



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-259721

May 25, 1995

Ms. Jeanne DiGange
Authorized Certifying Officer
NFC, Office of Finance and Management
U.S. Department of Agriculture
P.O. Box 60000
New Orleans, Louisiana 70160

Dear Ms. DiGange:

This is in response to your letter to our Office, dated December 7, 1994, concerning the claim of Mr. Curtis V. Chisley for various relocation expenses of his children.¹ For the following reasons, we concur with your determination that he was not entitled to them, and we remand his request for waiver.

The facts in this matter are not in dispute. The record shows that on May 31, 1991, the Department of Agriculture authorized a transfer for Mr. Chisley from Tyler, Texas, to Chicago, Illinois. Mr. Chisley is a divorced parent who shares "Joint Managing Conservatorship" over the children with his ex-wife. According to the divorce decree, the children are allowed to visit Mr. Chisley for 60 days during the summer and at other specified times throughout the year. Mr. Chisley listed his three children as members of his immediate family since they would be on their 60-day summer visitation when his actual move would occur. It is undisputed, however, that his children did not reside with Mr. Chisley permanently for more than 50 percent of the time.

The Department of Agriculture seeks to recoup a total of \$3,252.95 from Mr. Chisley for the various relocation expenses which it paid him on behalf of his children since

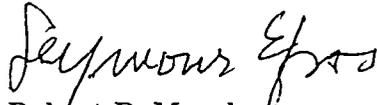
¹Reference FSD-1 RJP.

they did not reside with him for more than 50 percent of the time.² Mr. Chisley believes that he was entitled to the expenses, but, if we decide that he was not, he seeks waiver of repayment.

We believe that your determination was correct. Where a child in an employee's joint custody resides with him for only a brief period each year, that child does not qualify as a member of the employee's immediate family for purposes of the Federal Travel Regulation, 41 C.F.R. § 302-1.4(f) (1994). Alan M. Grundy, 70 Comp. Gen. 522 (1991) and cases cited therein. Here, although Mr. Chisley had custody at the time of the transfer, this was clearly pursuant to his 60-day vacation visitation rights under the divorce decree and was not a permanent arrangement. See e.g. B-208874, Nov. 16, 1982 (employee's child only visited him during the 2-month summer visitation period).

In regard to the issue of waiver of the erroneous allowances, we remand this matter so that the employee may make a formal application to his agency, if he so chooses. See 4 C.F.R. § 92.1 et. seq. (1995).

Sincerely yours,


Robert P. Murphy
General Counsel

cc: Mr. Curtis V. Chisley
15962 Ellis Avenue
South Holland, Illinois 60473

Ms. Katherine A. Klass
Vice-President, National Meat Grader's Council
4439 Valhalla Road
New Franken, Wisconsin 54229

²The total amount of \$3,252.95 consists of the following erroneous payments: \$2,354.44 for travel voucher payments, \$520.16 for the withholding tax allowances, and \$378.35 for the Relocation Income Tax Allowance.