



# FROM COUNSEL

A Preventive Law Service of the Fort Riley Legal Assistance Office  
*Keeping You Informed On Personal Legal Affairs*

## **BASIC ALLOWANCE FOR HOUSING (BAH)**

Consider these questions and answers to help you determine your eligibility for BAH in these specific situations. This is not intended to encompass every aspect of BAH, but simply to provide some clarity on a couple of BAH and dependent situations.

### **REFERENCES:**

- The Joint Travel Regulations, 1 October 2014
- AR 420-1, Army Facilities Management, 12 February 2008/RAR 24 August 2012
- First Sergeant's Barracks Program 2020 Handbook, 26 March 2014

### **Q: WHAT IS BAH?**

A. Effective 1 January 1998, in general, a member on active duty entitled to basic pay is authorized a housing allowance based on the member's grade, dependency status, and location. The location determines the rate and is paid for housing in the U.S. The BAH rate is based on median housing costs and is paid independently of a member's actual housing costs. Except for a partial housing allowance or BAH-Diff, a housing allowance is not paid to a member assigned to adequate government quarters.

### **Q: WHAT IS BAH DIFFERENTIAL (BAH-DIFF)?**

A: BAH-DIFF is the housing allowance amount for a member who is assigned to single-type government quarters and who is authorized a BAH solely by reason of the member's payment of child support. A member is not authorized BAH-DIFF if the monthly rate of that child support is less than the BAH-DIFF amount. The BAH-DIFF amounts, originally calculated in 1997, are updated annually based on changes in the Basic Pay tables.

### **Q: I AM DIVORCED, OR NEVER MARRIED, WITH CHILDREN, WHAT IS MY BAH ALLOWANCE?**

A: It depends on whether or not you have legal and physical/residential custody of your children, pay child support, and/or live in single-type government quarters.

1. If you have at least joint legal and primary physical/residential custody of your children, then you are authorized BAH at the with-dependent rate. Your court order providing you with joint legal and primary physical custody of your children must be presented to your local finance department in order for DFAS to make an eligibility determination. You are not authorized BAH at the with-dependent rate if you have been assigned adequate family-type government quarters.

2. If you do not live in government quarters (generally an E-6 and above), the other parent has custody, and you are paying adequate child support (at least in an amount of your BAH-DIFF rate), then you are authorized BAH at the with-dependent rate. However, if you do not live in government quarters due to a certificate of non-availability (CNA) then you will most likely not receive BAH at the with-dependent rate. If you are living in assigned adequate family-type government quarters you will not receive BAH. If you are

living in assigned adequate single-type quarters and you are paying adequate child support (at least in an amount of your BAH-DIFF rate) then you will receive the BAH-DIFF rate.

3. A member is not authorized BAH solely on the basis of the member's child support payment when the child/children is/are in another active duty member's custody (including a former spouse), who is assigned to government owned/leased family type quarters (does not include privatized housing) or is in receipt of a with-dependent housing allowance. Two service members cannot receive BAH with dependent rate for the same child. The service member with the court ordered primary physical/residential custody will be entitled to the BAH with dependent rate.

**Q: WHAT IF I DO NOT HAVE PRIMARY PHYSICAL/RESIDENTIAL CUSTODY OF MY CHILD/CHILDREN, BUT I STILL RECEIVE VISITATION TIME?**

A: The Garrison Commander, or Housing Manager (if authority has been delegated), may authorize a certificate of non-availability (CNA) to authorize a Soldier to reside off-post either on a permanent or temporary basis. A permanent CNA has a beginning date, is for the duration of the Soldier's tour, and can be issued in a number of situations. One situation is that a permanent CNA can be issued when an exception to policy is approved due to visitation of a dependent not living with the Soldier full-time, for which the Soldier is paying child support (DFAS child support rules apply). The authorization authority will determine approval based upon the completed application.

**Q: HOW DO I APPLY FOR AN EXCEPTION TO POLICY IN ORDER TO OBTAIN A CERTIFICATE OF NON-AVAILABILITY WHEN CHILD/CHILDREN VISITATION IS THE BASIS?**

A: An exception to policy will be handled on a case-by-case basis by the First Sergeant's Barracks Program through the Housing Office. The garrison Housing Manager will review all requests for an exception to policy for a certificate of non-availability prior to submission to the Garrison Commander. The First Sergeant's Barracks Program, located in the basement of building 214, will provide a Soldier with the packet detailing the required documentation for applying for the CNA. There is no set amount of visitation time that will qualify you for the exception to policy for the CNA, but the entirety of the application will be reviewed to determine the approval. An approval of the CNA will most likely result in the Soldier receiving BAH at the without-dependent rate.

**Q: WHAT IF I AM MARRIED TO ANOTHER SOLDIER THAT IS STATIONED AT A DIFFERENT POST?**

A: Soldiers in the rank of E-5 and below when in the United States or E-6 and below when outside the United States who are married to another service member and have no other family members and are serving separate tours will be assigned to housing on the same basis as unmarried (unaccompanied) personnel. However, if they are assigned to the same duty station within 120 days of each other and are entitled to receive a housing allowance at the without dependent rate, they may apply for on-post Family housing or reside off-post.

CPT Joe Ahlemeyer 15 July 2015

**FROM COUNSEL** is distributed by the Fort Riley Office of the Staff Judge Advocate, Legal Assistance Office, located in Building 216. **Consult an attorney for specific legal advice for your particular situation.** Our office hours are: 0900 – 1600 MON-THUR, 0800-1500 FRI. Call 239-3117 for an appointment. See also <http://www.riley.army.mil/Units/Staff/StaffJudgeAdvocate/LegalAssistance.aspx>.