

Title 20: Employees' Benefits

PART 410—FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, TITLE IV—BLACK LUNG BENEFITS (1969—)

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Subpart C—Relationship and Dependency

Authority: Sec. 702(a)(5) of the Social Security Act (42 U.S.C. 902(a)(5)), secs. 402, 412(a), 426(a), and 508, 83 Stat. 792; 30 U.S.C. 902, 922(a), 936, and 957.

§ 410.300 Relationship and dependency; general.

(a) In order to establish entitlement to benefits, a widow, child, parent, brother, or sister must meet relationship and dependency requirements with respect to the miner or widow, as applicable, prescribed by or pursuant to the Act.

(b) In order for an entitled miner or widow to qualify for augmented benefits because of one or more dependents (see §410.510(c)), such dependents must meet relationship and dependency requirements with respect to such beneficiary prescribed by or pursuant to the Act.

(c) References in §§410.310(c), 410.320(c), 410.330(d), and 410.340, to the “same right to share in the intestate personal property” of a deceased miner (or widow), refer to the right of an individual to share in such distribution in his own right and not by right of representation.

[37 FR 20638, Sept. 30, 1972]

§ 410.310 Determination of relationship; wife.

An individual will be considered to be the wife of a miner if:

(a) The courts of the State in which such miner is domiciled (see §410.392) would find that such individual and the miner were validly married; or

(b) The courts of the State in which such miner is domiciled (see §410.392) would find, under the law they would apply in determining the devolution of the miner's intestate personal property, that the individual is the miner's wife; or

(c) Under State law, such individual has the same right she would have if she were the wife to share in the miner's intestate personal property; or

(d)(1) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which, but for a legal impediment (see §410.391), would have been a valid marriage. However, such purported marriage shall not be considered a valid marriage if such individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household (see §410.393) in the month in which there is filed a request that the miner's benefits be augmented because such individual qualifies as his wife (see §410.510(c)). The provisions of this paragraph shall not apply, however, if the miner's benefits are or have been augmented under §410.510(c) because another person qualifies or has qualified as his wife and such other person is, or is considered to be, the wife of such miner under paragraph (a), (b), or (c) of this section at the time such request is filed.

(2) The qualification for augmentation purposes of an individual who would not be considered to be the wife of such miner but for this paragraph (d), shall end with the month before the month in which (i) the Administration determines that the benefits of the miner should be augmented on account of another person,

if such other person is (or is considered to be) the wife of such miner under paragraph (a), (b), or (c) of this section, or (ii) if the individual who previously qualified as a wife for purposes of §410.510(c), entered into a marriage valid without regard to this paragraph, with a person other than such miner.

[36 FR 23756, Dec. 14, 1971, as amended at 37 FR 20638, Sept. 30, 1972]

§ 410.311 Determination of relationship; divorced wife.

An individual will be considered to be the divorced wife of a miner if her marriage to such miner has been terminated by a final divorce on or after the 20th anniversary of the marriage: *Provided*, That if she was married to and divorced from him more than once, she was married to him in each calendar year of the period beginning 20 years immediately before the date on which any divorce became final and ending with the year in which that divorce became final.

[37 FR 20638, Sept. 30, 1972]

§ 410.320 Determination of relationship; widow.

An individual will be considered to be the widow of a miner if:

(a) The courts of the State in which such miner was domiciled (see §410.392) at the time of his death would find that the individual and the miner were validly married; or

(b) The courts of the State in which such miner was domiciled (see §410.392) at the time of his death would find, under the law they would apply in determining the devolution of the miner's intestate personal property, that the individual was the miner's widow; or

(c) Under State law, such individual has the same right she would have as if she were the miner's widow to share in the miner's intestate personal property; or

(d) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which, but for a legal impediment (see §410.391) would have been a valid marriage. However, such purported marriage shall not be considered a valid marriage if such individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household (see §410.393) at the time of the miner's death. The provisions of this paragraph shall not apply if another person is or has been entitled to benefits as the widow of the miner and such other person is, or is considered to be, the widow of such miner under paragraph (a), (b), or (c) of this section at the time such individual files her claim for benefits.

[36 FR 23756, Dec. 14, 1971, as amended at 37 FR 20638, Sept. 30, 1972]

§ 410.321 Determination of relationship; surviving divorced wife.

An individual will be considered to be the surviving divorced wife of a deceased miner if her marriage to such miner had been terminated by a final divorce on or after the 20th anniversary of the marriage: *Provided*, That, if she was married to and divorced from him more than once, she was married to him in each calendar year of the period beginning 20 years immediately before the date on which any divorce became final and ending with the year in which that divorce became final.

[37 FR 20639, Sept. 30, 1972]

§ 410.330 Determination of relationship; child.

As used in this section, the term *beneficiary* means only a widow entitled to benefits at the time of her death (see §410.211), or a miner, except where there is a specific reference to the "father" only, in which case it means only a miner. An individual will be considered to be the child of a beneficiary if:

(a) The courts of the State in which such beneficiary is domiciled (see §410.392) would find, under the law they would apply in determining the devolution of the beneficiary's intestate personal property, that the individual is the beneficiary's child; or

(b) Such individual is the legally adopted child of such beneficiary; or

(c) Such individual is the stepchild of such beneficiary by reason of a valid marriage of his parent or adopting parent to such beneficiary; or

(d) Such individual does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, but would, under State law, have the same right as a child to share in the beneficiary's intestate personal property; or

(e) Such individual is the natural son or daughter of a beneficiary but does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if the beneficiary and the mother or the father, as the case may be, of such individual went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment (see §410.391), would have been a valid marriage.

(f) Such individual is the natural son or daughter of a beneficiary but does not have the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) or (e) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if:

(1) Such beneficiary, prior to his entitlement to benefits, has acknowledged in writing that the individual is his son or daughter, or has been decreed by a court to be the father of the individual, or he has been ordered by a court to contribute to the support of the individual (see §410.395(c)) because the individual is his son or daughter; or

(2) Such beneficiary is shown by satisfactory evidence to be the father of the individual and was living with or contributing to the support of the individual at the time such beneficiary became entitled to benefits.

(g) Such individual is the natural son or daughter of a beneficiary but does not have the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) or (e) of this section, such individual shall nevertheless be considered to be the child of such beneficiary for months no earlier than June 1974, if:

(1) Such beneficiary has acknowledged in writing that the individual is his son or daughter, or has been decreed by a court to be the father of the individual, or he has been ordered by a court to contribute to the support of the individual (see §410.395(c)) because the individual is his son or daughter; and in the case of a deceased individual such acknowledgement, court decree, or court order was made before the death of such beneficiary; or

(2) Such beneficiary is shown by satisfactory evidence to be the father of the individual and was living with or contributing to the support of the individual at the time such request for benefits is made.

[36 FR 23756, Dec. 14, 1971, as amended at 37 FR 20639, Sept. 30, 1972; 41 FR 33550, Aug. 10, 1976]

§ 410.340 Determination of relationship; parent, brother, or sister.

An individual will be considered to be the parent, brother, or sister of a miner if the courts of the State in which such miner was domiciled (see §410.392) at the time of his death would find, under the law they would apply in determining the devolution of the miner's intestate personal property, that the individual is the miner's parent, brother, or sister. Where, under such law, the individual does not bear the relationship to the miner of parent, brother, or sister, but would, under State law, have the same status (*i.e.*, right to share in the miner's intestate personal property) as a parent, brother, or sister, the individual will be deemed to be

such. An individual will be considered to be the parent, brother, or sister of a miner if the individual is the stepparent, stepbrother, stepsister, half brother, or half sister of the miner, or is the parent, brother, or sister of the miner by adoption.

[37 FR 20639, Sept. 30, 1972]

§ 410.350 Determination of dependency; wife.

An individual who is the miner's wife (see §410.310) will be determined to be dependent upon the miner if:

- (a) She is a member of the same household as the miner (see §410.393); or
- (b) She is receiving regular contributions from the miner for her support (see §410.395(c)); or
- (c) The miner has been ordered by a court to contribute to her support (see §410.395(e)); or
- (d) She is the natural mother of the son or daughter of the miner; or
- (e) She was married to the miner (see §410.310) for a period of not less than 1 year.

[37 FR 20639, Sept. 30, 1972]

§ 410.351 Determination of dependency; divorced wife.

An individual who is the miner's divorced wife (see §410.311) will be determined to be dependent upon the miner if:

- (a) She is receiving at least one-half of her support from the miner (see §410.395(g)); or
- (b) She is receiving substantial contributions from the miner pursuant to a written agreement (see §410.395(c) and (f)); or
- (c) There is in effect a court order for substantial contributions to her support to be furnished by such miner (see §410.395 (c) and (e)).

[37 FR 20639, Sept. 30, 1972]

§ 410.360 Determination of dependency; widow.

(a) *General.* An individual who is the miner's widow (see §410.320) will be determined to have been dependent on the miner if, at the time of the miner's death:

- (1) She was living with the miner (see §410.393); or
- (2) She was dependent upon the miner for support or the miner has been ordered by a court to contribute to her support (see §410.395); or
- (3) She was living apart from the miner because of his desertion or other reasonable cause; or
- (4) She is the natural mother of his son or daughter; or
- (5) She had legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of 18; or

(6) He had legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of 18; or

(7) She was married to him at the time both of them legally adopted a child under the age of 18; or

(8) She was married to him for a period of not less than 9 months immediately prior to the day on which he died (but see paragraph (b) of this section).

(b) *Waiver of 9-month requirement*—(1) *General*. Except as provided in paragraph (b)(3) of this section, the requirement in paragraph (a)(8) of this section that the surviving spouse of a miner must have been married to him for a period of not less than 9 months immediately prior to the day on which he died in order to qualify as such miner's widow, shall be deemed to be satisfied where such miner dies within the applicable 9-month period, if his death:

(i) Is accidental (as defined in paragraph (b)(2) of this section), or

(ii) Occurs in line of duty while he is a member of a uniformed service serving on active duty (as defined in §404.1013 (f) (2) and (3) of this chapter), and such surviving spouse was married to such miner for a period of not less than 3 months immediately prior to the day on which he died.

(2) *Accidental death*. For purposes of paragraph (b)(1)(i) of this section, the death of a miner is accidental if such individual receives bodily injuries solely through violent, external, and accidental means and, as a direct result of the bodily injuries and independently of all other causes, loses his life not later than 3 months after the day on which he receives such bodily injuries. The term *accident* means an event that was unpremeditated and unforeseen from the standpoint of the deceased individual. To determine whether the death of an individual did, in fact, result from an accident the Administration will consider all the circumstances surrounding the casualty. An intentional and voluntary suicide will not be considered to be death by accident; however, suicide by an individual who is so insane as to be incapable of acting intentionally and voluntarily will be considered to be death by accident. In no event will the death of an individual resulting from violent and external causes be considered a suicide unless there is direct proof that the fatal injury was self-inflicted.

(3) *Applicability*. The provisions of this paragraph shall not apply if the Administration determines that at the time of the marriage involved, the miner could not reasonably have been expected to live for 9 months.

[37 FR 20639, Sept. 30, 1972]

§ 410.361 Determination of dependency; surviving divorced wife.

An individual who is the miner's surviving divorced wife (see §410.321) will be determined to have been dependent on the miner if, for the month preceding the month in which the miner died:

(a) She was receiving at least one-half of her support from the miner (see §410.395(g)); or

(b) She was receiving substantial contributions from the miner pursuant to a written agreement (see §410.395 (c) and (f)); or

(c) There was in effect a court order for substantial contributions to her support to be furnished by such miner (see §410.395 (c) and (e)).

[37 FR 20639, Sept. 30, 1972]

§ 410.370 Determination of dependency; child.

For purposes of augmenting the benefits of a miner or widow (see §410.510 (c)), the term *beneficiary* as used in this section means only a miner or widow entitled to benefits (see §§410.201 and 410.210); or, for

purposes of an individual's entitlement to benefits as a surviving child (see §410.212), the term *beneficiary* as used in this section means only a deceased miner (see §410.200) or a deceased widow who was entitled to benefits for the month prior to the month of her death (see §§410.210 and 410.211). An individual who is the beneficiary's child (see §410.330) will, as applicable, be determined to be, or to have been, dependent on the beneficiary, if the child:

(a) Is unmarried; and

(b)(1) Is under 18 years of age; or

(2) Is 18 years of age or older and is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d) (see subpart P of part 404 of this chapter). For purposes of entitlement to benefits as a surviving child (see §410.212), such disability must have begun:

(i) Before the child attained age 22; however, no entitlement to child's benefits may be established for any month before January 1973, based on a disability which began after attainment of age 18; or

(ii) In the case of a student, before he ceased to be a student (see paragraph (c) of this section); or

(3) Is 18 years of age or older and is a student.

(c)(1) The term *student* means a *full-time student* as defined in section 202(d)(7) of the Social Security Act, 42 U.S.C. 402(d)(7) (see §404.320(c) of this chapter), or an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(i) A school, college, or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof; or

(ii) A school, college, or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body; or

(iii) A school, college, or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(iv) A technical, trade, vocational, business, or professional school accredited or licensed by the Federal, or a State government or any political subdivision thereof, providing courses of not less than 3 months' duration that prepare the student for a livelihood in a trade, industry, vocation, or profession.

(2) A student will be considered to be "pursuing a full-time course of study or training at an institution" if he is enrolled in a noncorrespondence course and is carrying a subject load which is considered full time for day students under the institution's standards and practices. However, a student will not be considered to be "pursuing a full-time course of study or training" if he is enrolled in a course of study or training of less than 13 school weeks' duration. A student beginning or ending a full-time course of study or training in part of any month will be considered to be pursuing such course for the entire month.

(3) A child is deemed not to have ceased to be a student:

(i) During any interim between school years, if the interim does not exceed 4 months and he shows to the satisfaction of the Administration that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim; or

(ii) During periods of reasonable duration during which, in the judgment of the Administration, he is prevented by factors beyond his control from pursuing his education.

(4) A student who completes 4 years of education beyond the high school level, or whose 23rd birthday occurs during a semester or other enrollment period in which he is pursuing a full-time course of study or training shall continue to be considered a student for as long as he otherwise qualifies under this section until the end of such period.

[37 FR 20639, Sept. 30, 1972, as amended at 41 FR 7091, Feb. 17, 1976]

§ 410.380 Determination of dependency; parent, brother, or sister.

An individual who is the miner's parent, brother, or sister (see §410.340) will be determined to have been dependent on the miner if, during the 1-year period immediately prior to such miner's death:

(a) Such individual and the miner were living in the same household (see §410.393); and

(b) Such individual was totally dependent on the miner for support (see §410.395(h)).

[37 FR 20640, Sept. 30, 1972]

§ 410.390 Time of determinations.

(a) *Relationship and dependency of wife or child.* With respect to the wife or child of a miner entitled to benefits, and with respect to the child of a widow entitled to benefits, the determination as to whether an individual purporting to be a wife or child is related to or dependent upon such miner or widow shall be based on the facts and circumstances with respect to the period of time as to which such issue of relationship or dependency is material. (See, for example, §410.510(c).)

(b) *Relationship and dependency of widow.* The determination as to whether an individual purporting to be the widow of a miner was related to or dependent upon such miner is made after such individual effectively files a claim for benefits (see §410.227) as a widow. Such determination is based on the facts and circumstances with respect to the time of the miner's death (except as provided in §410.320(d)). A prior determination that such individual was determined to be, or not to be, the wife of such miner, pursuant to §§410.310 and 410.350, for purposes of augmenting the miner's benefits for a certain period (see §410.510(c)), is not determinative of the issue of whether the individual is the widow of such miner or of whether she was dependent on such miner.

(c) *Relationship and dependency of surviving divorced wife.* The determination as to whether an individual purporting to be a surviving divorced wife of a miner was related to or dependent upon such miner is made when such individual effectively files a claim for benefits (see §410.227) as a surviving divorced wife. Such determination is made with respect to the time of the miner's death. A prior determination that such individual was, or was not, the divorced wife of such miner, pursuant to §§410.311 and 410.351, for purposes of augmenting the miner's benefits for a certain period (see §410.510(c)), is not determinative of the issue of whether the individual is the surviving divorced wife of such miner or of whether she was dependent on such miner.

[37 FR 20640, Sept. 30, 1972]

§ 410.391 Legal impediment.

For purposes of this subpart C, *legal impediment* means an impediment resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution, or resulting from a defect in the procedure followed in connection with the purported marriage ceremony—for example, the solemnization of a marriage only through a religious ceremony in a country which requires a civil ceremony for a valid marriage.

[36 FR 23756, Dec. 14, 1971]

§ 410.392 Domicile.

(a) For purposes of this subpart C, the term *domicile* means the place of an individual's true, fixed, and permanent home to which, whenever he is absent, he has the intention of returning.

(b) The domicile of a deceased miner or widow is determined as of the time of his or her death.

(c) The domicile or a change in domicile of a beneficiary or other individual is determined with respect to the period or periods of time as to which the issue of domicile is material.

(d) If an individual was not domiciled in any State at the pertinent time, the law of the District of Columbia is applied as if such individual were then domiciled there.

[36 FR 23756, Dec. 14, 1971, as amended at 37 FR 20640, Sept. 30, 1972]

§ 410.393 “Member of the same household”; “living with”; “living in the same household”; and “living in the miner's household”.

(a) *Defined.* (1) The term *member of the same household* as used in section 402(a)(2) of the Act (with respect to a wife); the term *living with* as used in section 402(e) of the Act (with respect to a widow); and the term *living in the same household* as used in §§410.310(d) and 410.320(d) (with respect to certain wives and widows, respectively), mean that a husband and wife were customarily living together as husband and wife in the same place of abode.

(2) The term *living in the miner's household* as used in section 412(a)(5) of the Act (with respect to a parent, brother, or sister (see §410.380)), means that the miner and such parent, brother, or sister, were sharing the same residence.

(b) *Temporary absence.* The temporary absence from the same residence of either the miner, or his wife, parent, brother, or sister (as the case may be), does not preclude a finding that one was *living with* the other, or that they were *members of the same household*, etc. The absence of one such individual from the residence in which both had customarily lived shall, in the absence of evidence to the contrary, be considered temporary;

(1) If such absence was due to service in the Armed Forces of the United States; or

(2) If the period of absence from his or her residence did not exceed 6 months, and neither individual was outside the United States, and the absence was due to business or employment reasons, or because of confinement in a penal institution or in a hospital, nursing home, or other curative institution; or

(3) In any other case, if the evidence establishes that despite such absence they nevertheless reasonably expected to resume physically living together at some time in the reasonably near future.

(c) *Death during absence.* Where the death of one of the parties occurred while away from the residence for treatment or care of an illness or an injury (e.g., in a hospital), the fact that the death was foreseen as possible or probable does not in and of itself preclude a finding that the parties were “living with” one another or were “member[s] of the same household” etc. at the time of death.

(d) *Absences other than temporary.* In situations other than those described in paragraphs (b) and (c) of this section, the absence shall not be considered temporary, and the parties may not be found to be “living with” one another or to be “member[s] of the same household” etc. A finding of temporary absence would not be justified where one of the parties was committed to a penal institution for life or for a period exceeding the reasonable life expectancy of either, or was under a sentence of death; or where the parties had ceased to live in the same place of abode because of marital or family difficulties and had not resumed living together before death.

(e) *Relevant period of time.* (1) The determination as to whether a widow had been “living with” her husband shall be based upon the facts and circumstances as of the time of death of the miner.

(2) The determination as to whether a wife is a “member of the same household” as her husband shall be based upon the facts and circumstances with respect to the period or periods of time as to which the issue of membership in the same household is material. (See §410.510(c).)

(3) The determination as to whether a parent, brother, or sister was “living in the miner's household” shall take account only of the 1-year period immediately prior to the miner's death. (See §410.380.)

[37 FR 20640, Sept. 30, 1972]

§ 410.394 [Reserved]

§ 410.395 Contributions and support.

(a) *Support* defined. The term *support* includes food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for the maintenance of the person supported.

(b) *Contributions* defined. The term *contributions* refers to contributions actually provided by the contributor from his own property, or the use thereof, or by the use of his own credit.

(c) *Regular contributions* and *substantial contributions* defined. The terms *regular contributions* and *substantial contributions* mean contributions that are customary and sufficient to constitute a material factor in the cost of the individual's support.

(d) *Contributions and community property.* When a wife receives, and uses for her support, income from her services or property and such income, under applicable State law, is the community property of herself and the miner, no part of such income is a *contribution* by the miner to his wife's support regardless of any legal interest the miner may have therein. However, when a wife receives, and uses for her support, income from the services and the property of the miner and, under applicable State law, such income is community property, all of such income is considered to be a contribution by the miner to his wife's support.

(e) *Court order for support* defined. References to support orders in §§410.330 (f)(1), 410.350(c), and 410.360(b) mean any court order, judgment, or decree of a court of competent jurisdiction which requires regular contributions that are a material factor in the cost of the individual's support and which is in effect at the applicable time. If such contributions are required by a court order, this condition is met whether or not the contributions were actually made.

(f) *Written agreement* defined. The term *written agreement* in the phrase *substantial contributions * * * pursuant to a written agreement* (see §§410.351 (b) and 410.361(b)) means an agreement signed by the miner providing for substantial contributions by him for the individual's support. It must be in effect at the applicable time but it need not be legally enforceable.

(g) *One-half support* defined. The term *one-half support* means that the miner made regular contributions, in cash or in kind, to the support of a divorced wife (see §410.351(a)), or of a surviving divorced wife (see §410.361 (a)), at the specified time or for the specified period, and that the amount of such contributions equaled or exceeded one-half the total cost of such individual's support at such time or during such period.

(h) *Totally dependent for support* defined. The term *totally dependent on the miner for support* as used in §410.380(b), means that such miner made regular contributions to the support of his parent, brother, or sister, as the case may be, and that the amount of such contributions at least equaled the total cost of such individual's support.

[37 FR 20641, Sept. 30, 1972]

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