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Mrs. StineCOMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20318IN REPLY
REFER TO:

B-198749

June 10, 1980

The Honorable Jesse Helms
United States Senator
Post Office Drawer 23125
Raleigh, North Carolina 27611

Do not make available to public reading room

Dear Senator Helms:

This is in response to your letter of May 2, 1980, regarding the basic allowance for quarters (BAQ) being drawn by single military members for the support of their illegitimate dependent children.

Pursuant to 37 U.S.C. § 403 (1976), a service member entitled to basic pay is also entitled to monthly BAQ if the member is not assigned to Government quarters adequate for himself and his "dependents." Section 401 of title 37, United States Code, defines a member's "dependent" as used in section 403 to include--

"his unmarried child (including any of the following categories of children if such child is in fact dependent on the member: a stepchild; an adopted child; or an illegitimate child whose alleged member-father has been judicially decreed to be the father of the child or judicially ordered to contribute to the child's support, or whose parentage has been admitted in writing by the member) * * *" (Emphasis added.)

Therefore, a member may receive BAQ based on an illegitimate child similarly to receiving it based on a legitimate child if the illegitimate child is, in fact, dependent on the member.

Entitlement to BAQ based on illegitimate children was authorized when section 103, Public Law 93-64, July 9, 1973, 87 Stat. 148, amended 37 U.S.C. § 401 to include illegitimate child in the definition of a dependent. The Department of Defense and the Senate Committee on Armed Services felt that this change was justified citing

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Miller v. Laird, 349 F. Supp. 1037 (D. D.C. 1972). See 93 Cong. Rec. 20899 (1973). The court in Miller held that denial of medical benefits to an illegitimate child of a service member violated the concept of equal protection embodied in the Fifth Amendment to the Constitution of the United States without rational justification.

To prevent abuse, applicable regulations require that dependency of an illegitimate child must be supported by documentary evidence of dependency and must be annually certified by the member. This is in consonance with the understanding of the Conference Committee in considering the change in the law authorizing BAQ on behalf of illegitimate children that the allowance based on illegitimate children would be implemented by the Department of Defense "in such a manner as to prevent abuse." House Conference Report No. 93-361, 93d Cong., 1st Sess. 6 (1973). Determination and approval of dependency or relationship for BAQ entitlement is made by the applicable office as specified in Tables 3-2-1 and 3-2-2 of the Department of Defense Military Pay and Allowances Entitlements Manual. The requirements for paying BAQ based on the dependency of an illegitimate child differ from those for paying BAQ based on a legitimate child in that proof of dependency of a legitimate child is generally not required.

While the law does not require the member to make any additional out-of-pocket contribution to the support of a dependent child (legitimate or illegitimate) to claim it as a dependent, it does require that the illegitimate child be in fact dependent on the member. Further, a single member assigned to single-type Government quarters who claims an illegitimate child in the custody of another for BAQ purposes, must show that the monthly support furnished the child is at least equal to the BAQ at the "with dependents" rate. Also, if the member is not assigned Government quarters, the regulations require that the support furnished must be the greater of: over one-half the child's support, or the difference between the BAQ at the "with" and "without" dependents rates. These requirements appear to be in accord with the law.

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We hope this serves the purpose of your inquiry.

Sincerely yours,

Milton J. Fowler

For The Comptroller General
of the United States