



Survivors Benefits for Same-Sex Partners and Spouses

Survivors Benefits for Same-Sex Partners and Spouses

Marital status is important in determining entitlement to retirement, survivors, Medicare, and disability benefits. Social Security pays survivors benefits to the surviving spouse and some dependents of a deceased worker. A surviving spouse could be entitled to benefits or a higher benefit amount based on a marital relationship. Survivors benefits are monthly payments paid to dependents of a worker.

To learn more about survivors benefits for other dependents (e.g., unmarried children, disabled adult children, dependent parents), please visit Benefits for Children. A surviving partner's eligibility for survivors benefits is typically based on how long the worker was employed, the surviving partner's current marital status, and how long the worker and partner were married. With some exceptions, qualifying survivors typically must have been married to the deceased worker for at least 9 months and have not remarried before the age of 60 (50 if disabled). However, because of unconstitutional state laws, many same-sex couples could not marry and thus were not eligible for survivors benefits.

Under an agreement for *Ely v. Saul* and *Thornton v. Commissioner of Social Security*, more same-sex partners may qualify for survivors benefits.

You can file a new claim or if you were previously denied survivors benefits because you did not meet the marriage requirement due to unconstitutional state laws, you can ask us to reopen, or take another look at, your claim. This is the case even if you did not file an appeal at that time. If you were previously denied benefits and we find that you qualify for benefits under the *Ely* or *Thornton* decision, you may be due retroactive benefits.

Ely v. Saul

We will consider whether a same-sex couple was prevented from being married for at least nine months by unconstitutional laws barring same-sex marriage.

Thornton v. Commissioner of Social Security

We will consider whether a same-sex couple was prevented from marrying by unconstitutional laws barring same-sex marriage.

Who does this affect?

These decisions apply to people who have not applied for benefits and to people who have already applied. These decisions also apply to those who were previously denied survivors benefits because they were not married for at least nine months or did not meet the marriage requirement because of unconstitutional laws.

How will Social Security determine if a surviving spouse and the deceased spouse were prevented from being married for at least nine months by unconstitutional laws barring same-sex marriage?

We will consider all available evidence of the circumstances that resulted in the couple being married for less than nine months when the spouse died. Here are some questions we may ask of a surviving spouse in making the determination:

- Did the law of the state where the ceremonial marriage occurred prohibit same-sex marriages until less than nine months before your deceased spouse's death?
- If you had a ceremonial marriage in a state other than your state of domicile, did the state of domicile allow for same-sex marriage before the state where the ceremonial marriage occurred?
- Would you have been married to your deceased spouse for at least nine months if a state law did not prohibit same-sex marriage?

- If you could have met the nine-month duration requirement based on the date same-sex marriages were permitted in the state where you married, what were your reasons for not marrying earlier?
- Was there a waiting period for marriage licenses when you and the deceased applied for a marriage license?
- Did you live together? If yes, how long did you live together?
- Did you own property together?
- Did you inherit from the deceased based on a will?
- Did the deceased spouse name you as a beneficiary for life insurance or retirement benefits?
- Was there any commitment ceremony or other attempt to have the relationship formally recognized prior to the legalization of same-sex marriage?
- Did you have children together or did you raise any children together from prior relationships?
- Is there any other available evidence regarding when you would have married had state law permitted you to marry earlier?

How will Social Security determine if a surviving partner of a same-sex relationship was prevented from being married by unconstitutional laws barring same-sex marriage?

We will consider all available evidence of the circumstances that resulted in the couple not being married when their partner died. Here are some questions we may ask of a surviving partner in making the determination:

- Would you have married if you were not prohibited from doing so?
- What date would you have married if you were not prohibited from doing so?
- How long were you together as a couple?
- Did you live together? If yes, how long did you live together?

- Did you own property together?
- Did you inherit from your partner based on a will?
- Did your partner name you as a beneficiary for life insurance or retirement benefits?
- Was there any commitment ceremony or other attempt to have your relationship formally recognized?
- Did you have children together or did you raise any children together from prior relationships?
- Did you share joint responsibility to care for one another?
- Did you choose not to marry prior to the death of your partner for reasons other than a state law prohibition on same-sex marriages?
- Would you have been otherwise eligible to marry if the law had not barred same-sex couples from marriage?

How can I apply for survivors benefits?

The application to file for survivors benefits is not available online. If you think you may be entitled to survivors benefits, we encourage you to contact us right away. Call us at **1-800-772-1213** (TTY **1-800-325-0778**) or contact your local Social Security office. You should apply even if you are not sure if you are entitled.

What if I previously applied for survivors benefits and was denied because I was not married or married long enough?

Call us toll-free at **1-800-772-1213** (TTY **1-800-325-0778**) to ask us to reopen your claim based on the *Ely* or *Thornton* decision.

More resources

You can find more information about these court cases and benefits for same-sex couples at www.ssa.gov/people/lgbtq/couples.html. More information about survivors benefits, generally, is available at www.ssa.gov/benefits/survivors.



Securing today
and tomorrow

Social Security Administration

Publication No. 17-019

May 2022

Survivors Benefits for Same-Sex Partners and Spouses
Produced and published at U.S. taxpayer expense