delegated to the Administrator of General Services under section 1(9) of Executive Order No. 11609, July 22, 1971, 36 Federal Register 13747. Such regulations are contained in the Federal Travel Regulations (FPMR 101-7) (May 1973) and subparagraph 2-1.5h provides, in part, as follows:

"(2) Allowable travel and transportation.

"(a) Destination. An eligible employee and his immediate family shall be . . .

B-187241

allowed expenses for travel from his post of duty outside the conterminous United States to his place of actual residence at the time of assignment to a post of duty outside the conterminous United States (referred to as 'actual residence' in 2-1.5h). Those expenses shall also be allowed from the place of actual residence upon return to the same or another post of duty outside the conterminous United States."

Subparagraph 2-1.4d defines "immediate family" as follows:

"Immediate family. Any of the following named members of the employee's household at the time he reports for duty at his new permanent duty station or performs authorized or approved overseas tour renewal agreement travel or separation travel: spouse, children (including step-children and adopted children) unmarried and under 21 years of age or physically or mentally incapable of supporting themselves regardless of age, or dependent parents of the employee and of the employee's spouse."

Based upon the foregoing, the certifying officer asks that since the employee furnishes virtually all of the total support and has joint custody of his minor children, can the definition of "immediate family" be construed to include the children as members of his household, thereby authorizing certification of their transportation expenses between Juneau and Seattle.

In our decision 52 Comp. Gen. 878 (1973), with respect to the concept of joint legal custody of the children of divorced parents, we stated:

"In recent years a new and innovative concept has emerged in

B-187241

awarding custody of a child upon separation or divorce of the parents. The essence of the concept is joint legal custody of the child and joint resolution of all custodial issues. This concept, based as it is on the agreement of the parents, is entirely different from conventional exclusive and divided or partial custody. Under the joint custody arrangement, upon separation or divorce, the parents agree that neither of them shall have an exclusive right to custody and that the best interest of the child is paramount. They accept the responsibility to mutually agree on all facets of the child's upbringing such as where the child is to live, with whom and for what duration. Should an impasse develop the parents agree to arbitrate the question. This flexible approach concerning the difficult question of child custody has found acceptance in many courts which have increasingly begun to award joint custody. Kubie, Provisions for the Care of Children of Divorced Parents: A New Legal Instrument, 73 Yale L.J. 1197 (1964).

"Inasmuch as both divorced or separated parents remain in the same legal relationship to the child with respect to custody as before the divorce or separation, a question is raised as to whether entitlement of an employee-parent, with joint custody of a child, to allowances and other benefits under Government regulations would also remain unchanged. * * *"

We recognize that in modern divorce proceedings, as here, the employee-father, should, wherever possible, share in the

legal custody and upbringing of a child or children of the marriage. Further, it is noted that the welfare of the minor children being of utmost importance, and particularly where the children are attending school, it is not always feasible for them to spend an equal amount of time in the households of both the mother and the father. However, in order for an individual to be covered by the definition of "immediate family" as it appears in the regulations and consequently entitled to the transportation allowance being claimed, it is necessary for that person to be one of the named individuals and a member of the household of the employee.

With respect to the term "household," such term is not defined in the regulations. We have stated that the term is one of uncertain meaning and that persons may be members of the same household even though they are not living under the same roof. 48 Comp. Gen. 457 (1969). See also Crossfield v. Phoenix Insurance Co., 187 A. 2d 20 (1962); Mazzilli v. Accident & Casualty Insurance Co. of Winterthur, Switzerland, 170 A. 2d 800 (1961).

A case involving similar facts and circumstances as the one under consideration is Cal-Farm Insurance Co. v. Boisseranc, 312 P. 2d 401 (1957). In Cal-Farm, at the time the insurance policy was purchased, the family was together. Subsequently the father and mother separated and two of their children lived with the mother. Pursuant to a modification of an interlocutory divorce decree, both parents were awarded joint custody of the son with the stipulation that his "physical residence" would be with the mother and that the father would have visitation rights at all reasonable times, including visits by the son at the father's home. The record showed that the son spent approximately three-fourths of his time with the father. In holding that the son was a resident of his father's household and therefore was an insured within the meaning of the insurance policy, the court stated that the terms of the custody decree were not controlling as a matter of law. It was further stated that even if such decree had given full custody and control of the son to the mother without a right of visitation in the father and if the son had spent all of his time with his father, he would be deemed to be a member of the father's household.

However, the facts in this case show that the children actually reside with their mother approximately 11 months of

B-187241

each year and although the employee has joint custody of said children, rather than a permissive right to visit the minors, plans for them to visit at his residence in Juneau for one month during the summer, and is financially responsible for the support of his children, the period of time during which they actually live with the claimant is not of sufficient duration to warrant a determination that the children are in fact "members of the employee's household." Cal-Farm case, supra; 52 Comp. Gen. 878 (1973); and B-129962, November 26, 1974, and January 4, 1957.

Accordingly, the claimant's three children may not be considered as part of his immediate family for the purpose of authorizing reimbursement of their air fare from Juneau to Seattle and return in connection with renewal agreement travel by the employee. The voucher may not be certified for payment.


Deputy Comptroller General
of the United States