

Social Security Administration

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(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 Administra-

tion 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

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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