

## OGC Has Reviewed

CSFD

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Assistant General Counsel

### "Dependent" or "Dependency Status" from the Standpoint of Quarters and Cost of Living Allowance

1. The question has been informally presented as to what constitutes a "dependent" or "dependency status" from the standpoint of Quarters and Cost of Living Allowance. It is the purpose of this memorandum:

- a. To discuss the foregoing by referring initially to sources in which these terms, or their equivalents, are used. (Paragraphs 2.(a) and 2.(b) are noted below merely because of certain similarities in language to Quarters and Cost of Living Regulations.)
- b. To determine the subjects included.
- c. To refer to interpretive precedent where available.

2. Reference is made to the following sources:

- a. (1) Public Law 600, 79th Congress, provides in part as follows:

"(a) Under such regulations as the President may prescribe . . . . the expenses of travel of himself and the expenses of transportation of his immediate family . . . ."

(2) Pursuant to the authority vested in the President, supplemental regulation, in the form of Executive Order 9805, was issued which defined "immediate family" as follows:

"d. "Immediate family" means any of the following-named members of the employee's household:

- a. Spouse.
- b. Children (including stepchildren and adopted children), unmarried and under twenty-one years of age.
- c. Children physically or mentally incapable of supporting themselves.
- d. Dependent parents of the employee (but not of the spouse)."

b. Pursuant to Title IX of the Foreign Service Act of 1946, the Secretary of State prescribed Travel Regulations, Sec. 103.605, which defined family as follows:

"(b) "Family" means any of the following named members of the household of the officer or employee:

- (1) Wife.
- (2) Children (including stepchildren and adopted children) unmarried and under twenty-one years of age, or physically or mentally incapable of supporting themselves, regardless of age.
- (3) Dependent parents (including step-parents and adoptive parents) of the officer or employee (but not of the spouse).
- (4) Husband who is physically or mentally incapable of supporting himself.

c. Pursuant to the Act of June 26, 1930 (46 Stat. 818), which authorized regulations for governing allowance for living quarters in the absence of officers or employees being furnished quarters, Circular No. A-8, Revised, was issued, defining family as follows:

"(d) "Family" means the mother, father, children, stepchildren, or sister of a married or unmarried employee living with the employee at the foreign post."

Circular No. A-8 provides further that one of the bases for granting a quarters allowance shall be the family status as defined above. Appendix II thereto gives administrative implementation to the foregoing by prescribing maximum allowance for rent, heat, fuel, and light on the basis of married, or unmarried with family, and single without family scale. It is to be noted that the only clause of limitation in this regard is "living with the employee at the foreign post".

d. The Secretary of State has adopted Bureau of the Budget Circular A-8, Revised, Part A, as a standard for granting quarters allowance, except as supplemented or modified by the Department of State Foreign Service Allowance Regulations. In this regard, it is to be noted that the latter Regulations, Section 108, paragraph 220, defines family as follows:

(1) Wife.

(2) In case of an officer who has no wife residing with him at the post, his mother or sister or daughter, regardless of age or dependency, who acts as his hostess.

(3) A child or stepchild or adopted child who is under twenty-one.

(4) A child or stepchild or adopted child who is over twenty-one, but mentally or physically incapable of self-support.

(5) A parent (including a stepparent or adoptive parent) who is principally dependent upon the officer or employee for support.

(6) A sister or brother who is principally dependent upon the officer or employee for support, and who is under twenty-one years of age.

(7) A sister or brother who is principally dependent upon the officer or employee for support and is over twenty-one but physically or mentally incapable of self-support.

(8) The husband who is physically or mentally incapable of self-support.

In this regard, it is to be noted that though the definition of "family" under the Department of State Foreign Service Allowance Regulations is more extended, the concept of "dependency" is an expressed condition in certain instances. Circular A-8 does not qualify the relationship.

e. Pursuant to Section 204 of the Act of July 30, 1947, (Public Law 269, 80th Congress), the benefits of Section 901 (2)(1) of the Foreign Service Act were extended to employees of all other departments. Since this was accomplished by Revision of Circular A-8, the extension of the term "dependent" as used in Appendix III, Schedules No. 1 and 2, thereof, can have no greater extension than the term "family" as defined in Circular A-8 proper.

f. Pursuant to the Foreign Service Act of 1946, Section 901 (2)(1), the Secretary of State prescribed certain post allowances for employees living at foreign posts, the amount of the allowance being based on the classification of the post, basic salary, and family status. Paragraph (d), hereof, indicates what constitutes a family from the standpoint of the Foreign Service Allowance Regulations.

It is to be noted in this regard that the prescribed forms for granting cost of living allowance recognize the difference between personnel with dependents and personnel without dependents. "Dependents" as used, however, can have no greater extension than the term "family" as defined in the aforesaid Regulations.

3. From the foregoing, it is clear that in certain instances, the mere existence of a stated relationship will entitle the officer or employee to travel or allowance benefits; whereas, in other instances, the status of dependency must be a necessary accompaniment of a stated relationship. Executive Order 9805 speaks of "dependent parents of the employee", and Department of State Travel Regulations speak in part of "dependent parents" (including those not of the blood), and "dependent husband" (due to mental or physical disability). In relation to quarters, Circular A-8, Revised, makes no mention of the term "dependent" but uses the term "living with the employee at the foreign post", and Department of State Foreign Service Allowance Regulations define "family" recognizing relationship plus dependency in several categories, and, apparently, in part, construing the phrase, "living with the employee at the foreign post", synonymously with dependency. In relation to post allowance, the comments made with respect to quarters are applicable. It is clear from the above that the basic concept has been laid down by statute, and that the administrative implementation has been left to designated authorities, whose definitions or administration of terms are not always uniform or coextensive.

4. In passing, it is noted that the basic statutes have referred to the term "family" and left the administrative implementation to designated authorities. In the past when Congress defined the term "dependent" to include parent, mother, or father, the Comptroller General has consistently held that had Congress intended more; i.e., other than natural parents, it would have expressly so provided. This principle of interpretation should likewise be followed in the interpretation of administration regulations unless otherwise clarified.

5. It has been held in establishing the dependency of a mother that in any case where the income and the value of other elements entering into the cost of living expenses regularly received by the mother from other sources is greater than the value of the contributions received from the officer, the mother is not dependent upon the officer for her chief support. (2 C.G. 41) In a similar case, 20 C.G. 400, the Comptroller General had occasion to comment upon the term "dependent". Involved was Section 4 of the Act, 37 USCA 8, defining dependent as follows:

"That the term "dependent" as used in the succeeding sections of this Act shall include at all times and in all places a lawful wife and unmarried children under twenty-one years of age. It shall also include the mother of the officer provided she is in fact dependent on him for her chief support."

"In Rieger v. U.S., 69 Cl. Ch. 632, it was said at page 637, after quoting Section 4 of the Act:

"As was said by this court in Freeland v. United States, 69 C. Cls. 364:

'It is difficult to standardize the facts which disclose a condition designated in the law as "chief support" '.

Each case must stand upon its own particular facts. No hard and fast rule can be laid down arbitrarily fixing the value of property owned, or the amount of income received by a mother, as entirely determinative of the question of whether she is dependent within the meaning of the statute.

We think the words "chief support" used in the statute should be given their ordinary and well-known meaning. "Chief" support means "main" support or "principal support. We think a mother is dependent for her "chief support" if some one else is required to furnish most, or the greater part, of the funds necessary for her reasonable support.' "

The close correspondence between the phraseology of this quoted decision and certain language in the Foreign Service Allowance Regulations of the Department of State is to be noted. It is basic to a consideration of this matter, that the certifying officer must have supporting evidence sufficient to establish the status of dependency from a factual standpoint.

As has been illustrated, the Department of State has apparently limited the extension of the term "family" with respect to quarters and allowance by introducing the element of "dependency" in certain categories. On the other hand, under Circular A-8, the language of which at least is followed in Agency instructions, the stated relationship, plus actual residence with the employee at the foreign post, with nothing more, is sufficient to give rise to application for the benefits of quarters allowance, though the recipients of the cost of living allowance are supposedly limited administratively by the application of Schedules 1 and 2, Appendix III, Circular A-8.

With respect to cost of living allowance, however, the granting of the benefits results from the application of schedules which are based on "with dependents" or "without dependents". With respect to quarters allowances, however, there is no such qualification, either in the scales or in the regulations, where relationship and residence alone would appear to give rise to the benefits.

It may be for consideration in the administration of the above that the employee be required to establish a pre-existing bona fide family relationship, as defined, prior to embarking for foreign service duty, or in other words, the phrase, "living with the employee at the foreign post", should be a continuation of a prior dependent family relationship, as defined, and not a family accumulated for the purpose of acquiring statutory or regulatory benefits. It is recognized that circumstances may arise requiring an individual to assume the reins of the family from necessity. These are excluded from consideration.

6. The availability of administrative precedent and interpretation under present procedures is somewhat limited, and qualifications other than those discussed above may exist.

7. The Department of State application form for allowance of quarters and cost of living requires that the employee or officer entitled thereto indicate the percentage of dependency of each dependent claimed. This is particularly in line with the term "family" as defined in Foreign Service Allowance Regulations. The administrative implementation of Circular 1-5 requires no such percentage breakdown. In both cases, however, no information other than a general certificate by the employee is required. In instances where the appropriate administrative official is confronted with a questionable case, or a percentage breakdown, or it is generally determined that a factual substantiation is desired, it may be desirable to require the employee to file an affidavit with the application for allowances, which affidavit might carry the following suggested topics:

a. That the member of the "family" is residing with the employee or officer not for the purpose of receiving any personal or pecuniary advantage, either in the way of increase in allowances, or otherwise.

b. That the relationship between employee or officer and member of his "family" is a continuation or a prior existing dependent family relationship, and not an acquired family for the purpose of being eligible for allowance benefits.

c. That sole source of allowance benefit from 'family status' is derived from Government and no reimbursement or recoupment therefor, directly or indirectly, in any manner or form whatever.

d. Value and net income from all assets of dependent, real and personal, tangible and intangible.

e. Income of dependent from all other sources, including contributions from member of family for one year preceding this affidavit.

f. Average monthly living expense of dependent during last year.

g. Contributions, money or otherwise, or income received by dependent from officer or employee claiming allowance.

h. Other material facts tending to establish status of dependency.

8. The above elements are suggestive, of course, and undoubtedly can be expanded and others added. This office would be pleased to assist you in developing such documents as are considered necessary to evoke pertinent information.

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