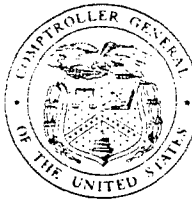


**DECISION**



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

FILE: B-196727

DATE: May 20, 1980

MATTER OF: Captain Rodney H. Bowman

- DIGEST:
1. A service member has two stepchildren who are authorized concurrent travel and accompany him on his permanent change-of-station assignment, and he claims ~~entitlement~~ to reimbursement for ~~cost of their~~ transportation and a temporary lodging allowance. Pursuant to service regulations authorized by 37 U.S.C. 401, 405 and 406, in order for stepchildren to qualify as his in fact dependents, he must show substantial support which is defined as being not less than 30 percent of the total cost of support, regardless of value of items which make up that total so long as they are reasonable.
  
  2. Support payments received by a stepchild from its natural parent are considered as income for the purpose of establishing dependency for travel and transportation allowance entitlements of a stepparent member claimed on the stepchild's behalf. Thus, the support payments are appropriate offsets from the total support costs incurred for the purpose of determining whether the stepparent member has satisfied the substantial support requirement of the regulations, regardless of whether such income is actually expended for that purpose. See cases cited.

DLG 04680

This action is in response to a request for advance decision from the United States Army Finance and Accounting Office, Japan, on the question as to whether the stepchildren of Captain Rodney H. Bowman, USA, qualify as his dependents for transportation and temporary lodging allowance purposes incident to his permanent change-of-station assignment in 1979. This matter has been assigned Control No. 79-35 by the Per Diem, Travel and Transportation Allowance Committee.

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The record shows that Captain Bowman was given a permanent change-of-station assignment from the United States to Camp Zama, Japan, and was authorized concurrent travel of his wife and two stepchildren. After arriving at his duty station in Japan, he filed claim for reimbursement for the cost of transportation of dependents and for a Temporary Lodging Allowance (TLA). The claim as it relates to the two stepchildren was not allowed administratively because doubt exists as to whether the children qualify as Captain Bowman's dependents as outlined in Army Regulations (AR) 37-104-3 and 37-106.

The enclosures with the submission indicate that the natural father of the two children provides \$250 a month for the support of each child. Captain Bowman claims that the total support cost incurred by him for each of the children is \$310.50. Of that amount, \$137.50 is listed as being the housing cost per child. He derives this figure by dividing an estimated monthly fair market value rent for the Government quarters he occupies, by the number of occupants (4).

Doubt is expressed as to the propriety of using such a standard for this purpose. The Finance and Accounting Office states that Captain Bowman's housing is Government housing and is in lieu of his otherwise proper entitlement to a basic allowance for quarters in the amount of \$286.20. It is suggested that it is this cost which is to be divided by 4 in order to establish the housing value for dependency purposes.

Section 406(a) of title 37, United States Code, provides that a member ordered to make a change of permanent station is entitled to transportation for dependents. TLA is authorized pursuant to 37 U.S.C. 405 (1976). Section 401 of the same title defines dependent for the purposes of sections 405 and 406 as including stepchildren, if they are "in fact dependent on the member." Regulations promulgated under that authority are contained in Volume 1 of the Joint Travel Regulations (1 JTR).

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In 34 Comp. Gen. 193 (1954), we analyzed the meaning of "in fact dependent" as used in section 102(g) of the Career Compensation Act of 1949--the antecedent of 37 U.S.C. 401--in a situation similar to the present case. We stated therein at pages 194 and 195:

"\* \* \* The words 'in fact dependent' were used to express the intent that a stepchild \* \* \* may be considered a dependent \* \* \* only when it is established that [the child] \* \* \* actually is dependent on the member of the uniformed services for its support, maintenance, and education. \* \* \* The facts that the child may live with the member, that its transportation is necessary incident to the member's change of station, or that the amount contributed by the member improves the living conditions of the child, do not of themselves make the child in fact dependent upon the member. \* \* \* the conclusion appears required, with respect to the statute here involved, that the payments received by the member's wife from a former husband for the \* \* \* stepchild are properly to be regarded as income in determining whether an alleged dependent was, or is, in fact dependent upon the member.

"The statute, however, while no doubt contemplating substantial dependency, does not specify chief support or require that any certain degree of dependency be shown with regard to stepchildren \* \* \*."

See also in this connection, 34 Comp. Gen. 694 (1955) B-124149, December 23, 1955, and B-150452, September 16, 1963.

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Appendix J of the Joint Travel Regulations defines dependents to include stepchildren who are "in fact dependent upon the member." For this purpose, the definition goes on to include the language used in the before-quoted decisions, equating "in fact" dependency with the concept of the member contributing "a substantial portion" of the child's total cost of support.

✓ Based on the foregoing, paragraph 30216(b) of AR 37-104-3 and paragraph 9-65 of AR 37-106 have established that in order for a member to be reimbursed for transportation of a stepchild he must show that he contributes at least 30 percent of the total cost of that support.

The affidavit submitted by the member shows that by including housing based on fair market rental value the financial support required for each child totals \$310.50. Considering the fact that the monthly support income for each child is \$250, even if the amount claimed by Captain Bowman as the total cost of support was viewed as reasonable, we do not believe he has met or exceeded the substantial dependency requirement of the regulations. ✓ Compare B-193161, February 22, 1979. By taking into consideration the amount of each child's independent support income, Captain Bowman has contributed less than 20 percent of the total cost of support for such child. Therefore, it is our view that Captain Bowman's stepchildren do not qualify as his dependents in fact for the purposes of the travel allowances and TLA he claims.

Accordingly, the voucher may not be paid and will be retained here.

*Milton J. Fowler*

For the Comptroller General  
of the United States