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B-235606, Feb 7, 1991

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APPROPRIATIONS/FINANCIAL MANAGEMENT - Appropriation Availability - Purpose availability - Adoption expenses DIGEST: 1. Under section 638 of the National Defense Authorization Act for Fiscal Years 1988 and 1989, "qualifying adoption expenses" are payable if they are incurred for adoption proceedings initiated after September 30, 1987. A member who had custody as a guardian of his stepgrandchildren in 1984, could not adopt them at that time because he neither had the consent of the natural parents nor any other basis in law for doing so. Although the member continued to exercise custody as a legal guardian until he filed petitions for their adoption in October 1987 with the consent of the natural parents, the adoption proceedings were not initiated until the filing of the petitions. MILITARY PERSONNEL- Pay - Adoption expenses - Reimbursement 2.Under section 638 of the National Defense Authorization Act for Fiscal Years 1988 and 1989, the Secretary of Defense was required to establish a test program under which a member of the Armed Forces may be reimbursed for "qualifying adoption expenses," which are defined as "reasonable and necessary expenses that are directly related to the legal adoption of a child." However, where the grandparents obtained initial custody of the children 3 years prior to the filing of a petition for adoption neither the custody proceedings nor other expenses incurred prior to the petition for adoption can be described as being "directly related to the legal adoption" of the minors.

LTC Gerald P. Barrett-- Reimbursement of Adoption Expenses:

The Finance and Accounting Officer at the United States Army Missile Command, Redstone Arsenal, Alabama, requests an advance decision on whether LTC Gerald P. Barrett, United States Army, may be reimbursed certain expenses incident to the adoption of his stepgrandchildren under section 638 of the National Defense Authorization Act for Fiscal Years 1988 and 1989. /1/ The Army approved reimbursement of $436 for legal fees incident to the actual petition and order of adoption on October 19-20, 1987, as well as the amendment of birth certificates in December 1987, but awaits our decision prior to the payment of expenses incurred prior to October 1, 1987. We conclude that expenses incurred incident to the initial custody proceedings and medical care insurance during custody are not directly related to the adoption, and therefore are not reimbursable.

BACKGROUND

Based on an order entered by the Circuit Court For Madison County, Alabama, /2/ on November 16, 1984, the member and his wife, the paternal stepgrandfather and grandmother, respectively, obtained custody of two minor children. This custody

proceeding stemmed from the grandparents' intervention into a case involving the marriage of the natural parents, and none of the documentation incident to that proceeding references an intention to adopt. Nevertheless, the member states that he and his wife had every intention of adopting the two children at that time, but were unable to do so because they had neither parental consent nor sufficient evidence to prove abandonment by the parents, required by Alabama law as a basis for adoption. This is supported by the member's written request for a duty assignment in Alabama until the adoption could be completed. the advice of their legal counsel, therefore, they confined their litigation to obtaining custody. The legal fees associated with the 1984 custody proceedings were $2,339. Between November 1984 and October 1987, the member incurred an additional $1,954 in medical insurance expenses for the two minor children.

On October 19, 1987, based on their legal counsel's opinion that they had adequate evidence to prove abandonment of the two minors by their parents, the member and his wife filed petitions to adopt. This time, however, the natural parents consented to the adoption, and a Final Decree of Adoption was entered on October 20, 1987, in the Probate Court of Madison County, Alabama. /3/

The member claims expenses incident to the 1984 custody proceedings and the medical care insurance from 1984 until the time of adoption when the two children became eligible for military medical coverage, as well as the qualifying adoption expenses already approved by the Army.

Only "qualifying adoption expenses" which are "directly related" to an adoption may be reimbursed under section 638(g)(1) of the Authorization Act. The $436 for legal fees incident to the actual petition and order of adoption on October 19-20, 1987, as well as the amendment of birth certificates in December 1987, are "directly related" to the adoption proceedings, and clearly, are "qualifying adoption expenses." However, the legal fees incurred incident to the custody proceedings, and the medical insurance expenses incurred thereafter, are directly related to litigation over custody and responsibilities arising from the custodial relationship. They are not directly related to the adoptions, and therefore, may not be reimbursed.

Accordingly, the additional expenses claimed by him should not be paid.

/1/ Pub.L. No. 100-180, Sec. 638, 101 Stat. 1019, 1106-1108 (1987). Section 638 was later amended by Pub.L. No. 101-189, Sec. 662, 103 Stat. 1352, 1465 (1989).

/2/ Civil Action DR 84-1050.

/3/ Case Number 3206-A.