

**§ 410.380**

**20 CFR Ch. III (4-1-04 Edition)**

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

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(b) Such individual was totally dependent on the miner for support (see § 410.395(h)).

[37 FR 20640, Sept. 30, 1972]

### § 410.390 Time of determinations.

(a) *Relationship and dependency of wife or child.* With respect to the wife or child of a miner entitled to benefits, and with respect to the child of a widow entitled to benefits, the determination as to whether an individual purporting to be a wife or child is related to or dependent upon such miner or widow shall be based on the facts and circumstances with respect to the period of time as to which such issue of relationship or dependency is material. (See, for example, § 410.510(c).)

(b) *Relationship and dependency of widow.* The determination as to whether an individual purporting to be the widow of a miner was related to or dependent upon such miner is made after such individual effectively files a claim for benefits (see § 410.227) as a widow. Such determination is based on the facts and circumstances with respect to the time of the miner's death (except as provided in § 410.320(d)). A prior determination that such individual was determined to be, or not to be, the wife of such miner, pursuant to §§ 410.310 and 410.350, for purposes of augmenting the miner's benefits for a certain period (see § 410.510(c)), is not determinative of the issue of whether the individual is the widow of such miner or of whether she was dependent on such miner.

(c) *Relationship and dependency of surviving divorced wife.* The determination as to whether an individual purporting to be a surviving divorced wife of a miner was related to or dependent upon such miner is made when such individual effectively files a claim for benefits (see § 410.227) as a surviving divorced wife. Such determination is made with respect to the time of the miner's death. A prior determination that such individual was, or was not, the divorced wife of such miner, pursuant to §§ 410.311 and 410.351, for purposes of augmenting the miner's benefits for a certain period (see § 410.510(c)), is not determinative of the issue of whether the individual is the surviving divorced

wife of such miner or of whether she was dependent on such miner.

[37 FR 20640, Sept. 30, 1972]

### § 410.391 Legal impediment.

For purposes of this subpart C, *legal impediment* means an impediment resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution, or resulting from a defect in the procedure followed in connection with the purported marriage ceremony—for example, the solemnization of a marriage only through a religious ceremony in a country which requires a civil ceremony for a valid marriage.

[36 FR 23756, Dec. 14, 1971]

### § 410.392 Domicile.

(a) For purposes of this subpart C, the term *domicile* means the place of an individual's true, fixed, and permanent home to which, whenever he is absent, he has the intention of returning.

(b) The domicile of a deceased miner or widow is determined as of the time of his or her death.

(c) The domicile or a change in domicile of a beneficiary or other individual is determined with respect to the period or periods of time as to which the issue of domicile is material.

(d) If an individual was not domiciled in any State at the pertinent time, the law of the District of Columbia is applied as if such individual were then domiciled there.

[36 FR 23756, Dec. 14, 1971, as amended at 37 FR 20640, Sept. 30, 1972]

### § 410.393 "Member of the same household"; "living with"; "living in the same household"; and "living in the miner's household".

(a) *Defined.* (1) The term *member of the same household* as used in section 402(a)(2) of the Act (with respect to a wife); the term *living with* as used in section 402(e) of the Act (with respect to a widow); and the term *living in the same household* as used in §§ 410.310(d) and 410.320(d) (with respect to certain wives and widows, respectively), mean that a husband and wife were customarily living together as husband and wife in the same place of abode.