

DOCUMENT RESUME

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Basic Allowance for Quarters for Separated or Divorced Members.  
B-191671. November 27, 1978. 5 pp.

Decision re: Department of Defense; by Robert F. Keller, Deputy  
Comptroller General.

Contact: Office of the General Counsel: Personnel Law Matters  
II.

Authority: 37 U.S.C. 403(b). 37 U.S.C. 403(j). 37 U.S.C. 301.  
Executive Order 11157, as amended. 45 Comp. Gen. 146. 45  
Comp. Gen. 165.

A determination of the Basic Allowance for Quarters entitlements when spouses, who are both members of the uniformed services and have a child, are divorced or separated was requested. The Basic Allowance for Quarters at the with dependent rate is not payable to a member living in adequate single-type Government quarters and paying child support when the estranged or divorced spouse is also a service member and assigned to adequate family-type Government quarters. A member paying child support to a divorced or estranged spouse who is also a member is entitled to a Basic Allowance for Quarters at the without dependent rate only when not assigned to adequate single-type Government quarters if the member with custody of the child is assigned to adequate family-type Government quarters. (Author/SC)

**DECISION**



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

*8434*

**FILE:** B-191671

**DATE:** November 27, 1978

**MATTER OF:** Basic allowance for quarters for separated or divorced members

- DIGEST:**
1. The basic allowance for quarters at the with dependent rate is not payable to a member living in adequate single-type Government quarters and paying child support to an estranged or divorced spouse when that spouse is also a service member and assigned to adequate family-type Government quarters.
  2. A member paying child support to a divorced or estranged spouse who is also a member is entitled to a basic allowance for quarters at the without dependent rate only when not assigned to adequate single-type Government quarters if the member with custody of the child is assigned to adequate family-type Government quarters.

We have for consideration the letter of April 4, 1978, from the Acting Assistant Secretary of Defense (Comptroller), requesting a determination of Basic Allowance for Quarters (BAQ) entitlements when spouses, who are both members of the uniformed services and have a child, are divorced or separated.

Under the pay and allowance system applicable to members of the uniformed services either housing in kind is provided or an allowance for housing is paid. Housing provided must be adequate for the member and dependents, and if such housing is not provided to a member who has dependents, BAQ is paid at the with dependent rate--a larger allowance than BAQ at the without dependent rate.

When a member is divorced and does not have custody of the children of the marriage, a BAQ at the with dependent rate may be paid if the member provides support for his dependents in the form of alimony and child support. Similar payments may be allowed prior to divorce on the basis of agreements under which the member pays for the support of his dependents.

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Several cases have arisen in the past in which the dependents of a divorced or separated member are provided housing by the Government not as a result of the status of the member claiming BAQ, but as a result of the status of the other spouse. Under applicable law and regulations, it has generally been held that a member may not be paid BAQ at the with dependent rate when the dependents who would justify such payment are quartered in Government housing at no expense. This rule has been applied even when the alimony or support payments made by the claiming member are not diminished.

In this context question 1 as presented by the Department is as follows:

"1. May basic allowance for quarters (BAQ) at the with dependents rate be paid to a member who is paying court-ordered child support to a former spouse who is a service member and has custody of their child under the following circumstances:

"a. When the members are divorced and the former spouse and dependent child are assigned adequate family-type Government quarters and the member is assigned to adequate single-type Government quarters?

"b. When the members are divorced and the former spouse and dependent child are assigned adequate family-type Government quarters and the member is not assigned to adequate single-type Government quarters?"

The statute which grants service members entitlement to BAQ expressly states that:

"\* \* \* a member \* \* \* who is assigned to quarters of the United States \* \* \* appropriate to his grade, rank, or rating and adequate for himself, and his dependents, if with dependents, is not entitled to a basic allowance for quarters.  
\* \* \*" 37 U.S.C. § 403(b) (1976).

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Under 37 U.S.C. 403(j) the President has issued regulations which establish the basic rules for paying BAQ. These regulations, as contained in Executive Order No. 11157, June 22, 1964, as amended, are set out in a note under 37 U.S.C. 301. Section 403 of the Executive order provides in pertinent part:

"SEC. 403. (a) Any quarters of housing facilities under the jurisdiction of any of the uniformed services in fact occupied without payment of rental charges (1) by a member and his dependents, or (2) by a member without dependents, or (3) by the dependents of a member on field duty or on sea duty or on duty at a station where adequate quarters are not available for his dependents, shall be deemed to have been assigned to such member as appropriate and adequate quarters, and no basic allowance for quarters shall accrue to such member under such circumstances \* \* \*"

Regulations providing more specific rules are contained in Chapter 2, Part 3, of the Department of Defense Military Pay and Allowances Entitlements Manual.

Neither Executive Order No. 11157, as amended, nor our decisions have interpreted 37 U.S.C. 403(b) as entitling a member to payment of BAQ at the with dependent rate when Government quarters occupied by the dependents at no expense are furnished incident to an entitlement other than the member's entitlement. Thus, in 45 Comp. Gen. 146 (1965), which is cited in the submission, Government quarters occupied by the member's dependents as a result of the wife's remarriage to another member were considered to have been furnished by the Government within the terms of 37 U.S.C. 403(b) at least during the period when the member claiming BAQ was furnished Government quarters. However, 45 Comp. Gen. 146 allowed the BAQ at the with dependent rate during a short period when he was not furnished single Government quarters. It appears that this rule was predicated upon the wording of section 403(a) of Executive Order No. 11157, as amended. That section does not specifically deny BAQ to a member during a period when Government quarters are not furnished. However, those provisions apply to all members with dependents and assume that the member and dependents would reside together if possible. We do not believe that it must be applied

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to cases in which there is a marital separation, since such application would result in rules which may not be justified by the facts involved.

Therefore, when both spouses or former spouses are on active duty in the uniformed services and the spouse who has custody of the child (or children) is furnished Government family quarters, the other spouse is entitled to either Government single quarters or a BAQ at the without dependent rate. To the extent 45 Comp. Gen. 165 states a different rule it will no longer be followed. The first question is answered accordingly.

We are aware that alimony and support payments required of the spouse who does not have custody of the child or children may not be decreased by virtue of the fact that the other spouse or former spouse is furnished Government family quarters. However, alimony and support payments are predicated at least to some extent on the needs of the wife and children and are subject to change based upon changing circumstances. We believe it is incumbent upon the member who is liable for such payments to have support agreements or orders written in a manner which will provide appropriate adjustments when the spouse and children are furnished Government quarters at no cost to either spouse.

Questions 2 and 3 are as follows and will be answered jointly.

"2. Would the answers to 1.a. and 1.b. be the same for the period of court-ordered separation prior to a final divorce decree?

"3. Would the answers to 1.a. and 1.b. be the same for the period of voluntary separation prior to a final divorce decree?"

The extent of the couples' estrangement does not change the result of the decision. Both members retain their statutory right either to adequate quarters or to an allowance. When separate quarters can adequately fulfill the members' needs the BAQ cannot be paid. Nor does separation affect the entitlement to BAQ when the member with custody is assigned to quarters and the member

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paying support is not. On that basis questions 2 and 3 are answered in the affirmative.

Deputy

*R. G. Kotten*  
Comptroller General  
of the United States