



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
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Matter of: Termination of Wardship-Based Dependency -

File: Department of Defense General Counsel Opinion: DoD/GC
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REDACTED COPY

DECISION

An official of the Defense Finance and Accounting Service (DFAS) has requested an advance decision under 31 U.S.C. § 3529 regarding the termination of dependency when such dependency is based on a guardian/ward relationship. In connection with the request, DFAS submitted information regarding [REDACTED], who claims continued basic allowance for quarters (BAQ) on behalf of his brother, [REDACTED] for whom he was appointed guardian by an August 15, 1994, order of the Superior Court of the County of Los Angeles, California. In answer to a growing number of claims, DFAS seeks our interpretation of the definition of "dependent" as it applies to wards in 37 U.S.C. § 401(a)(4). Specifically at issue is whether [REDACTED], who reached age 18 on November 4, 1995, qualifies as dependent under the wardship-based definition of dependent, now that [REDACTED] has attained the age of majority.

The request was submitted to the General Accounting Office (GAO) on February 21, 1996; however, as a result of the transfer of functions from GAO to the executive branch mandated by Public Law No. 104-316, October 19, 1996, and in accordance with subsequent delegations, the matter has been transferred to this office for resolution. For the reasons set forth below, we conclude that [REDACTED] remains entitled to BAQ on behalf of [REDACTED].

DISCUSSION

For purposes of military benefits, a member's dependents include: an unmarried child under 21, under 23 if a full-time student, or incapable of self-support because of mental or physical incapacity. 37 U.S.C. § 401(a)(2). Students over 21 and children incapable of self-support must be dependent on the member for more than half of their support.



In 1993, Congress enacted 37 U.S.C. § 401(a)(4), which added wards to the list of military dependents. See Pub. L. No. 103-160, § 631, 107 Stat. 1683. Such a dependent is an unmarried person who is placed in the legal custody of a member as a result of an order of a court of competent jurisdiction for a period of at least 12 consecutive months. The statute requires that the person be under 21, under 23 if a full-time student, or incapable of self-support due to a mental or physical incapacity which occurred while the person was a dependent. Wards must also be dependent on the member for more than half of their support and must not be a dependent under any other paragraph of the statute.

The definitions in 37 U.S.C. § 401(a)(2) and (a)(4) are substantially the same. In Comp. Gen. B-270432, June 24, 1996, the Comptroller General concluded that wards form a single class of dependents with a member's children in spite of the separation of the definitions in 37 U.S.C. § 401. The decision noted that wards apparently were not placed in the definitional category with children in 37 U.S.C. § 401 because some wards are not related to their guardians by blood or adoption and because the definition of "children" is already complex, since it includes legitimate and illegitimate natural children, stepchildren, and adopted children.

With regard to the intent of Congress as to termination of dependency based on wardship, the language in 37 U.S.C. § 401(a)(4)(A), that wards are persons placed in the legal custody of a member by a court, might be interpreted to mean that dependency ends at the age of majority. We conclude, however, that section 401(a)(4)(B) represents Congressional intent that wardship-based dependency end at age 21, or later, if other requirements are met. In our view, section 401(a)(4)(A) sets out the basis of dependency status, whereas section 401(a)(4)(B) indicates when wardship-based dependency ends. This interpretation is in accord with the principle of statutory construction that effect must be given to every word, clause, and sentence of a statute, so that no part will be inoperative or superfluous. See Knutzen v. Eben Ezer Lutheran Housing Center, 815 F.2d 1343, 1348-1349 (10th Cir. 1987); 46 Comp. Gen. 548 (1966). If wardship-based dependency ends at the age of majority, section 401(a)(4)(B) is largely superfluous, since the age of majority in most states is 18.

Additional support for the proposition that wardship-based dependency does not terminate upon attainment of the age of majority is found in the interpretation of the wardship-based definition of "dependent" at 10 U.S.C. § 1072(2)(I), which defines dependency for purposes of entitlement to medical and dental care in military medical treatment facilities. That definition is virtually identical to section 401(a)(4), and has

been implemented in Service regulations to permit continued access to medical and dental care until attainment of age 21, or later, if other conditions are met. See, e.g., Air Force Instruction 36-3001, chapter 2, § Q. We believe that the above interpretation is correct and that section 401(a)(4) should be interpreted in a consistent manner.

Accordingly, and if otherwise proper, the dependency of a person who qualified as a wardship-based dependent upon placement in the legal custody of a member by a court of competent jurisdiction does not terminate upon a ward's attainment of the age of majority, but rather remains effective for purposes of 37 U.S.C. § 401(a)(4) until attainment of age 21, or later, if other requirements under 37 U.S.C. § 401(a)(4) are met.

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