

LETTER OPINION
2004-L-22

March 12, 2004

Mr. John Mahoney
Oliver County State's Attorney
PO Box 355
Center, ND 58530-0355

Dear Mr. Mahoney:

Thank you for your letter asking whether the term "child" as used in N.D.C.C. § 15-10-18.2(1) includes "stepchild." This section states:

"Dependent" for purposes of section 15-10-18.3 means any child, spouse, widow, or widower of a resident veteran, as "veteran" is defined in section 37-01-40, who was killed in action or died from wounds or other service-connected causes, was totally disabled as a result of service-connected causes, died from service-connected disabilities, was a prisoner of war, or was declared missing in action.

N.D.C.C. § 15-10-18.2(1).

Section 15-10-18.3, N.D.C.C., provides for free tuition to the dependents at any North Dakota state-supported institution of higher education or technical education school. As you noted, this statute appears to be modeled after a similar federal law. See Hearing on H.B. 1390 Before the Senate Comm. on Social Welfare and Veterans' Affairs, 1973 N.D. Leg. (Feb. 22) (Testimony of Sen. Jacob) ("this bill is patterned after legislation drafted by the [D]epartment of Defense").

While the federal legislation upon which the state statute was patterned specifically defines "child" to include a stepchild under certain circumstances as outlined in your letter, no similar expansion of the definition was included by the North Dakota Legislature when it considered this state's enactment. See 38 U.S.C. § 101(4). The legislative history indicates N.D.C.C. §§ 15-10-18.2 and 15-10-18.3 were patterned after federal legislation, although it is also clear the state law was not intended to be identical to the federal law. For example, while the definition of "child" was not discussed, the definition of "veteran" was discussed as follows:

Rep. Reed: Define Veteran

Answer by Mr. [Bill] Williamson: There are various definitions. In various groups and organizations and in federal and state levels. In North Dakota, we define a veteran as a person who has served in the military during a period of war or conflict and specific dates. If they serve any other time, they are not veterans. The federal law opens it up to greater extent and permits recognition of veteran status to any one [sic] who serves more than 180 days or was discharged with an injury, disease or physical condition, the Employment Security Bureau has the most lenient position of all. They identify the veteran as one who served one day or more in military service. It doesn't [sic] make any difference where or when he served. This becomes a problem to us all.

(Emphasis added.) See Hearing on H.B. 2390 Before the House Comm. on Social Services and Veterans' Affairs, 1979 N.D. Leg (Mar. 2) (Testimony of Bill Williamson). Thus, the Legislature carefully crafted the definitions to meet the needs of North Dakota citizens. Since enactment, the Legislature has changed the definition of "dependent" and "veteran," as used in this statute; however, it has never defined the term "child." See, e.g., 1973 N.D. Sess. Laws ch. 135, §1; 1979 N.D. Sess. Laws ch. 215, §1; 1985 N.D. Sess. Laws ch. 397, § 1; 1987 N.D. Sess. Laws ch. 201, § 1; 1991 N.D. Sess. Laws ch. 161, § 1.

Since "child" is not defined in chapter 15-10, we must look to other sources to determine whether the term "child" includes "stepchild." Section 1-01-09, N.D.C.C., states "[w]henver the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase wherever it occurs in the same or subsequent statutes, except when a contrary intention plainly appears." Words not defined are to be understood in their ordinary sense. N.D.C.C. §1-02-02. Section 1-01-18, N.D.C.C., defines the term "children" to include "children by birth and by adoption." See also N.D.C.C. § 30.1-01-06(6) (defining "child" under the Uniform Probate Code to exclude a stepchild). "Stepchild" is the child of one's spouse by a previous marriage. Black's Law Dictionary at 1425 (7th ed. 1999). See also Flanagan v. Railroad Retirement Bd., 332 F.2d 301, 303 (3d Cir. 1964) ("A stepchild is defined as 'the child of one of the spouses by a former marriage.' Such a person is not, in contemplation of law, one of a designated individual's 'children' in the absence of a statutory declaration to that effect."); N.D.A.G. Letter to Meier (October 27, 1983) (relying on N.D.C.C.

§ 1-01-18 to conclude that the term “child” as used in N.D.C.C. §10-06-07(2) included children by birth or adoption, but did not include stepchildren).¹

In addition, “[i]n the enactment of a statute earlier acts on the same subject are generally presumed to have been within the knowledge and view of the legislature which is regarded as having adopted the new statute in the light thereof and with reference thereto.” Lapland v. Stearns, 54 N.W.2d 748, 753 (N.D. 1952). The definition of “children” in N.D.C.C. § 1-01-18 was enacted prior to N.D.C.C. §§ 15-10-18.2 and 15-10-18.3. Therefore, when the Legislature enacted those sections, it is presumed that it did so with full knowledge of the definition of “children” in N.D.C.C. § 1-01-18.

My office has searched diligently to locate legal authority that would support a conclusion that the Legislature intended the definition of “child” to include a stepchild. Unfortunately, none was located. “If the plain language of a statute is clear and unambiguous, the letter of the statute cannot be disregarded under the pretext of pursuing its spirit because the legislative intent is presumed clear from the face of the statute.” Lawrence v. N.D. Workers Comp. Bureau, 608 N.W. 2d 254, 260 (N.D. 2000).

Based upon the foregoing, it is my opinion that the term “child” as used in N.D.C.C. § 15-10-18.2 includes children by birth or adoption, but does not include stepchildren. I suggest that this issue be brought to the attention of the Legislative Assembly for any corrective legislation it may feel is appropriate.

Sincerely,

Wayne Stenehjem
Attorney General

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cc: Senator Karen Krebsbach, Chairman, Senate Committee on Government and Veterans Affairs
Representative Matthew Klein, Chairman, House Committee on Government and Veterans Affairs
Senator Bob Stenehjem, Chairman, Legislative Council

¹ Many other Attorneys General have issued similar opinions. See 1992 Ohio Op. Att’y Gen. No. 92-014 (“when there has been no adoption or declaration of guardianship, the stepchild of a veteran is not eligible to apply for financial assistance from the veterans service commission”); 1949 Iowa Op. Att’y Gen. 121 (stepchild was not included in the term “child,” and would not be eligible for assistance from soldier’s orphans educational fund); Mich. Op. Att’y. Gen. 1955-56, No. 2612 (a person, pending adoption, is not legally obligated to support his stepchildren and therefore stepchildren of a veteran are not considered dependents as the term is used in the Veterans’ Trust Fund Act); 1951 Penn. Op. Att’y Gen. No. 622 (the term “surviving minor child or surviving minor children” means natural child or adopted child; however, stepchildren or illegitimate children are not entitled to veteran’s compensation law benefits).