

his death, the worker was visited frequently by his wife, who lived in the house to which the worker would have returned if he were able. The widow was receiving a Retirement Insurance Benefit (RIB) which exceeded her late husband's Primary Insurance Amount (PIA). Based on Pub. L. 97-35 and a strict interpretation of the regulatory definition of LISH, this widow would not qualify for the LSDP because she was neither LISH nor entitled to benefits based on her late husband's earnings record. (However, if the widow's RIB did not exceed her late husband's PIA, she would qualify for the LSDP.)

Present Policy

Operating instructions, as well as most of the pertinent regulatory sections, have been changed to reflect the changes in the law established by Public Law 97-35. To qualify as a LISH spouse, the widow(er) and the deceased must have "customarily lived together as husband and wife in the same residence" (§ 404.347). While temporary separations do not necessarily preclude the Social Security Administration (SSA) from considering a couple to be LISH, extended separations (including most that last 6 months or more) generally indicate the couple was not LISH.

However, in order to avoid the possible anomaly discussed above, SSR 82-50 was issued to provide for an exception when an extended separation is based solely on medical reasons. SSR 82-50 states:

If a husband and wife are (or were) separated and continue(d) to be separated, solely for medical reasons, SSA may consider them to be living in the same household even if the separation is (or was) likely to be permanent and there is (or was) little or no expectation of the parties again physically residing together. As long as the spouse who is now applying for the LSDP or spouse's benefits based on a deemed marriage has continued to demonstrate strong personal and/or financial concern for the worker, SSA will assume they would have lived together (absent evidence to the contrary) had the medical reasons not necessitated their separation, and will pay the LSDP or spouse's benefits to the spouse.

Proposed Policy

Since there are still some sections of our regulations that refer to the law on entitlement to the LSDP which predated Public Law 97-35 and since these sections no longer are applicable, we propose to update or remove them. We will eliminate obsolete §§ 404.393, 404.394, 404.395, and 404.765, 404.3(a), 404.612(e), 404.615(b), and 404.2 (a)(2) through (a)(6).

Also, we propose to incorporate the LISH policy interpretation found in SSR 82-50 into our regulations. The proposed policy interpretation will clearly allow for extended separations due to the confinement of either spouse in a nursing home, hospital, or other medical institution. As long as evidence indicates the husband and wife were initially separated, and continue to be separated, solely for medical reasons and would otherwise have resided together, they will be considered to be LISH.

Electronic Version

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Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These proposed rules impose no additional reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social security.

Dated: November 27, 1995.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, subparts A, D, G, and H of

part 404 of chapter III of title 20 of the Code of Federal Regulations are proposed to be amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

Subpart A—[Amended]

1. The authority citation for subpart A of part 404 is revised to read as follows:

Authority: Secs. 203, 205(a), 216(j), and 702(a)(5) of the Social Security Act (42 U.S.C. 203, 405(a), 416(j), and 902(a)(5)).

§ 404.2 [Amended]

2. Section 404.2 is amended by removing paragraphs (a)(2) through (a)(6) and redesignating paragraph (a)(7) as paragraph (a)(2).

§ 404.3 [Amended]

3. Section 404.3 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

Subpart D—[Amended]

4. The authority citation for subpart D of part 404 is revised to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

5. Section 404.347 is revised to read as follows:

§ 404.347 "Living in the same household" defined.

Living in the same household means that you and the insured customarily lived together as husband and wife in the same residence. You may be considered to be living in the same household although one of you is temporarily absent from the residence. An absence will be considered temporary if:

(a) It was due to service in the U.S. Armed Forces;

(b) It was 6 months or less and neither you nor the insured were outside of the United States during this time and the absence was due to business, employment, or confinement in a hospital, nursing home, other medical institution, or a penal institution;

(c) It was for an extended separation, regardless of the duration, due to the confinement of either you or the insured in a hospital, nursing home, or other medical institution, if the evidence indicates that you were separated solely for medical reasons and you otherwise would have resided together; or

(d) It was based on other circumstances, and it is shown that you and the insured reasonably could have