

## **LGBT FAMILIES AND THE RECOGNITION OF SAME-SEX MARRIAGE: WHO BENEFITS?**

Within the LGBT community, there is a great deal of discussion about the effect of the Supreme Court's recent decisions concerning same-sex marriage on the Social Security program. There are a broad array of Social Security benefits that have always been available to married individuals and their children that are only now being made available to LGBT families and their children, regardless of where they live in the United States.

But what types of benefits are involved? Who wins? Can anyone get more than they get now? The purpose of the following illustrative examples should help LGBT family members better understand the types of benefits they might receive. There are benefits that couldn't be paid while the Defense of Marriage Act (DOMA) was the law of the land, but can be paid now in every state. What follows are brief summaries of the requirements for selected categories of benefits that are available as part of the overall family protections that are included in Social Security.

In addition, the National Committee Foundation has prepared a number of LGBT-specific examples of individuals who can now qualify for Social Security that same-sex marriages are authorized and recognized everywhere in the United States. They are here only to illustrate who might qualify for benefits and to help LGBT families better understand who might qualify for benefits. However, the most important message is, when in doubt, file a claim with the Social Security Administration. It doesn't cost anything and it will assure that each case is determined accurately and authoritatively.

### **REQUIREMENTS FOR SPOUSAL BENEFITS**

The following are the basic requirements for receiving a spousal benefit. Your spouse can receive as much as one-half of the amount of your full, unreduced retirement benefit. Benefits can be paid to your husband or wife:

- If he or she is age 62 or older; or
- At any age if he or she is caring for your child (the child must be younger than 16 or disabled and entitled to Social Security benefits on your record).
- If your spouse is receiving a Social Security benefit on his/her own work record, it must be less than one-half of your full, unreduced retirement benefit.
- Benefits can be paid only after you and your spouse have been married for at least 12 months.

### **EXAMPLE 1: RETIRED COUPLE, BOTH ALREADY RECEIVING SOCIAL SECURITY**

Joe Brown, age 71, is receiving Social Security benefits of \$2,700 per month<sup>1</sup>. He retired when he reached his full retirement age. Joe and Bill married in Massachusetts back in 2010 and now live in California. Joe always had a well-paying job and has a benefit that's quite a bit higher than Bill's. Bill's benefit, which he started receiving last year when he turned 66, is \$875. Now that their marriage is recognized universally, Bill stands to qualify for a higher benefit by applying for spousal benefits on Joe's record. Here's how the benefit would be figured:

1. The maximum that Bill can receive on Joe's record is \$1,350, which is half of Joe's benefit. Since they both waited until they reached their full retirement age, there is no reduction for early retirement.
2. From the \$1,350 that Bill can receive on Joe's record we must subtract the amount Bill receives on his own record (\$1,350 minus \$875).
3. The difference, which is \$475, is the additional amount that Bill can receive on Joe's record now that DOMA has been invalidated.
4. Bill should apply as quickly as possible. While Social Security can pay up to six months' retroactive benefits, he should file a claim on Joe's record to avoid any loss of benefits.

### **REQUIREMENTS FOR WIDOW/WIDOWER'S BENEFITS**

When you die, your family may be eligible for benefits based on your work history. Family members who can collect benefits include a widow or widower who is:

- 60 or older; or
- 50 or older and disabled; or
- At any age if he or she is caring for your child who is younger than 16 or disabled and entitled to Social Security on your record; and
- Not eligible for an equal or higher benefit based on his or her own work history; and
- Not currently married, unless the remarriage occurred after age 60 or after age 50 if disabled.
- Generally, your marriage must have lasted for at least 9 months prior to your death in order for your spouse to qualify for widow or widower's benefits.
- A widow/widower's benefit ranges between 75 to 100 percent of the deceased worker's benefit.

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<sup>1</sup> All of the examples included in this document reflect the amount a person receives before any withholding for Medicare. In 2015, the typical retiree pays \$104.90 per month for Medicare Part B and an average of about \$31.00 for prescription drug coverage under Part D.

### **EXAMPLE 2: WIDOW'S BENEFITS**

Edie Brown, age 83, is receiving Social Security benefits of \$1,200 per month before any withholding for Medicare. She and her wife, Joy Smith, were married in Iowa, and Edie continues to live there, even though Joy passed away in January. At the time of her death, Joy's monthly Social Security benefit, before Medicare withholding, was \$1,600. Both Edie and Joy waited until they reached their full retirement age to apply for Social Security, so neither had their benefit reduced due to early retirement.

1. Edie can qualify for a widow's benefit on Joy's Social Security record. The maximum that Edie can receive each month as Joy's widow is \$1,600.
2. From this, we must subtract the amount that Edie receives on her own record (\$1,600 minus \$1,200).
3. The difference, which is \$400, is the additional amount that Edie can receive as Joy's widow.
4. Edie should apply immediately. If she fails to apply in the current month, she will lose that month's benefit, since SSA can only pay retroactive benefits for six months prior to the date of the application (12 months if the benefit is based on disability).

### **EXAMPLE 3: WIDOWER'S BENEFITS**

Tom Johnson and Henry Jones have lived together as committed partners for many years. Tom was the couple's breadwinner since Henry had health problems through his life that limited his ability to work. They married in Massachusetts in 2008. Henry now lives in New York, alone, since Tom died in 2011. Tom died before he could qualify for Social Security. Since then, Henry has been living off a small inheritance he received from his parents. He hasn't worked enough to be insured for benefits on his own record. Henry is 68. Tom's Social Security benefit amount, if he were alive to receive it, would be \$1,900.

1. Henry can qualify for a widower's benefit on Tom's Social Security record. Since he is past his full retirement age, there will be no reduction in Henry's benefit due to early retirement.
2. Because Henry isn't receiving a benefit on his own Social Security record, he will receive 100 percent of Tom's monthly benefit amount, or \$1,900.
3. Henry should apply immediately. A delay of even one month will translate into a loss of \$1,900, due to the six month limit on retroactive benefits (12 months if the benefit is based on disability).

## **REQUIREMENTS FOR THE LUMP SUM DEATH BENEFIT (LSDB)**

Following are the requirements for receiving the \$255 LSDB:

- You and your spouse must have been married for at least 9 months immediately prior to your spouse's death;
- Your deceased spouse must have worked and paid into the system long enough to be fully insured for Social Security benefits;
- You and your spouse must have been living in the same household at the time of the death; and
- You must apply for the benefit within two years of the date of your spouse's death.

(NOTE: If there is no surviving spouse who can qualify, the deceased person's children can qualify for the LSDB if they were receiving or eligible for benefits on his or her earnings record during the month the worker died.)

### **EXAMPLE 4: LSDB**

Lois Egan and Mary Dow were married in Iowa in 2011 and now live in Maryland. Lois is 40 and is working full time. Mary passed away in June 2014 at their home in Baltimore. When she died, Mary was fully insured for retirement benefits. Neither Mary nor Lois has any children. The primary benefit amount payable on Mary's record is \$2,500.

1. Lois can qualify for the lump sum death benefit that is payable on Mary's Social Security Record. The amount of the LSDB is \$255.
2. Lois should file an application before June 2016, since an application for the LSDB must be filed within 2 years of the worker's death.
3. In the future, Lois might qualify for widow's benefits on Mary's record. As a widow, she can receive benefits as early as age 50 if she becomes disabled, or at age 60 if she isn't disabled.

## **REQUIREMENTS FOR CHILD'S BENEFITS**

Benefits can be paid to a worker's unmarried children if the worker is receiving Social Security or is deceased and the children are:

- Younger than 18; or
- Between 18 and 19 years old in elementary or secondary school as full-time students; or
- Age 18 or older and severely disabled (the disability must have started before age 22).

- If you become the parent of a child (including an adopted child) after you begin receiving benefits, you should let the Social Security Administration know as soon as possible so they can decide if the child is eligible for benefits.
- If a child is receiving benefits on a living parent's record, he/she can receive as much as 50 percent of the parent's own Social Security benefit. If the parent is deceased, the benefit for a child can be as much as 75 percent of the parent's benefit.

#### **EXAMPLE 5: CHILD'S BENEFITS**

Eric Roberts and Charles Abbott married in 2009 in Massachusetts, where they continued to live until Eric's death in January 2015. Charles's daughter, Ellen, who is 9 years old, has lived with her father and his partner since Charles' divorce from his wife in 2007. Eric was the breadwinner of the family, and since his death it has been difficult to make ends meet. Charles wants to know whether his daughter, who has no income of her own, can qualify for Social Security benefits on her late step-father's record. Eric's primary insurance benefit is \$2,300 per month.

1. Charles should file an application on Ellen's behalf immediately. Because Ellen was receiving at least one-half of her support from her late step-father in the year preceding his death, she meets the dependency test required to receive benefits as a step-child.
2. A child who receives benefits on a deceased worker's Social Security record qualifies for a monthly benefit amount that is three-fourths (75 percent) of the worker's primary insurance benefit.
3. Ellen's monthly benefit will be \$1,725.
4. Because benefits can be paid retroactively for only six months, any delay in applying can lead to a permanent loss of benefits.
5. In general, Ellen can receive child's benefits on her step-father's record until she reaches age 18. If she is no longer in a secondary school or is not disabled, her benefits will end when she reaches age 18.

#### **EXAMPLE 6: CHILDHOOD DISABILITY BENEFITS (CDB)**

In addition to his daughter, Ellen (see prior example), Charles also has a young son, Ethan, who soon will be 18. Ethan was hit by an automobile while riding his bicycle four years ago and now uses a wheel-chair. Like his sister, Ethan also has lived with his father since Charles' 2007 divorce. Ethan has no income of his own, and Charles wonders whether Ethan can also receive benefits on his step-father's record.

1. Charles should file an application for Ethan without delay. If the Social Security Administration finds that his condition is disabling, he will also qualify for benefits on his late step-father's Social Security record.
2. His monthly benefit will be the same as his sister's, \$1,725.

3. In general, Ethan will be able to receive Social Security on his step-father's record for the rest of his life. He will need to let SSA know if he marries or takes a job, as either event could lead to the termination of his benefits.

### **MEDICARE PART B PREMIUMS**

Medicare Part B helps cover the costs of care received from doctors and other health care providers, outpatient care, home health care, durable medical equipment and some preventive services. Social Security recipients automatically get Part A Hospital Insurance and Part B when they turn 65. You can wait to get Part B; otherwise, you will begin paying monthly Part B premiums. The standard monthly premium in 2015 is \$104.90. Although over 95 percent of beneficiaries pay the standard premium, individuals with annual income over \$85,000 and "married couples, filing jointly" with annual income over \$170,000 pay higher, income-related premiums. This year the higher premiums range from \$146.90 to \$335.70.

- Income thresholds are based on modified adjusted gross income (MAGI) - adjusted gross income plus tax exempt interest income - as reported on IRS tax returns from two years ago.
- Each year, Social Security notifies beneficiaries if they have to pay more than the premium amount. If a person's situation changes, such as a reduction in income, he or she can contact Social Security to request a new decision about the premium amount.

### **EXAMPLE 7: PART B PREMIUMS FOR AN INDIVIDUAL VS. A COUPLE**

Joe and Bob married in California where they continue to reside. They are both over age 65 and are enrolled in Medicare Part B. Joe's income comes from an employer pension and Social Security, and will total \$120,000 in 2015. Bob receives Social Security and investment income that will total \$45,000 in 2015. Currently, Joe's Medicare premium (\$209.80) is twice as high as Bob's (\$104.90) because of his higher income. Now that their marriage is recognized, Joe's Medicare premium will be cut in half because their total income will be less than \$170,000.

1. Joe should contact the Social Security Administration to explain to them that he has new information and may need a new decision about his income-related monthly Medicare premium. Marriage is one event that can lead to an adjustment of Medicare premiums.
2. The people at the Social Security office will want to have income estimates from both Joe and Bob so that they can make a decision whether to adjust Joe's Medicare premium.