

# SOCIAL SECURITY ISSUES ON MARITAL RELATIONSHIPS AND SSI BENEFITS, PARTICULARLY “LIVING TOGETHER AS HUSBAND AND WIFE”

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## SOCIAL SECURITY FEDERAL REGULATIONS

### Subpart R—Relationship

**AUTHORITY:** Secs. 702(a)(5), 1612(b), 1614(b), (c), and (d), and 1631(d)(1) and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382a(b), 1382c(b), (c), and (d) and 1383(d)(1) and (e)).

**SOURCE:** 45 FR 71795, Oct. 30, 1980, unless otherwise noted. Redesignated at 46 FR 29211, May 29, 1981; 46 FR 42063, Aug. 19, 1981.

### **20 CFR § 416.1801. Introduction.**

(a) *What is in this subpart.* This subpart contains the basic rules for deciding for SSI purposes whether a person is considered married and, if so, to whom; whether a person is considered a child; and whether a person is considered another person's parent. It tells what information and evidence we need to decide these facts.

(b) *Related subparts.* Subpart D discusses how to determine the amount of a person's benefits; subpart G discusses what changes in a person's situation he or she must report to us; subpart K discusses how we count income; and subpart L discusses how we count resources (money and property). The questions of whether a person is

married, to whom a person is married, whether a person is a child, and who is a person's parent must be answered in order to know which rules in subparts D, G, K, and L apply.

(c) *Definitions.* In this subpart—

*Eligible spouse* means a person—

(1) Who is eligible for SSI,

(2) Whom we consider the spouse of another person who is eligible for SSI, and

(3) Who was living in the same household with that person on—

(i) The first day of the month following the date the application is filed (for the initial month of eligibility for payment based on that application);

(ii) The date a request for reinstatement of eligibility is filed (for the month of such request); or

(iii) The first day of the month, for all other months. An individual is considered to be living with an eligible spouse during temporary absences as defined in § 416.1149 and while receiving continued benefits under section 1611(e)(1) (E) or (G) of the Act.

*Spouse* means a person's husband or wife under the rules of §§ 416.1806 through 416.1835 of this part.

*We* and *us* mean the Social Security Administration.

*You* means a person who has applied for or has been receiving SSI benefits, or a person for whom someone else has applied for or has been receiving SSI benefits.

[45 FR 71795, Oct. 30, 1980. Redesignated at 46 FR 29211, May 29, 1981; 46 FR 42063, Aug. 19, 1981, as amended at 60 FR 16376, Mar. 30, 1995; 64 FR 31975, June 15, 1999; 65 FR 16815, Mar. 30, 2000]

## WHO IS CONSIDERED YOUR SPOUSE

### **20 CFR § 416.1802. Effects of marriage on eligibility and amount of benefits.**

(a) *If you have an ineligible spouse—*(1) *Counting income.* If you apply for or receive SSI benefits, and you are married to someone who is not eligible for SSI benefits and are living in the same household as that person, we may count part of that person's income as yours. Counting part of that person's income as yours may reduce the amount of your benefits or even make you ineligible. Section 416.410 discusses the

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amount of benefits and § 416.1163 explains how we count income for an individual with an ineligible spouse.

(2) *Counting resources.* If you are married to someone who is not eligible for SSI benefits and are living in the same household as that person, we will count the value of that person's resources (money and property), minus certain exclusions, as yours when we determine your eligibility. Section 416.1202(a) gives a more detailed statement of how we count resources and § 416.1205(a) gives the limit of resources allowed for eligibility of a person with an ineligible spouse.

(b) *If you have an eligible spouse—(1) Counting income.* If you apply for or receive SSI benefits and have an eligible spouse as defined in § 416.1801(c), we will count your combined income and calculate the benefit amount for you as a couple. Section 416.412 gives a detailed statement of the amount of benefits and subpart K of this part explains how we count income for an eligible couple.

(2) *Counting resources.* If you have an eligible spouse as defined in § 416.1801(c), we will count the value of your combined resources (money and property), minus certain exclusions, and use the couple's resource limit when we determine your eligibility. Section 416.1205(b) gives a detailed statement of the resource limit for an eligible couple.

(c) *If you are married, we do not consider you a child.* The rules for counting income and resources are different for children than for adults. (Section 416.1851 discusses the effects of being considered a child on eligibility and amount of benefits.) Regardless of your age, if you are married we do not consider you to be a child.

(d)(1) *General rule:* Benefits depend on whether you are married or not married at the beginning of each month. If you get married, even on the first day of a month we will treat you as single until the next month. If your marriage ends, even on the first day of a month, we will treat you as married until the next month.

(2) *Exception: If you both meet eligibility requirements after your date of marriage or after your marriage ends.* If, in the month that you marry, each of you first meets all eligibility requirements after the date of your marriage, we will treat you as an eligible couple for that month. If, in the month that your marriage ends, each of you first meets all eligibility requirements after the date your marriage ends, we will treat you as eligible individuals. (See subparts D and E regarding how your benefits will be prorated.)

[45 FR 71795, Oct. 30, 1980. Redesignated at 46 FR 29211, May 29, 1981; 46 FR 42063, Aug. 19, 1981, and amended at 51 FR 13495, Apr. 21, 1986; 60 FR 16376, Mar. 30, 1995]

## **20 CFR § 416.1806. Whether you are married and who is your spouse.**

(a) We will consider someone to be your spouse (and therefore consider you to be married) for SSI purposes if—

(1) You are legally married under the laws of the State where your and his or her permanent home is (or was when you lived together);

(2) We have decided that either of you is entitled to husband's or wife's Social Security insurance benefits as the spouse of the other (this decision will not affect your SSI benefits for any month before it is made); or

(3) You and an unrelated person of the opposite sex are living together in the same household at or after the time you apply for SSI benefits, and you both lead people to believe that you are husband and wife.

(b) if more than one person would qualify as your husband or wife under paragraph (a) of this section, we will consider the person you are presently living with to be your spouse for SSI purposes.

[60 FR 16376, Mar. 30, 1995]

## **20 CFR § 416.1816. Information we need concerning marriage when you apply for SSI.**

When you apply for SSI benefits, we will ask whether you are married. If you are married, we will ask whether you are living with your spouse. If you are unmarried or you are married but not living with your spouse, we will ask whether you are living in the same household with anyone of the opposite sex who is not related to you. If you are, we will ask whether you and that person lead other people to believe that you are husband and wife.

## **20 CFR § 416.1821. Showing that you are married when you apply for SSI.**

(a) *General rule: Proof is unnecessary.* If you tell us you are married we will consider you married unless we have information to the contrary. We will also consider you married, on the basis of your statement, if you say you are living with an unrelated person of the opposite sex and you both lead people to believe you are married. However, if we have information contrary to what you tell us, we will ask for evidence as described in paragraph (c).

(b) *Exception: If you are a child to whom parental deeming rules apply.* If you are a child to whom the parental deeming rules apply and we receive information from you or others that you are married, we will ask for evidence of your marriage. The rules on deeming parental income are in §§ 416.1165 and 416.1166. The rules on deeming of parental resources are in § 416.1202.

(c) *Evidence of marriage.* If paragraph (a) or (b) of this section indicates that you must show us evidence that you are married, you must show us your marriage certificate (which can be the original certificate, a certified copy of the public record of marriage, or a certified copy of the church record) if you can. If you cannot, you must tell us why not and give us whatever evidence you can.

[45 FR 71795, Oct. 30, 1980. Redesignated at 46 FR 29211, May 29, 1981; 46 FR 42063, Aug. 19, 1981, and amended at 52 FR 8889, Mar. 20, 1987]

## **20 CFR § 416.1826. Showing that you are not married when you apply for SSI.**

(a) *General rule: Proof is unnecessary.* If you do not live with an unrelated person of the opposite sex and you say that you are not married, we will generally accept your statement unless we have information to the contrary.

(b) *Exception: If you are under age 22 and have been married.* If you are under age 22 and have been married, to prove that your marriage has ended you must show us the decree of divorce or annulment or the death certificate if you can. If you cannot, you must tell us why not and give us whatever evidence you can.

(c) *Exception: If you are living with an unrelated person of the opposite sex.* (1) If you are living with an unrelated person of the opposite sex, you and the person you are

living with must explain to us what your relationship is and answer questions such as the following:

(i) What names are the two of you known by?

(ii) Do you introduce yourselves as husband and wife? If not, how are you introduced?

(iii) What names are used on mail for each of you?

(iv) Who owns or rents the place where you live?

(v) Do any deeds, leases, time payment papers, tax papers, or any other papers show you as husband and wife?

(2) We will consider you married to the person you live with unless the information we have, including the answers to the questions in paragraph (c)(1) of this section, all considered together, show that the two of you do not lead people to believe that you are each other's husband and wife.

## **20 CFR § 416.1830. When we stop considering you and your spouse an eligible couple.**

We will stop considering you and your spouse an eligible couple, even if you both remain eligible, at the beginning of whichever of these months comes first—

(a) The calendar month after the month you stopped living with your eligible spouse,  
or

(b) The calendar month after the month in which your marriage ends.

[45 FR 71795, Oct. 30, 1980. Redesignated at 46 FR 29211, May 29, 1981; 46 FR 42063, Aug. 19, 1981, as amended at 60 FR 16376, Mar. 30, 1995]

## **20 CFR § 416.1832. When we consider your marriage ended.**

We consider your marriage ended when—

(a) Your spouse dies;

(b) Your divorce or annulment becomes final;

(c) We decide that either of you is not a spouse of the other for purposes of husband's or wife's social security insurance benefits, if we considered you married only because of § 416.1806(a)(2); or

(d) You and your spouse stop living together, if we considered you married only because of § 416.1806(a)(3).

[45 FR 71795, Oct. 30, 1980. Redesignated at 46 FR 29211, May 29, 1981; 46 FR 42063, Aug. 19, 1981, as amended at 60 FR 16376, Mar. 30, 1995]

## **20 CFR § 416.1835. Information we need about separation or end of marriage after you become eligible for SSI.**

(a) *If you and your spouse stop living together.* If you and your spouse stop living together, you must promptly report that fact to us, so that we can decide whether there has been a change that affects either person's benefits. You must also answer questions such as the following. If you cannot answer our questions you must tell us why not and give us whatever information you can.

(1) When did you stop living together?

(2) Do you expect to live together again?

(3) If so, when?

(4) Where is your husband or wife living?

(5) Is either of you living with someone else as husband and wife?

(b) *Evidence of end of marriage—(1) Death.* We will accept your statement that your husband or wife died unless we have information to the contrary. If we have contrary information, you must show us the death certificate if you can. If you cannot, you must tell us why not and give us whatever evidence you can.

(2) *Divorce or annulment.* If your marriage ends by divorce or annulment, you must show us the decree of divorce or annulment if you can. If you cannot, you must tell us why not and give us whatever evidence you can.

(3) *Other reason.* If your marriage ends for reasons other than death, divorce, or annulment, you must give us any information we ask you to give us about the end of the marriage. If you cannot, you must explain why you cannot. We will consider all of the relevant information to decide if and when your marriage ends.

# **SOCIAL SECURITY PROGRAM OPERATIONS MANUAL (POMS)**

## **SI 00501.150 Determining Whether a Marital Relationship Exists**

### **Citations:**

Social Security Act §[1614\(b\)](#) and §[1614\(d\)](#)

Regulations 20 CFR [416.1801](#) through [416.1835](#)

### **A. When to use these instructions to determine the existence of marital relationships for Supplemental Security Income (SSI) purposes**

Use the instructions in this section to determine the existence of a marital relationship for SSI purposes.

For information regarding same-sex marriages, refer to [GN 00210.800](#), Same-Sex Marriages - Supplemental Security Income, and [GN 00210.010](#), Interviewing Individuals with Claims Involving Same-Sex Relationships.

For information regarding transgender individuals, refer to [GN 00305.005](#), Determining Marital Status.

### **B. When two individuals are considered married for SSI purposes**

#### **1. Opposite-sex marriages**

Two opposite-sex individuals are married for SSI purposes if they are:

- Legally married under the laws of the state where they make their permanent home; or
- Married for Title II purposes; or
- Living together in the same household and holding themselves out as an opposite-sex married couple to the community in which they live. See [SI](#)



[00501.152](#), Determining Whether Two Individuals Are Holding Themselves Out as a Married Couple, for more information.

## **2. Same-sex marriages**

Two same-sex individuals are married for SSI purposes if they are legally married under the laws of the state where they make their permanent home.

**NOTE:** We will **not** recognize that a claimant and a same-sex individual with whom he or she lives are married for SSI purposes because they are:

- entitled to Title II benefits as same-sex spouses; or
- in a non-marital legal relationship (e.g., a civil union, a domestic partnership); or
- holding themselves out to the community as a married couple.

## **C. When a marital relationship exists for SSI purposes**

### **1. Accept an allegation about marriage**

#### **a. Opposite-sex marriages**

Accept an individual's allegation that he or she is or is not married. If there is information to the contrary, follow instructions in this section to obtain evidence about marital status for SSI purposes.

#### **b. Same-sex marriages**

For allegations of a same-sex marriage, refer to [GN 00210.800C](#) to determine if the marriage can be recognized for SSI purposes.

### **2. Evidence of marriage**

If evidence is needed, follow instructions in [GN 00305.000](#), Proof of Marital Relationship.

### **3. Married for Title II purposes**

#### **a. Opposite-sex marriages**

Document the file to show the entitlement of one member of the couple to Title II benefits on the record of the other.

#### **b. Same-sex marriages**

We cannot recognize a same-sex couple as married for SSI purposes solely based on entitlement to Title II as a same-sex spouse.

### **4. Holding out as a married couple**

#### **a. Opposite-sex couples**

Refer to [SI 00501.152](#), Determining Whether Two Individuals Are Holding Themselves Out as a Married Couple, for more information.

#### **b. Same-sex couples**

We cannot recognize a same-sex couple as married for SSI purposes solely based on their holding themselves out to the community as a married couple.

### **D. When two individuals are no longer considered married for SSI purposes**

Two individuals are no longer married for SSI purposes as of the date that any of the following occurs.

- Either individual dies.
- They receive an issuance of a final decree of annulment or divorce.
- Either individual begins living with a different person whom the agency would also recognize as a spouse. For more information, see [SI 00501.150.G.1](#) in this section.
- They change their permanent home to a state whose laws do not recognize their marriage.
- An opposite-sex couple no longer hold themselves out as married.

- An opposite-sex couple are no longer married for Title II purposes.

**NOTE:** If a marital relationship ends by death, divorce, or annulment in the same month it began, treat the marriage as if it had never existed. Otherwise, the termination of marriage is effective the month after the month of death, divorce, or annulment.

## **E. Evidence that a marital relationship has ended**

### **1. Death, divorce, annulment**

Note the date and the event on a DROC screen, and indicate what evidence you obtained or explain why evidence is not available.

### **2. Living with different spouse**

Document the file with relevant information.

### **3. Change in Title II “deemed spouse” determination**

Document the file with a copy of the Title II termination notice or MBR query showing the deemed spouse's ledger account file (LAF) code, if something indicates that we reversed a prior “deemed spouse” determination.

### **4. Opposite-sex couple no longer holding out**

Refer to [SI 00501.152](#), Determining Whether Two Individuals Are Holding Themselves Out as a Married Couple for more information if there is an indication that the opposite-sex couple are no longer holding themselves out as married.

## **F. When the marital relationship applies to eligibility and computation of payments**

For SSI purposes, two individuals are married for a month if they meet any of the criteria in [SI 00501.150B](#) in this section as of the first moment of the month. For the exceptions to the “first moment of the month” rule, see [SI 00501.154](#), Determining When Couple Computation Rules Apply.

## **G. Special circumstances**

### **1. If more than one individual could be considered a spouse**

For SSI purposes, we recognize as a spouse only a person with whom the claimant is living. It is not material that another person may also qualify as the legal spouse of either of the people who are living together.

For example, an SSI claimant may be married but living separately from someone who is his or her spouse according to state law, but we may recognize another opposite-sex individual in the household as the claimant's holding out spouse for SSI purposes.

### **2. Couple resume living together**

A marital relationship exists when two individuals resume living together after having lived together previously as a married couple. In such a case, we presume that the individuals are in a marital relationship unless they present evidence to the contrary. Evidence to the contrary includes evidence of a divorce or, in the case of an opposite-sex couple, the termination of a holding out relationship. For example, if a divorced couple resumes living together due to illness or for economic reasons with no intention of resuming a marital relationship, this represents evidence to the contrary.

If two individuals who previously lived together as a married couple resume living together, review the facts of the case to make a new marital status determination.

- If the couple are still legally married under the laws of the state where they make their permanent home, and they resume living together after having lived apart, they are a married couple for SSI purposes, regardless of the reason they resumed living together.
- If the couple allege that they are legally separated, consider the couple to be married since a legal marriage still exists.
- If the couple allege that they are divorced, obtain a copy of the divorce decree. Obtain signed statements from both individuals explaining why they are living together (e.g., illness, economic reasons). If they are an opposite-sex couple, follow instructions in [SI 00501.152](#) to determine if they are holding themselves out to the community as married.

- If an opposite-sex couple allege that they are no longer holding themselves out as married, follow instructions in [SI 00501.152](#), Determining Whether Two Individuals Are Holding Themselves Out as a Married Couple.

**Example:**

Marie and Patrick divorced several years ago. Recently, Patrick became ill. Marie, who is an SSI recipient, moved to Pat's home to provide care during his illness. Marie informed Social Security about the change of address. Patrick filed for SSI benefits and informed the claims representative about their divorce and the current living arrangement. Because Marie and Patrick are living together, the claims representative followed instructions in [SI 00501.152](#) to determine if they are holding themselves out as married. Neither Marie nor Patrick presents them as married, and there is no indication of a holding-out relationship. Therefore, Patrick is an eligible individual.

## **SI 00501.152 Determining Whether Two Opposite-Sex Individuals Are Holding Themselves Out as a Married Couple**

### **A. Determining if a man and a woman are holding themselves out as a married couple**

Use these instructions to determine if a man and a woman who live in the same household are considered married for supplemental security income (SSI) purposes because they hold themselves out as a married couple to the community in which they live.

**IMPORTANT:** Develop for holding out only in cases involving opposite-sex couples. Do not develop for holding out in cases involving same-sex couples.

### **B. When not to develop for holding out by a man and a woman**

Do not ask about holding out if there is an obvious reason for the man and woman to live in the same household, other than as a couple. The following are examples.

- They are in a family relationship (e.g., siblings).

- They have an employer-employee relationship such as for housekeeping or child care.
- Their household arrangement is only for the purpose of sharing expenses.

## **C. Procedure for determining if a man and a woman are holding themselves out as a married couple**

### **1. Treatment of allegations**

Obtain a signed statement as to whether the man and the woman hold themselves out to the community as a married couple. Treat the allegation in the statement as follows:

#### **a. Individual denies holding out as married, no evidence to the contrary**

Accept the allegation.

#### **b. Individual alleges holding out as married**

Obtain a signed statement from the other individual. If both allege holding out, accept the allegation.

#### **c. Either individual denies holding out as a married couple, evidence to the contrary**

Obtain the signed responses of both the man and the woman to the following questions. You may use Form SSA-4178, Marital Relationship Questionnaire, provided in [SI 00501.153](#):

- By what name or names are you known?
- How do you introduce the other person to friends, relatives, or others?
- How is mail addressed to you and to the other person?
- Are there any bills, installment contracts, tax returns, or other papers showing you as a husband and wife?
- Is the place where you live owned or rented by both of you or only one?

Ask other questions if you think that will help clarify how the individuals present themselves to the community.

## **2. Holding out not indicated**

Stop development if all the responses of both the man and the woman show that neither presents the relationship as a marital one.

## **3. Responses indicate possible holding out**

If one or more of the answers by either the man or the woman indicate the possibility of a holding out relationship, obtain as many of the following items of evidence (grouped in order of probative value) as possible and make a written determination.

- Mortgages, leases, property deeds, bank accounts, insurance policies, passports, tax returns, credit cards.
- Information (preferably documents) from other government programs, such as Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), public housing, etc.
- Magazine or newspaper subscription labels, personal mail.
- Statements from relatives, close friends, or neighbors.

## **4. Holding out determination**

In order for the agency to make a written determination that a man and a woman are holding themselves out as a married couple, consider the following:

- The age and probative value of the evidence.
- The role the individuals played in creating the evidence (e.g., signing a lease as a married couple).
- The individuals' explanation regarding evidence that indicates holding out.

## **5. Case Code (CG) entry**

If a holding out relationship exists, see SM 01005.525 and SM 01301.820 for the appropriate CG field entry.

## **D. Examples**

### **1. No holding out alleged; evidence to the contrary; holding out not established**

Michael Stevens and Barbara Foster deny any marital relationship but also indicate that they rent an apartment together. The field office (FO) obtains an SSA-4178 (Marital Relationship Questionnaire).

The information shows that, although they share activities, they live together for economic reasons. They supply their bank statements, which show they do not have joint accounts.

The FO decides that the evidence, the responses on the SSA-4178, and the explanation about the information on the rental of the apartment support the no holding out allegation.

### **2. No holding out alleged; evidence to the contrary; holding out established**

Kevin Anders and Kathryn Simms deny any marital relationship. They live in a house owned by Ms. Simms. The property tax records and mortgage are in Ms. Simms' name. The FO learns from a field contact that the neighbors refer to Ms. Simms as Mrs. Anders. The FO develops following the procedure in [SI 00501.152C.1.c.](#) (in this section).

Ms. Simms admits that the neighbors know they are not legally married but refer to her as Mrs. Anders, and she does not correct them.

The responses on the SSA-4178 indicate that Mr. Anders and Ms. Simms filed tax returns as "married filing jointly" using the Anders name. They also have charge accounts in the Anders name. Based on this information and the available evidence, the FO decides that they are holding themselves out to the community as a married couple.

### **3. Mixed allegations; no holding out**

Steve Garrett and Betty Sanders each receive SSI as eligible individuals. When they move in together, they report the change in their living arrangements.

At the redetermination, Mr. Garrett signs a statement that they hold themselves out to the community as a married couple and plan to be married.



When contacted, Ms. Sanders states she does not present their relationship to the community as that of a married couple and will not do so until they are married. Their apartment rental lease shows both names. There is no other information or evidence that indicates Ms. Sanders presents their relationship as that of a married couple. Since only one of the individuals presents the relationship to the community as that of a married couple, the FO decides there is no holding out and continues to treat them as two eligible individuals.

#### **4. Holding out relationship ends; couple remain in the same household; no holding out**

Alex Mathis and Alice Blake have lived together and held themselves out to the community as a married couple for 15 years. Mr. Mathis receives SSI benefits; Ms. Blake works. We deem Ms. Blake's income to Mr. Mathis.

Mr. Mathis contacts the teleservice center in June and reports that he no longer considers Ms. Blake to be his wife and wants his full SSI payment. He adds that he has met someone else but is temporarily remaining with Ms. Blake for financial reasons. The FO contacts Ms. Blake, who states that Mr. Mathis is living in the basement of the house and will move out as soon as he is financially able. Ms. Blake provides evidence that they dissolved all joint credit accounts. Based on this information, the FO determines that they are no longer considered holding out as married.

#### **5. Same-sex couple were married under the laws of one state but live in another state that does not recognize their marriage; do not develop for holding out**

Mark Johnson and Eric Morris were married in Connecticut, after the date that Connecticut began to permit same-sex marriages. They later move to a permanent home in a state that does not recognize same-sex marriage. Eric becomes disabled, and he applies for SSI. During Eric's application, he states that he and Mark are married. The FO refers to [GN 00210.800C](#) to determine if the marriage can be recognized for SSI purposes. Because the state where Eric now makes his permanent home does not recognize same-sex marriage, the FO does not recognize Mark and Eric's marriage for SSI purposes. The FO does not develop for holding out.

## **SOCIAL SECURITY RULINGS**

### **SSR 76-27: SECTION 1614(d)(2) and 1614(f)(1) (42 U.S.C. 1382c(d)(2) and 1382c(f)(1)) -- SUPPLEMENTAL SECURITY INCOME -- MARITAL RELATIONSHIP**

**20 CFR 416.1003(b) and (c) and 416.1005(a)**

#### **SSR 76-27**

The claimant and a woman whom he holds out to the community to be his wife, reside in a State which does not recognize common-law marriages. The Social Security Administration determined that a husband-wife relationship existed according to section 1614(d)(2) of the Social Security Act. The claimant contended that since the State of his residence does not recognize a marriage relationship, the Federal Government should be precluded from recognizing one. *Held*, a husband-wife relationship as defined in section 1614(d)(2) of the Social Security Act, as amended, does exist whether or not such relationship is recognized by the State in which they reside. Because of this relationship, the claimant is subject to the income and resource deeming provisions of section 1614(f)(1) of the Social Security Act.

The general issue is whether the claimant is a "husband" under section 1614(d)(2) of the Social Security Act, as amended, and if so, is the claimant affected by the deeming provisions of section 1614(f)(1) of the Social Security Act, as amended. The specific issues to be decided are: Whether the claimant and a woman who are holding themselves out as man and wife to the community in which they reside, are husband and wife under the Social Security Act; and what effect would a State's nonrecognition of a common-law marriage have in the final determination as to whether they are husband and wife?

The claimant, an obviously disabled individual, appeared at the hearing with a woman whom he identified as his wife, Eve. Claimant admitted at the hearing that he considered Eve to be his wife and that they had lived together holding themselves out to the community as man and wife since 1971. He indicated that there had never been a formal marriage ceremony binding them but that they looked upon one another as husband and wife. Eve also indicated in her testimony at the hearing that the claimant's testimony was substantially correct. Both indicated that the child now living with them was the natural son of the claimant and Eve.

Section 1614(d)(2) of the Social Security Act provides that:

"In determining whether two individuals are husband and wife for purposes of this title, appropriate State Law shall be applied; except that . . . if a man and woman are found to be holding themselves out to the community in which they reside as husband and wife, they shall be so considered for purposes of this title notwithstanding any other provision of this section."

Section 416.1005(a) of Regulations No. 16 reads in part as follows:

"Two individuals may be considered to be husband and wife for the purpose of determining that one is the spouse of the other under title XVI of the Act if at the time the application for payments is made or at any later date:

(1) The individuals are living together in the same household, and holding themselves out to the community in which they reside as husband and wife. . ."

Section 416.1003(b) and (c) of Regulations No. 16 in this regard reads as follows:

"For purposes of this subpart, the term "household" means one or more individuals living as a family unit in a single place of abode . . . A man and woman are 'holding themselves out as husband and wife' if they represent themselves as husband and wife (or as married to each other) to relatives, friends, neighbors, or tradespeople with whom they do business."

Claimant does not contest the factual situation in the case but disagrees with the legal application of the Law and Regulations dealing with the legal definition of husband and wife and the application of deeming provisions. Claimant's main contention is that since the State of Kentucky does not recognize common-law marriages that this would preclude the Federal Government, specifically the Social Security Administration, from recognizing their common-law marriage, and thus finding that claimant and Eve were husband and wife and further finding that the deeming provisions of the Social Security Act would apply.

Since claimant and Eve have conceded that they have held themselves out as husband and wife in the community, and have considered themselves to be husband and wife since 1971, the question for decision is, what effect does the State of Kentucky's refusal to recognize common-law marriage have on the Federal Government's recognition of the claimant and Eve as husband and wife? The answer is found in the above cited Section 1614(d)(2) of the Social Security Act.

This section of the Act is intended to inform us that whether or not a State recognizes a common-law marriage is not the criteria by which the Federal Government will ultimately decide whether or not a man and woman are truly husband and wife. This section indicates that if a State were to find a common-law relationship between a man and woman and were to recognize such relationship as a valid marriage, the Federal Government would accept this in determining that they were man and wife. This section indicates that if a State were to find a common-law relationship between a man and woman and were to recognize such relationship as a valid marriage, the Federal Government would accept this in determining that they were man and wife. In the reverse situation where no valid marriage is recognized by a State, the Federal Government, more specifically the Social Security Administration, is directed to look at the specific relationship between the man and woman themselves, i.e., do they treat one another as man and wife, do they indicate to others in the surrounding area in which they live that they are man and wife?

Once it is determined that claimant and Eve are husband and wife, whether common-law or otherwise, or whether or not recognized by the State in which they reside, the application of the deeming provisions of the Social Security Act must follow. Subject to certain exclusions in the Social Security Act, the income and resources of Eve will be deemed to the claimant.

In view of the above premises, the Hearing Examiner concludes that the claimant and Eve are husband and wife and have been husband and wife, according to their own testimony, since 1971 and, will continue to be husband and wife. Furthermore, since they are husband and wife, as defined by Section 1614(d)(2), Social Security Act, as amended, they automatically are subject to the income and resources deeming provisions of Section 1614(f)(1) of the Social Security act, as amended, which provides:

"For purposes of determining eligibility for and the amount of benefits for any individual who is married and whose spouse is living with him in the same household but is not an eligible spouse, such individual's income and resources shall be deemed to include any income and resources of such spouse, whether or not available to such individual, except to the extent determined by the Secretary to be inequitable under the circumstances."

It is the decision of the Hearing Examiner that the claimant and Eve are husband and wife as defined by Section 1614(d)(2) of the Social Security Act, as amended, and as such they are subject to the income and resources deeming provisions of Section 1614(f)(1) of the Social Security act, as amended.

# SSR 81-4c: SECTION 1614(d)(2) (42 U.S.C. 1382c(d)(2)) -- SUPPLEMENTAL SECURITY INCOME -- MARITAL RELATIONSHIP BASED ON LIVING TOGETHER IN THE SAME HOUSEHOLD -- CONSTITUTIONALITY

**20 CFR 416.1007**

**SSR 81-4c**

Vickers v. Harris, USDC, E.D. TENN NORTHERN DIVISION, CIV. NO. 3-79-479 (2/29/80)

In January 1979, A and B, who are both disabled, applied for supplemental security income (SSI) benefits. Although they have lived together for about eighteen years, they have never been legally married, and the State where they reside does not recognize common-law marriage. The Social Security Administration (SSA) determined that A and B were holding themselves out to the community as husband and wife and that as a consequence, under section 1614(d)(2) of the Social Security Act (the Act), they must be considered as a married couple for purposes of determining their eligibility for SSI benefits. Accordingly, A and B were awarded SSI benefits as an eligible couple. In April 1979, SSA approved A's application for disability insurance (DI) benefits under title II of the Act and advised B that A's entitlement to DI benefits rendered them both ineligible for SSI benefits. (Under section 1614(f)(1) of the Act, B's income was deemed to include A's income, including his DI benefits; therefore, B was ineligible for SSI benefits because her income exceeded the limit provided by statute.) Consequently, B filed a civil suit, contending that the "holding-out" provision of section 1614(d)(2) of the Act was unconstitutional because it violated her Equal Protection rights under the Due Process Clause of the Fifth Amendment. B claimed that she was being discriminated against because of her "disfavored social status," i.e., living with a man out-of-wedlock. *Held*, the provision in section 1614(d)(2) is consistent with the requirements of the fifth Amendment because its treatment of a man and a woman as husband and wife when they hold themselves out as such is reasonably related to Congress's goal in the SSI program of providing a family unit with a minimum standard of living; therefore, SSA's determination denying B SSI benefits is sustained.

TAYLOR, District Judge:

This Social Security case comes before this Court pursuant to the Expedited Appeals Process provided for in Chapter III of Title 20 of the Code of Federal Regulations, Part 416, 20 CFR §§ 416.1424 *et seq.* Pursuant to those provisions, plaintiff has agreed to accept the factual determinations of the Secretary with regard to her claim (Tr. 2, 13; 20 CFR § 416.1424c(b)(1)). In exchange, the Secretary admits that but for the effect of the challenged statute, § 1614(d)(2) (42 USC § 1382c(d)(2)), plaintiff would be eligible for Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act (Act), 42 USC §§ 1387 *et seq.*

The sole issue for determination by this Court is the constitutionality of § 1614(d)(2) of the Social Security Act (the Act), 42 USC § 1382c(d)(2). That section provides:

In determining whether two individuals are husband and wife for the purposes of this title [Title XVI of the Act], appropriate state laws shall be applied; except that --

...

(2) if a man and woman are found to be holding themselves out to the community as husband and wife, they shall be so considered for purposes of this title notwithstanding any other provision of this section.

Plaintiff is a 56-year old woman who has been living with one Dock Pilcher for some eighteen years. They have never been legally married, and Tennessee does not recognize common law marriage. The evidence in the record shows that they own their common home in joint tenancy under the names of Dock Pilcher and Laura Vickers (Tr. 10, 39), that plaintiff's automobile title is in the name of Vickers (Tr. 42), that plaintiff receives mail addressed to Laura Vickers at her residence (Tr. 6), that Dock Pilcher introduces plaintiff to others as Laura Vickers (Tr. 8), and that neighbors generally know her as Laura Vickers (Tr. 3). The evidence further shows that they filed their 1978 income tax return as "married, filing joint return" (Tr. 5), that Dock Pilcher has claimed plaintiff as a dependent on the return (Tr. 6), that the close-community understands who is referred to by the name Laura Pilcher (Tr. 3), that is someone refers to plaintiff in her presence as Laura Pilcher, she does not correct them (Tr. 6), and that merchants in their community believe that a husband and wife relationship exists between plaintiff and Dock Pilcher (Tr. 3). Based on this evidence, the Secretary determined that plaintiff and Dock Pilcher were "holding themselves out to the community as husband and wife" (Tr. 4), and that for the purpose of their SSI eligibility, they must be considered as a married couple (Tr. 4).

Plaintiff and Pilcher filed a joint application for SSI in January, 1979. The record indicates that the application was approved and plaintiff and Pilcher began receiving SSI benefits in 1979. (Tr. 27, 29).

In April, the SSA approved the individual application of Dock Pilcher for Disability Insurance Benefits under Title II of the Act (DIB) and in June, 1979, sent plaintiff a Notice of Overpayment. SSA claimed that because the two must be considered as husband and wife, the DIB benefits received by Dock Pilcher rendered them both ineligible for SSI. (Tr. 21).

Plaintiff claims that the "holding-out" provision here in issue, 42 USC § 1382c(d)(2), violates her Equal Protection rights as embodied in the Due Process Clause of the Fifth Amendment, *Johnson v. Robison*, 415 U.S. 361 (1974). She appears to argue that (1) the statutory scheme of the Act which classified her as a spouse for the purposes of Title XVI SSI benefits, and at the same time as a non-spouse for the purpose of Title II DIB wife's insurance benefits, 42 USC §§ 402(b), 416(b), is arbitrary; and (2) that she has been the subject of invidious discrimination by reason of her "disfavored social status", i.e. living with a man out-of-wedlock.

First, it must be emphasized that the constitutionality of the provision allegedly precluding plaintiff from eligibility for Title II benefits is not properly before this Court. There is no allegation in the complaint, nor does it appear from the record, that plaintiff has ever applied for DIB. Therefore, the Secretary has rendered no final decision, and this Court is without jurisdiction to consider the issue. 42 U.S.C. § 405(g).

The sole issue before us, then is whether § 1614(d)(2) (42 USC § 1382c(d)(2)) and the regulations promulgated thereunder are invidiously discriminate against plaintiff in violation of the Due Process Clause of the Fifth Amendment.

Plaintiff claims that she is being discriminated against because of her "status", which, pursuant to the Expedited Appeals Process Agreement (Tr. 13), we must assume to be that of a woman living with a man and holding herself out as his wife (Tr. 4). Although her argument is not clear, she appears to be arguing that she is being treated differently from a woman who is living with a man, but not so holding herself out.<sup>[1]</sup> The precise question is whether the difference in treatment is invidious or arbitrary.

The Act embodies a social welfare scheme and delineates eligibility requirements for economic distribution, and in this sense is indistinguishable from an unemployment insurance program. Thus, the categorizations defined by Congress need not be precise, but are sufficient if they are reasonably related to the purposes for which they are drawn. *Califano v. Boles*, \_\_\_\_\_ U.S. \_\_\_\_\_, 47 LW 4874 (1979); *Idaho Dept. of Employment v. Smith*, 434 U.S. 100, (1977).



The purpose of one SSI program, as defined in the regulation is to assure a minimum level of income for people who are age 65 or over, or who are blind or disabled and who do not have sufficient income and resources to maintain a standard of living at the established federal minimum income level. 20 CFR § 416.110.

It is for Congress, not this Court, to determine both the federal minimum income level and the criteria by which it will be established.

It is clear from the statutory scheme that Congress intended to utilize the family unit as a vehicle by which both to measure need and to distribute benefits. In doing so, Congress was justified in assuming that people living together and behaving as a family for some purposes, e.g., tax and credit, would likewise carry out the family role for other purposes including the distribution of SSI benefits. Thus, the conclusion is inescapable that the treatment as husband and wife of those persons holding themselves out as such is reasonably related to Congress' goal of providing a minimum standard of living for those people involved.

It may be that Congress' assumption does not precisely fit the lifestyles of all individuals involved. But that is not the test of constitutionality. As the Supreme Court has recently stated:

The process of categorization presents difficulties inherent in any linedrawing exercise where the draftsman confronts a universe of potential beneficiaries with different histories and distinct needs. He strives for a level of generality that is administratively practicable, with full appreciation that the included class members whose "needs" upon a statutorily defined occurrence may not be as marked as those of isolated individuals outside the classification. "General rules are essential if a fund of this magnitude is to be administered with a modicum of efficiency, even though such rules inevitably produce seemingly arbitrary consequences in some individual cases." *Califano v. Jobst*, 434 U.S. 47, 53 (1977). A process of case-by-case adjudication that would provide a "perfect fit" in theory would increase administrative expense to a degree that benefit levels would probably be reduced, precluding a perfect fit, in fact. (citations omitted) *Califano v. Boles*, *supra*, 47 LW at 4875.

For the foregoing reasons, we hold that the provision challenged by plaintiff is consistent with the requirements of the Fifth Amendment. Accordingly, it is ORDERED that the determination of the Secretary denying her SSI benefits be, and the same hereby is, sustained. It is further ORDERED that this case be, and the same hereby is, dismissed.

Order accordingly.



<sup>[1]</sup> It must be emphasized that the classification of which plaintiff complains is not based on the fact that she lives with Pilcher out-of-wedlock, but only on the fact that she holds herself out as his wife as defined in the Act.

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## **Social Security Handbook**



### **2122. Marriage**

#### **2122.1 How Does Marriage Affect SSI Benefits?**

Marriage helps determine whether:

- A. There is an eligible couple (rather than two eligible individuals);
- B. The rules for deeming income and resources apply if a spouse is *not* eligible (see §2167); or
- C. An individual under age 22 is a child who qualifies for special income exclusions.

#### **2122.2 When Are A Man And Woman Considered Married?**

A man and woman are married for SSI purposes if:

- A. They are living in the same household and are married under the laws of their State;
- B. They are holding themselves out as husband and wife to the community in which they live; or
- C. One is entitled, as the spouse of the other, to Social Security benefits.

#### **2122.3 When Does SSA Evaluate The Existence Of A Marriage?**

We generally evaluate the existence of a marriage as of the first day of a month. However, there are exceptions:

- A. If both members of an eligible couple file an application in the same month, we evaluate couple status for that month on the first day of the month following the date the application is filed; and
- B. If both members of a formerly eligible couple seek reinstatement as a couple in the same month, we evaluate couple status for that month as of the latest request for reinstatement.

## 2122.4 Who Is Considered The Spouse If Marriage Status Changes?

The spouse you were living with at the beginning of a month is your spouse for SSI purposes, regardless of changes later in the month. For example, a “holding-out” spouse with whom you are living takes precedence over a legally married spouse from whom you are separated.

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## **REPORTS OF SOCIAL SECURITY CASES**

### **ROOMMATES NOT HOLDING OUT AS A COUPLE**

September 27, 2010

**Author:** [Catherine M. Callery \(Kate\)](#) | [Louise M. Tarantino](#)

Victor Torres, Disability Unit Director at Brooklyn Legal Services Corporation “A,” [reports](#) on an interesting decision involving an unmarried couple who are living together as roommates. The Social Security Administration (SSA) decided that they were living together as a common law couple - or in SSI parlance, “holding out” as husband and wife. See 20 C.F.R. §416.1806(a)(3). As a result of SSA’s incorrect assumption, the woman’s monthly SSD benefits were “deemed” available to the male roommate. Since her monthly SSD benefit is above the SSI couples rate, SSI determined that he was no longer financially eligible for SSI and that he had been overpaid.

Victor argued that his clients were merely roommates and that at no time did they ever hold themselves out to be a couple. He presented evidence, including pictures, demonstrating that they had separate rooms in their shared apartment. They also maintained separate bank accounts. See 20 C.F.R. §416.1826(c), setting forth other criteria that SSI will consider in determining whether two unrelated people of the opposite sex who are living together are “holding out”: what names are the two known by; do they introduce themselves as husband and wife; what names are used on mail they receive; who owns or rents the apartment; do deeds, tax papers, or other documents list them as

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husband and wife? POMS SI 00501.152 (Determining Whether a Man and Woman Are Holding Themselves Out as Husband and Wife) provides even more indicia to investigate.

Victor also threw in an equitable argument, reminding the ALJ that even though the woman's Title II income was being deemed to his client, he would not be eligible for any of that money if she were to pass away, since they are not married. The ALJ bought Victor's arguments and issued a fully favorable decision.

Victor reports that SSI frequently treats persons of the opposite sex who are living together as a couple for SSI purposes in New York City. As he notes, in this day and age of housing shortages, it is fairly common for people to share apartments. It is unfair and inappropriate for SSA to assume that the roommates are holding themselves out to be a couple, and then force them to prove otherwise. Victor also notes that SSA usually does not make this assumption if the couple living together is the same sex.

If advocates are seeing this problem in other parts of the state, let us know. In the meantime, congratulations to Victor for his creative work in this case.

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## **SOCIAL SECURITY FORM TO DETERMINE HOLDING OUT RELATIONSHIP**

Go to the PDF form, [SSA-4178, Marital Relationship Questionnaire](#)