

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF RHODE ISLAND

CIVIL ACTION
NO.

DEBORAH TEVYAW,	)
Plaintiff,	)
	)
v.	)
	)
CAROLYN W. COLVIN, in her official capacity	)
as the Acting Commissioner of the Social Security	)
Administration,	)
Defendant.	)
	)

COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF

INTRODUCTION

This case challenges the Social Security Administration's (SSA) erroneous interpretation and application of the statutes governing widow's insurance and lump sum death benefits to gay and lesbian widow/ers, resulting in the denial of Plaintiff Deborah ("Deb") Tevyaw's application for those benefits. Deb is a Rhode Island resident and was validly married to her spouse Patricia ("Pat") Baker until Pat's death in 2011. Deb later applied for widow's insurance and lump sum death benefit based upon Pat's Social Security earnings record. Even though Deb meets all of the statutory criteria for such benefits, the SSA denied her application based upon an erroneous interpretation and application of relevant law.

- Specifically, SSA is directed by statute to base determinations of family status for the purpose of awarding spouse-based benefits on an analysis of how "the courts of the State" in the insured's state of domicile at the time of application (or if deceased, at the time of death) would assess the applicant's spousal status. 42 U.S.C.

§ 416(h)(1)(A). The SSA has wrongly concluded that a gay or lesbian widow/er can only qualify for Social Security survivor benefits under 42 U.S.C. § 416(h)(1)(A)(i), if the courts of the state of domicile would have recognized the applicant as “validly married” under that state’s law, rather than as “validly married” in the state where the marriage was celebrated. A proper construction of § 416(h)(1)(A)(i) only requires that the courts of the state of domicile would find that the couple was “validly married,” which Deb and Pat were when they married in Massachusetts.

- Even if, *arguendo*, SSA’s reading of § 416(h)(1)(A)(i) were correct, it has compounded its errors through Program Operations Manual System (“POMS”) GN 00210.002(C) and GN 00210.003. These POMS establish state-specific dates of recognition for marriages of same-sex couples and several, including that for Rhode Island, are patently wrong. The dates used in the POMS provide that Rhode Island’s courts would not have recognized the marriages of same-sex couples at the time of Pat’s death, despite Rhode Island’s long-standing judicial recognition of out-of-state marriages even when those out-of-state marriages could not be validly entered into in Rhode Island. *See Ex Parte Chace*, 58 A. 978 (R.I. 1904) (establishing respect for lawfully solemnized out-of-state marriages as valid under principles of interstate comity).
- In addition, the SSA fails to recognize that even if Rhode Island’s courts would not have generally recognized marriages of same-sex couples for all purposes at the time of Pat’s death in 2011, Deb would still qualify under subsection (ii) of the statute, which allows someone to be recognized as a widow for purposes of

Social Security survivor benefits if the state of residence would accord that person “the same status with respect to the taking of [personal] property” as a widow.

Deb meets that standard under Rhode Island intestacy law.

- Finally, even if the SSA’s interpretation of § 416(h)(1)(A) and its implementation of the statute by regulation and POMS are correct, the statute, regulations and POMS are unconstitutional as violative of Equal Protection and Due Process.

JURISDICTION AND VENUE

1. This action arises under the Constitution of the United States and the laws of the United States, including 42 U.S.C. § 402. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, 42 U.S.C. § 405(g), and 28 U.S.C. § 2201.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e), because Plaintiff Deborah Tevyaw resides in this district, and the events giving rise to her claims arose in this district.

PARTIES

3. Plaintiff DEBORAH TEVYAW is a citizen of the State of Rhode Island and the United States of America, and she resides in Warwick, Rhode Island.

4. Defendant CAROLYN W. COLVIN is currently the Acting Commissioner of the Social Security Administration, an independent agency of the United States Government. In her official capacity, she is responsible for the administration and enforcement of the Social Security Act.

FACTS

5. Deborah (“Deb”) Tevyaw is 58 years old and currently resides in Warwick, Rhode Island.

6. Deb was in a lifelong, committed relationship with her same-sex partner and spouse, Patricia (“Pat”) Baker.

7. Deb and Pat met in 2002 through friends and began dating a year later.

8. On August 4, 2005, they were validly married in Massachusetts.

9. On August 14, 2011, Pat passed away due to cancer at the age of 55. At the time of Pat’s death, Deb and Pat lived in the same household in Johnston, Rhode Island.

10. Deb is listed as Pat’s spouse on Pat’s death certificate, which was issued by the Rhode Island Department of Health.

11. Pat, a long time corrections officer for Rhode Island, was fully insured by the Social Security program when she died.

12. Following Pat’s death, on December 27, 2011, Deb timely applied for Social Security disabled widow’s insurance benefits and lump sum death payment based upon Pat’s earnings record.

13. Under 42 U.S.C. § 402(i) and 20 C.F.R. §§ 404.390-404.391 and 404.347, a surviving spouse is entitled to a lump-sum death payment of \$255 if the surviving spouse was “living in the same household with the deceased at the time of death,” if the surviving spouse applies for the benefit “prior to the expiration of two years after the date of death ...,” and if the deceased spouse was “fully or currently insured” at the time of death.

14. Deb meets these requirements for the lump-sum death payment.

15. Under 42 U.S.C. § 402(e), a widow is entitled to insurance benefits equal to the primary insurance amount earned by her deceased spouse if the widow is not

married, has attained age 50 but has not attained age 60 and is under a disability, has filed application for widow's insurance benefits, and is not entitled to old-age insurance benefits or is entitled to old-age insurance benefits each of which is less than the primary insurance amount of the deceased spouse.

16. Deb meets these requirements for widow's benefits.

17. By letter dated January 17, 2012, the SSA informed Deb that her claim was denied because the SSA had determined that Deb did "not meet the marriage requirement." The letter further stated: "You can not [sic] get benefits because your marriage does not meet the requirements under Federal law for payment of Social Security spouse's or widow's benefits."

18. Deb timely filed a request for reconsideration on March 6, 2012.

19. By letter dated November 5, 2012, the SSA informed Deb that upon reconsideration, the SSA's "first decision was correct" because Deb was "not entitled to benefits because you are not the spouse of Patricia Baker under Social Security law." In the enclosed "Reconsideration Determination (Form SSA-662)," the SSA further explained: "The Defense of Marriage Act (DOMA) and Social Security law preclude the surviving partner of a same-sex marriage or union from qualifying as a surviving spouse or widow(er) regardless of that partner's status under State law."

20. Section 3 of DOMA, 1 U.S.C. § 7, provided that:

[i]n determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife.

21. On January 3, 2013, Deb timely appealed the denial of reconsideration and requested a hearing by an administrative law judge. Her request stated that “the reason for the denial of my claim is unconstitutional.”

22. By letter dated April 17, 2013, Deb received notice that her hearing had been scheduled for July 30, 2013.

23. On June 26, 2013, the U.S. Supreme Court held in U.S. v. Windsor, 133 S. Ct. 2675 (2013), that Section 3 of DOMA violated constitutional equal protection guarantees.

24. Following the Windsor decision, the SSA announced that it would hold the processing of all applications for same-sex spousal and survivor benefits pending further guidance from the SSA regarding the implementation of its legal obligations under Windsor.

25. On July 10, 2013, Deb received notice from the SSA that her hearing scheduled on July 30, 2013 had been postponed.

26. After ten months of having her application on hold, on May 14, 2014, Deb received a decision “fully favorable to the claimant” from Administrative Law Judge Barry H. Best, which is attached as Exhibit A. In support of the decision, Judge Best made the following pertinent findings of fact and conclusions of law:

- “The claimant entered into a valid same-sex marriage with the number-holder on August 4, 2005.”
- “The sole basis for finding that the claimant was not eligible for disabled widow’s benefits and a lump sum death payment was the operation of the Defense of Marriage Act.... This Act has been found unconstitutional by Decision of the United States Supreme Court.... On that basis, the threshold impediment to the claimants’ [sic] eligibility for disabled widow’s benefits and the lump sum death payment has been removed.”

- “Under Social Security statutes and regulations her marriage to her spouse is recognized as having been as valid as any other marital union.”
- “[D]uring all periods relevant to claims presented in this case, and for all purposes relevant to benefit programs administered by the Social Security Administration, the claimant and the number holder were married, and the claimant was the spouse of the number holder.”

27. On July 11, 2014, Deb received a “Notice of Appeals Council Action” from the SSA’s Office of Appellate Operations, informing her that the SSA’s Appeals Council had decided to review Judge Best’s decision in her case, because it “found that there is an error of law.”

28. As the basis for its decision to review Judge Best’s decision, the Office of Appellate Operations referred to a memorandum from the Northeastern Program Service Center dated June 23, 2014 (hereinafter “NPSC memorandum”), which was provided to Deb.

29. The NPSC memorandum asked that the Office of Appellate Operations review Judge Best’s decision because it asserted that his determination that Deb met “the marriage requirement ... is incorrect.” It further stated:

The claimant’s marriage ended upon the death of the wage earner on August 14, 2011. Reg. §404.345 requires that SSA look to the laws of the State where the wage earner was domiciled when they died. Since the marriage ended before Rhode Island recognized same-sex marriage it was never a valid marriage under Rhode Island State law. This is consistent with the policy provided in POMS GN 00210.002C Steps 11 and 13 and GN 00210.002D. Example 2.2. [emphasis added]

30. The NPSC memorandum stated that the first date on which “Rhode Island recognized same-sex marriages from any other state” was May 14, 2012. Accordingly, the memorandum asked that Judge Best’s decision be reversed and Deb’s application be denied.

31. 20 C.F.R. § 404.345, to which the NPSC memorandum cites, states that to determine whether an applicant qualifies as a widow/er, the SSA will “look to the laws of the State where the insured had a permanent home when he or she died.” It continues: “If you and the insured were validly married under State law ... the relationship requirement will be met. The relationship requirement will also be met if under State law you would be able to inherit a wife’s, husband’s, widow’s, or widower’s share of the insured’s personal property if he or she were to die without leaving a will.”

32. 20 C.F.R. § 404.345 is an attempt to implement 42 U.S.C. § 416(h)(1)(A). That statute provides two means by which a person may qualify as a widow/er for survivor benefits. Subsection (i) of § 416(h)(1)(A) states that “[a]n applicant is the ... widow ... of a fully or currently insured individual ... [if] the courts of the State in which he was domiciled at the time of death ... would find that such applicant and such insured individual were validly married ... at the time he died.” Subsection (ii) states that “[i]f such courts would not find that such applicant and such insured individual were validly married at such time, such applicant shall, nevertheless be deemed to be the ... widow... of such insured individual if such applicant would, under the laws applied by such courts in determining the devolution of intestate personal property, have the same status with respect to the taking of such property as a wife, husband, widow, or widower of such insured individual.”

33. In an attempt to implement 42 U.S.C. § 416(h)(1)(A), the SSA has also issued POMS GN 00210.002, which was also cited in the NPSC memorandum.

34. POMS, or Program Operations Manual System, are the “[i]nstructions used by employees and agents of SSA to carry out the law, regulations, and rulings” (<http://www.ssa.gov/regulations/#a0=3>).

35. Step 11 of POMS GN 00210.002, which is attached as Exhibit B, instructs the SSA to ask: “At the time of his or [sic] death, was the deceased NH [Number Holder] domiciled in a state that at that time recognized same-sex marriages from any other state?” If the answer is no, the POMS concludes that “[t]he claimant is not in a marriage that can be recognized for purposes of determining entitlement.”

36. In order to answer the question in Step 11, the POMS references a chart contained in POMS GN 00210.003, which is attached as Exhibit C. That chart describes May 14, 2012 as the first date “same-sex marriages from any other states were recognized” in Rhode Island.

37. The starting date on which any given state would have recognized a marriage of a same-sex couple is not relevant to 42 U.S.C. § 416(h)(1)(A), which asks instead whether the courts of the state of domicile would have found that the couple were “validly married.”

38. Even if the date of recognition were relevant to 42 U.S.C. § 416(h)(1)(A), May 14, 2012 is not the correct starting date on which Rhode Island’s courts would have recognized the marriage of a same-sex couple.

39. Instead, Rhode Island’s courts have long recognized out-of-state marriages under principles of comity, even where the Rhode Island couple could not have married in Rhode Island. *See Ex Parte Chace*, 58 A. 978 (R.I. 1904) (establishing respect for lawfully solemnized out-of-state marriages as valid under principles of interstate comity).

40. The SSA chose May 14, 2012 as the starting date of recognition presumably because that is the date on which Rhode Island Governor Lincoln Chafee issued an executive order instructing executive state departments, agencies, and offices to comply with existing Rhode Island law by recognizing the lawful marriages of same-sex couple. As its basis, the executive order recognizes that “since at least 1904, Rhode Island has recognized marriages validly celebrated in other states and countries under the principle of comity, regardless of whether the couple could have married in Rhode Island” and cites *Ex Parte Chace*, 58 A. 978 (R.I. 1904). The executive order also cites to a 2007 opinion by the Rhode Island Attorney General stating that “same-sex marriages from other jurisdictions do not violate this state’s public policy and therefore must be recognized under principles of comity and full faith and credit.” A copy of the executive order is attached as Exhibit D.

41. On July 8, 2014, in response to the SSA’s adoption of May 14, 2012 as Rhode Island’s recognition date, Governor Chafee sent separate and identical letters to Defendant Colvin and Stuart F. Delery, Assistant Attorney General for the U.S. Department of Justice, explaining that the May 14, 2012 executive order “did not establish May 14, 2012 as the date upon which Rhode Island would first recognize out of state, same-sex marriages.” Instead, Governor Chafee’s letters stated that the executive order “clarified that Rhode Island courts have recognized marriages validly celebrated in other states since at least 1904.” The letters expressed “concern that the Social Security Administration (SSA) is applying May 14, 2012 as the date of recognition of out of state marriages” and asked that the SSA “review its policy manuals and ensure that any SSA

applications that have been affected or denied based upon this misinterpretation be remedied as quickly as possible.”

42. Governor Chafee’s letters also asserted that even if the SSA is unwilling to correct the “date of recognition” for Rhode Island, “a married, same-sex couple would have independently qualified for benefits pursuant to 42 U.S.C. § 416(h)(1)(A)(ii)” because “such applicant would, under the laws applied by such courts in determining the devolution of intestate personal property, have the same status with respect to the taking of such property as a wife, husband, widow, or widower of such insured individual.” A copy of Governor Chafee’s letter to Defendant Colvin is attached as Exhibit E.

43. On July 24, 2014, the entire Rhode Island Congressional delegation signed joint letters to Defendant Colvin and Attorney General Eric Holder to express their agreement and “support of Rhode Island Governor Lincoln Chafee’s letter requesting that the Social Security Administration (SSA) review its policies and procedures with respect to the effective date of Rhode Island’s recognition of out-of-state, same-sex marriages.” A copy of the Rhode Island Congressional delegation’s letter to Acting Commissioner Colvin is attached as Exhibit F.

44. Prior to Governor Chafee’s and the Rhode Island Congressional delegation’s letters, representatives from lesbian, gay, bisexual, and transgender (LGBT) advocacy organizations submitted three memoranda to the SSA and the Department of Justice (DOJ), urging the SSA to adopt the correct interpretation of 42 U.S.C. § 416(h)(1)(A).

45. On August 21, 2013, LGBT advocacy organizations Gay & Lesbian Advocates & Defenders (GLAD) and Lambda Legal submitted a memorandum to the

SSA and DOJ. That memorandum asserted that the valid marriage of a same-sex couple should be recognized pursuant to 42 U.S.C. § 416(h)(1)(A), regardless of where the couple resided at the time of death, that SSA should look to the whole law of the state (including comity law) in predicting which marriages state courts would recognize, and that “it would be reasonable for SSA to interpret the statute [to] make eligible for spouse-based benefits all validly married same-sex couples” to avoid constitutional problems.

46. On December 16, 2013, GLAD and Lambda Legal submitted a memo to Defendant Colvin. That memorandum asserted that constitutional imperatives applicable to the federal government and statutory construction principles “should result in SSA guidance allowing spousal and survivor benefits for those in marriages valid where celebrated.” In addition, the memorandum urged “SSA to eliminate the ‘recognition’ column from the chart” contained in GN 00210.003, because the “dates in that column of that chart are simply inaccurate,” including the May 14, 2012 recognition date for Rhode Island.

47. On May 14, 2014, GLAD submitted a memorandum to the SSA and DOJ addressing the chart contained in GN 00210.003 and asserted that the “dates for when marriages from other states were first recognized should be earlier than stated in the POMS.” This memorandum specifically addressed the May 14, 2012 recognition date for Rhode Island and argued that such date is “incorrect,” because “[f]or 110 years, Rhode Island has respected marriages as valid when lawfully solemnized out-of-state even when they cannot be certified in-state.”

48. Despite these numerous requests from Rhode Island elected officials and LGBT advocacy organizations beginning as early as August 2013, the SSA has refused to

treat as irrelevant under 42 U.S.C. § 416(h)(1)(A) the date it deems any given state to have begun recognizing out-of-state marriages of same-sex couples.

49. Despite these numerous requests from Rhode Island elected officials and LGBT advocacy organizations beginning as early as August 2013, the SSA has refused to correct the “date of recognition” for Rhode Island in the chart contained in POMS GN 00210.003.

50. Despite these numerous requests from Rhode Island elected officials and LGBT advocacy organizations beginning as early as August 2013, the SSA has refused to reverse its stated position that Judge Best’s decision was “incorrect” and to withdraw its review of Deb’s fully favorable decision from Judge Best by the Appeals Council.

51. Because the SSA has and continues to wrongly interpret and apply 42 U.S.C. § 416(h)(1)(A), Deb has suffered specific, concrete, and irreparable harm, and will continue to suffer such harm.

52. Because the SSA has and continues to wrongly interpret and apply 42 U.S.C. § 416(h)(1)(A), Deb’s monthly income has been reduced to \$732 a month, with her SSDI disability benefits as her only source of income. If she were to receive the survivor benefits, she believes that her income would increase to over \$2,000 a month.

53. Because the SSA has and continues to wrongly interpret and apply 42 U.S.C. § 416(h)(1)(A), Deb was unable to afford the mortgage on the home that she owned for over 38 years and that she and Pat shared for the entirety of their marriage. As a result, she was forced to sell that home in June 2013, the proceeds from which she used to pay off outstanding debts.

54. Due to the denial of benefits, Deb has been rendered destitute and without her own home.

**COUNT I: DECLARATORY JUDGMENT ACTION
PURSUANT TO 28 U.S.C. § 2201**

55. Plaintiff Deborah Tevyaw repeats and realleges the allegations set forth in Paragraphs 1-55 as if fully set forth herein.

56. The Social Security Act is codified in Chapter 7 of Title 42 of the United States Code. See generally 42 U.S.C. §§ 301 et seq.

57. Pursuant to 42 U.S.C. § 902, Defendant Colvin enforces federal law relative to eligibility of benefits through her supervision of the SSA.

58. Under federal law, 42 U.S.C. § 402(e), the qualified widow of a deceased insured shall receive insurance benefits up to the primary insurance amount earned by her insured deceased spouse.

59. Under federal law, 42 U.S.C. § 402(i), the qualified widow of a deceased person shall receive a lump-sum of \$255 after the death of her spouse.

60. Deb meets all of the statutory requirements to receive the widows' insurance benefit and the lump-sum death benefit under the Social Security Act, but for the SSA's incorrect interpretation and application of 42 U.S.C. § 416(h)(1)(A) to her application.

61. It would be futile for Deb to proceed further with the SSA because she cannot obtain the widows' insurance benefit or the lump-sum benefit solely because of the SSA's error of law in its incorrect interpretation and application of 42 U.S.C. § 416(h)(1)(A), as reflected in both its implementing regulations and POMS.

62. An actual controversy exists between the parties.

**CLAIM II: VIOLATION OF CONSTITUTIONAL EQUAL PROTECTION AND
DUE PROCESS
(U.S. Const. Amend. V)**

63. Plaintiff Deborah Tevyaw repeats and realleges the allegations set forth in Paragraphs 1-63 as if fully set forth herein.

64. If the SSA's interpretation and application of 42 U.S.C. § 416(h)(1)(A) is correct, then it violates Deb's equal protection and due process rights secured by the Fifth Amendment of the Constitution of the United States.

65. It would be futile for Deb to proceed further with the SSA because she cannot obtain the widows' insurance benefit or lump sum benefit solely because of the SSA's interpretation and application of 42 U.S.C. § 416(h)(1)(A), as reflected in both its implementing regulations and POMS.

66. Deb will be providing notice of this claim and this complaint to the Attorney General of the United States, pursuant to Federal Rule of Civil Procedure 5.1.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff Deborah Tevyaw prays that this Court:

1. Declare that POMS GN 00210.002(C), Step 11; POMS GN 00210.003, Column II; and 20 C.F.R. § 404.345 are invalid and contrary to the governing Social Security statutes.
2. Declare that Deborah Tevyaw meets the requirements of 42 U.S.C. § 416(h)(1)(A).
3. Declare that a widow/er previously married to someone of the same sex meets the requirements of 42 U.S.C. § 416(h)(1)(A)(i), so long as the courts of the state

in which the insured individual is domiciled at the time of death would find that the marriage was validly entered into in the state where the marriage was celebrated.

4. Declare that at the time of Ms. Baker's death, Rhode Island's courts would have recognized the marriages of same-sex couples.

5. Declare that at the time of Ms. Baker's death, Rhode Island's courts would have found that a widow/er previously married to someone of the same sex has the same status with respect to the taking of personal property as a wife, husband, widow, or widower of the insured individual under Rhode Island law.

6. Find that 42 U.S.C. § 416(h)(1)(A), as interpreted and applied by the SSA through its implementing regulations and POMS, violates constitutional equal protection and due process protections.

7. Enjoin the Defendant Colvin to process Plaintiff Deborah Tevyaw's application for widow's and lump sum death benefits without consideration of POMS GN 00210.002(C), Step 11; POMS GN 00210.003, Column III; or 20 C.F.R. § 404.345.

8. Enjoin the Defendant Colvin to process Plaintiff Deborah Tevyaw's application for widow's and lump sum death benefits based upon the determination that Ms. Tevyaw has met the requirements of 42 U.S.C. § 416(h)(1)(A).

9. Award attorney's fees and costs to plaintiffs pursuant to 28 U.S.C. § 2412 or any other applicable statutory provision.

10. Grant such other relief as is just and appropriate.

DATED: September 29, 2014

Respectfully submitted,

DEBORAH TEVYAW
By her attorneys,

PIERCE ATWOOD

/s/ Michael J. Daly
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EXHIBIT A



Refer To [REDACTED]

Office of Disability Adjudication and Review
SSA ODAR Hearing Office
155 Westminister Street
Suite 1000W, 10th Floor
Providence, RI 02903

Date: **MAY 14 2014**

Deborah Ann Tevyaw
[REDACTED]

Notice of Decision – Fully Favorable

I carefully reviewed the facts of your case and made the enclosed fully favorable decision. Please read this notice and my decision.

Another office will process my decision. That office may ask you for more information. If you do not hear anything within 60 days of the date of this notice, please contact your local office. The contact information for your local office is at the end of this notice.

If You Disagree With My Decision

If you disagree with my decision, you may file an appeal with the Appeals Council.

How To File An Appeal

To file an appeal you must ask in writing that the Appeals Council review my decision. You may use our Request for Review form (HA-520) or write a letter. The form is available at www.socialsecurity.gov. Please put the Social Security number shown above on any appeal you file. If you need help, you may file in person at any Social Security or hearing office.

Please send your request to:

**Appeals Council
Office of Disability Adjudication and Review
5107 Leesburg Pike
Falls Church, VA 22041-3255**

Time Limit To File An Appeal

You must file your written appeal **within 60 days** of the date you get this notice. The Appeals Council assumes you got this notice 5 days after the date of the notice unless you show you did not get it within the 5-day period.

The Appeals Council will dismiss a late request unless you show you had a good reason for not filing it on time.

See Next Page

Form HA-L76 (03-2010)

What Else You May Send Us

You may send us a written statement about your case. You may also send us new evidence. You should send your written statement and any new evidence **with your appeal**. Sending your written statement and any new evidence with your appeal may help us review your case sooner.

How An Appeal Works

The Appeals Council will consider your entire case. It will consider all of my decision, even the parts with which you agree. Review can make any part of my decision more or less favorable or unfavorable to you. The rules the Appeals Council uses are in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J).

The Appeals Council may:

- Deny your appeal,
- Return your case to me or another administrative law judge for a new decision,
- Issue its own decision, or
- Dismiss your case.

The Appeals Council will send you a notice telling you what it decides to do. If the Appeals Council denies your appeal, my decision will become the final decision.

The Appeals Council May Review My Decision On Its Own

The Appeals Council may review my decision even if you do not appeal. They may decide to review my decision within 60 days after the date of the decision. The Appeals Council will mail you a notice of review if they decide to review my decision.

When There Is No Appeals Council Review

If you do not appeal and the Appeals Council does not review my decision on its own, my decision will become final. A final decision can be changed only under special circumstances. You will not have the right to Federal court review.

Your Right To Representation In An Appeal

If you appeal, you may choose to have an attorney or other person help you. Many representatives do not charge a fee unless you win your appeal. Groups are available to help you find a representative or, if you qualify, to give you free legal services. Your local Social Security office has a list of groups that can help you in this process.

If you get someone to help you with your appeal, you or that person must let the Appeals Council know. If you hire someone, we must approve the fee before he or she is allowed to collect it.

If You Have Any Questions

We invite you to visit our website located at www.socialsecurity.gov to find answers to general questions about social security. You may also call (800) 772-1213 with questions. If you are deaf or hard of hearing, please use our TTY number (800) 325-0778.

If you have any other questions, please call, write, or visit any Social Security office. Please have this notice and decision with you. The telephone number of the local office that serves your area is (877) 402-0808. Its address is:

Social Security
Room 318
380 Westminster St
Providence, RI 02903-3245

Barry H. Best
Administrative Law Judge

Enclosures:
Decision Rationale

**SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review**

DECISION

IN THE CASE OF

Deborah Ann Tevyaw
(Claimant)

Patricia A. Baker
(Wage Earner)

CLAIM FOR

Disabled Widow's Benefits-Spousal
Relationship


(Social Security Number)

PRELIMINARY STATEMENT

This case is before the Administrative Law Judge on a request for hearing filed by the claimant on January 29, 2013, in connection with her application for disabled widow's benefits and a lump sum death benefit under Title II of the Social Security Act. Following review of all the evidence of record, the Administrative Law Judge has determined that a decision fully favorable to the claimant may be rendered without the need for an evidentiary hearing, pursuant to 20 CFR 404.948.

ISSUES

The sole issue is whether the claimant qualifies as the widow of the number holder under the marriage requirement provisions of 20 CFR 404.335, 404.337-338 and 404.344-345.

APPLICABLE LAW

Under Goodridge v. Department of Public Health, 798 N.E.2d 941 (Mass, 2003), the Supreme Judicial Court of Massachusetts ruled that same-sex marriages were legal in the Commonwealth of Massachusetts, and town clerks within the Commonwealth began issuing marriage licenses on May 17, 2004.

Rhode Island had a system of Civil Unions for individuals of the same sex who wished to formalize their relationships (RIL Chapter 15, Section 3.1). On May 14, 2012, Lincoln Chafee, Governor of Rhode Island, issued an Executive Order recognizing out of state same sex marriages.

On August 1, 2013, by legislative action signed into law by the Governor, same-sex marriages became legal in Rhode Island .

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The Social Security Act defines a widow as the surviving wife of an individual who was married to her for a period of not less than nine months prior to the day of which she died, or meets other requirements set forth in section 216(c). The Act defines disability as the inability to engage in any substantial gainful activity due to a physical or mental impairment, which can be extended to either result in death or to last for a continuous period of not less than 12 months.

Social Security Regulation 20 CFR 404.335, provides that a widow must be at least 60 years of age, or be under a disability as set forth above and be at least 50 years of age. The disability must have begun not later than seven years after the insured died or seven years after the widow was last entitled to mother's benefits or to widow's benefits based upon a disability, whichever occurred last.

Specifically, 20 CFR 404.335 provides that:

We will find you entitled to benefits as the widow or widower of a person who died fully insured if you meet the requirements in paragraphs (a) through (e) of this section:

- (a) You are the insured's widow or widower based upon a relationship described in §§ 404.345 through 404.346, and you meet one of the conditions in paragraphs (a)(1) through (4) of this section:

The Defense of Marriage Act (28 U.S.C. § 1738C) provided that:

SECTION .1. SHORT TITLE

This Act may be cited as the "Defense of Marriage Act".

SEC. 2 POWERS RESERVED TO THE STATES.

(a) IN GENERAL-Chapter 115 of title 28, United States Code, is amended by adding after section 1738B the following "§ 1738C. Certain acts, records, and proceedings and the effect thereof. "No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship"....

SEC. 3 DEFINITION OF MARRIAGE

- (a) IN GENERAL-Chapter 1 of title 1, United States Code, is amended by adding at the end the following:

See Next Page

“ § 7. Definition of ‘marriage’ and ‘spouse’

“In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife”.

Finally, under POMS GN 00305.005, Determining Marital Status, section B, Policy-Determining Marital Status, subsection 1, “Which State’s Law Applies” provided “The validity of a marriage is ordinarily determined by the law of the place where it occurred; if valid in that jurisdiction, it is usually held valid in other places. However, even though the marriage was valid where it was contracted, it may be void in the State of the worker’s domicile if it violates the law or public policy of the latter State.”

Section B, subsection 5 provided that “An individual whose claim for benefits is based on a State recognized same-sex marriage or having the same status as spouse for State inheritance purposes cannot meet the statutory gender-based definition of husband, wife, widow, widower of the NH [number holder], including one who is divorced. Under the Defense of Marriage Act, the word “marriage” means only a legal union between one man and one woman as husband and wife, and the word “spouse” refers only to a person of the opposite sex who is a husband or a wife. Therefore, for benefit purposes, SSA does not recognize such individual as the spouse of the NH [number holder].”

On June 26, 2013, by Decision of the U.S. Supreme Court in the case of United States v. Windsor, 570 U.S. 12 (2013), the provisions of the Defense of Marriage Act were struck down. In particular, the Court held that Section 3, “Definition of Marriage” violated the Fifth Amendment. Under the Windsor decision, Individuals who entered into lawful same-sex marriages in their State would be considered married for the purposes of entitlement to certain Federal benefits.

In response to the Windsor decision, the Social Security Administration initially “held” (i.e., postponed) adjudication of pending claims which raised Windsor issues, pending policy review. More recently, the Administration issued updated POMS policy instructions that have now removed from pending adjudications the threshold requirement that the qualifying marital relationship be between individuals of the opposite sex. Under this policy, certain claims under review which were at lower levels of adjudication denied on the threshold issue of same-sex “marital relationship” are now to be processed by normal application of relevant laws and regulations.

New POMS GN 00210.600 allows a **Lump Sum Death Payment (“LSDP”) in Same-Sex Marriage relationships.**

A. Introduction to LSDP claims involving same-sex marriage

Because of the Windsor court decision, we are now able to process some LSDP claims and appeals involving ceremonial same-sex marriages. These instructions include procedures for approving, denying, or holding claims and appeals for benefits based on a ceremonial same-sex marriage.

B. Instructions for processing LSDP claims involving same-sex marriage

This section provides instructions for processing some claims for a lump sum death payment involving a same-sex ceremonial marriage. Follow the instructions in GN 00210.005 to hold LSDP claims that we cannot process using the instructions in this section.

In addition to meeting the criteria set out in these instructions, claimants must meet all other general eligibility requirements as outlined in RS 00210.001 through RS 00210.050, if the claim does not meet these criteria hold the claim.

1. Confirm the validity of the marriage

a. Ceremonial marriage occurred in the United States (U.S.)

If the ceremonial marriage occurred in the U.S. (including the 50 states, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, Guam, American Samoa, and the Northern Mariana Islands), determine whether the couple entered a same-sex marriage after the date the issuing state permitted same-sex marriage using instructions in GN 00210.100B.1.

If the couple entered a same-sex marriage after the date the issuing state permitted same-sex marriage, determine the NH’s domicile following instructions in GN 00210.600B.2. in this section.

...

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Under new GN 00210.400, Same-Sex Marriage-Benefits for Surviving Spouses, a similar pattern of relationship verification is required, as well as additional requirements to the relationship.

B. Instructions for processing surviving spouse claims involving same-sex marriage

This section provides instructions for processing claims for surviving spouse benefits involving a same-sex ceremonial marriage.

1. Confirm the validity of the same-sex marriage

a. Ceremonial marriage occurred in the U.S.

If the ceremonial marriage occurred in the United States (U.S.) (including the 50 states, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, Guam, American Samoa, and the Northern Mariana Islands), determine whether the couple entered a same-sex marriage after the date the issuing state permitted same-sex marriage using instructions in GN 00210.100B.1.

2. Confirm domicile of deceased number holder (DNH)

Determine the DNH's domicile at the time he or she died by using the instructions in GN 00305.001A.2. Refer to the chart in GN 00210.100 for a list of states that recognize same-sex marriage.

If the DNH was domiciled at the time of his or her death in a state that recognizes same-sex marriage, determine whether the marriage meets the duration requirement following the instructions in GN 00210.400B.3 in this section. If the DNH was domiciled, at the time of his or her death, in a state that does not recognize same-sex marriage, hold the claim following instructions in GN 00210.005. For examples of cases to hold, see GN 00210.400F.2 in this section.

3. Confirm the duration requirement

A claimant for surviving spouse benefits must meet the duration of marriage requirement prior to adjudication of the claim.

4. Confirm the marital status of the claimant

The claimant must be unmarried to become entitled.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, the undersigned makes the following findings:

- 1. The claimant entered into a valid same-sex marriage with the number-holder on August 4, 2005.**

The claimant, Deborah Tevyaw, married Patricia Baker on August 4, 2005, in Massachusetts (Exhibit 1). Massachusetts fully recognized same-sex marriages at the time of this union. Both parties listed their legal address as 90 Leading Street, Johnston, RI.

Patricia Baker died on August 14, 2011, while still domiciled in Rhode Island (Exhibit 2). The Rhode Island Death Certificate was issued on November 10, 2011 (Exhibit 3).

Rhode Island now fully recognizes same-sex marriages.

The claimant filed an application for disabled widow's benefits and a lump sum death payment under her spouse's account with a protective filing date of December, 2011. The claim was denied on January 17, 2012: The sole basis for the denial of eligibility for Disabled Widow's benefits and a lump sum death payment was that the claimant and the deceased number holder did not meet the marriage requirement (Exhibit 11). The claimant filed a request for reconsideration on February 23, 2012, stating that the Defense of Marriage Act was unconstitutional (Exhibit 5). On reconsideration determination dated November 5, 2012, the Administration indicated that for the purposes of Social Security law, the claimant could not be considered the spouse of the deceased, and therefore was not entitled to disabled widow's benefits or the lump sum death payment (Exhibit 6). The notice explained that under the Defense of Marriage Act, "marriage" was limited to the legal union between one man and one woman as husband and wife, and "spouse" refers only to a person of the opposite sex who is a husband or wife. Further, it was noted that the Defense of Marriage Act precluded the surviving partner of a same-sex marriage or union from qualifying as a surviving spouse or widow(er) regardless of that partner's status under State law. The claimant filed a request for hearing on January 29, 2013, indicating that the reason for denial of benefits was unconstitutional (Exhibit 7).

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2. The claimant meets the marriage requirement of the Act and Regulations: Her application for disabled widow's benefits and a lump sum death benefit should now be processed for determination of whether she meets other applicable eligibility requirements (20 CFR 404.335).

The sole basis for finding that the claimant was not eligible for disabled widow's benefits and a lump sum death payment was the operation of the Defense of Marriage Act. This Act specifically precluded same-sex couples from qualifying for federal benefits, including Social Security benefits. This Act has been found unconstitutional by Decision of the United States Supreme Court, and its provisions, in particular those of Section 3 (The Defense of Marriage Act (28 U.S.C. § 1738C)), have been repealed. On that basis, the threshold impediment to the claimants' eligibility for disabled widow's benefits and the lump sum death payment has been removed. After due consideration of policy implications of the Windsor decision, the Social Security Administration has provided appropriate amendments to policy instructions, allowing these cases to move forward, and allowing Administrative Law Judges to adjudicate cases involving same-sex relationships.

The decision of the undersigned on the one issue raised in this appeal is fully favorable to the claimant: Under Social Security statutes and regulations her marriage to her spouse is recognized as having been as valid as any other marital union.

The Decision of the undersigned does not award the claimant disabled widow's benefits: Entitlement to such benefits requires favorable determination on issues which were never reached when the claim was processed and summarily rejected under prior same-sex marriage rules. Rather, this Decision allows – and requires – the claimant's claims as the spouse of the number-holder to move forward for adjudication on other issues relevant to her claims. The claimant must still meet all other requirements for any benefits for which she applies. The claimant's applications will therefore be returned to the appropriate components for an initial disability evaluation, determination on the durational relationship requirement, current marital status and domicile as required, and any other regulatory requirements, as well as for adjudication of the claimant's eligibility for a lump sum death payment as the spouse of the deceased number holder.

DECISION

It is the Decision of the Administrative Law Judge that during all periods relevant to claims presented in this case, and for all purposes relevant to benefit programs administered by the Social Security Administration, the claimant and the number holder were married, and the claimant was the spouse of the number holder.

It is the further Decision of the Administrative Law Judge that the claimant's application for disabled widow's benefits shall now be processed, and her eligibility be determined, in accordance with the provisions of Sections 202(e) and 223 of the Social Security Act and applicable regulatory provisions.

It is the further Decision of the Administrative Law Judge that the claimant's application for a lump sum death payment shall now be processed pursuant to Section 202(i) of the Act and applicable regulatory provision.

/s/ Barry H. Best

Barry H. Best
Administrative Law Judge

Date MAY 14 2014

EXHIBIT B

GN 00210.002 Same-Sex Marriage - Determining Marital Status for Title II and Medicare Benefits

A. Introduction to determining marital status for same-sex marriages

Use these instructions to determine marital status for same-sex couples when the same-sex marriage is material to the Title II or Medicare entitlement determination.

If the same-sex marriage is not material, process the claim without using these instructions. For example, when a number holder (NH) in a same-sex marriage files for a retirement benefit on the his or her own record, the marital status is not material to the claim; so process the NH's claim without applying these instructions.

Follow the instructions in [GN 00210.002B](#) to determine whether to:

- recognize the marriage for purposes of determining entitlement
- refer a case for legal opinion; or
- hold a case.

For instructions on determining whether a non-marital legal relationship meets the relationship entitlement factor for benefits, see [GN 00210.004](#). Examples of non-marital legal relationship for purposes of these instructions include civil unions, domestic partnerships, and reciprocal beneficiary relationships.

For Title XVI cases, see [GN 00210.800](#) to determine same-sex marital status.

B. Policy for determining marital status for same-sex couples

In Title II and Medicare claims, we look to the laws of the state of the number holder's (NH's) domicile to determine whether we can recognize the marriage. If the NH is alive, we look to the NH's domicile at the time of application or while the claim is pending a final determination. If the NH has died, we look to the NH's domicile at the time of his or her death.

Document the place of domicile (city or town, and state) on the RPOC screen. MCS screens do not capture the domicile of the NH. Do not rely on the mailing address or the "place of death" entry on the DECD screen.

NOTE: If a member of the couple alleges a prior civil union to an individual other than his or her current spouse, refer the claim for a legal opinion, according to instructions in [GN 01010.820](#).

C. How to determine marital status for same-sex couples

Use these steps to determine marital status:

Step	Action
1	Consult GN 00210.000 . Have we published instructions for this type of claim or action, when the case involves a same sex marriage? If yes , go to step 2. If no , hold the case according to instructions in GN 00210.005 .
2	Is this a Title XVI or concurrent case? If yes , use the instructions in GN 00210.800 to develop same-sex marital status for Title XVI claims or for the Title XVI aspects of concurrent claims. Use the instructions in GN 00210.002 to develop for same-sex marital status for the Title II aspects of concurrent claims. If no , go to step 3.
3	Does the claimant allege a same-sex marriage celebrated in a foreign jurisdiction; that is, was the marriage celebrated somewhere other than in: • the 50 United States, • the District of Columbia, • the U.S. Virgin Islands, • Puerto Rico, • Guam, • American Samoa, or • the Northern Mariana Islands? If yes , proceed according to the instructions in GN 00210.006 . If no , go to step 4.
4	Does the claimant allege that the marriage involves a transgender individual? If yes , go to step 5. If no , go to step 6.
5	Follow procedures in GN 00305.005B . Is this a same-sex marriage? If yes , go to step 6.

Step	Action
	If no , process the claim under existing instructions for opposite-sex marriages.
6	Did the couple have a ceremonial marriage? If yes, obtain proof of marriage as set out in: • Spouse's Benefits – Marriage Certification (RS 00202.065) • Spouse's Benefits – Proof of Marriage (RS 00202.070) • Widow(er)'s Benefits - Table of Proofs and Development – Policy (RS 00207.004) • Evidence Requirements for the Lump-Sum Death Payment (LSDP) (RS 00210.005) • Preferred Proof of Ceremonial Marriage (GN 00305.020) • Secondary Proof of Ceremonial Marriage (GN 00305.025) • Identifying Claimants Who May Need Assistance (GN 00301.180) • Failure to Submit Essential Evidence (GN 01010.410) then go to step 8. If no, go to step 7.
7	Is the claimant alleging that he or she had a non-ceremonial (common-law) marriage) (GN 00305.060) or a deemed marriage (GN 00305.055)? If yes, refer the case for legal opinion, according to instructions in GN 01010.820. If no, proceed according to the instructions in GN 00210.004 to develop for a possible non-marital legal relationship.
8	Consult Column I and Column II in GN 00210.003 for “Date Same-Sex Marriages Were Permitted in the State.” If the same-sex ceremonial marriage was celebrated: • In a state during a period where Column II indicates “hold,” hold the case according to instructions in GN 00210.005. • In a state not listed, the marriage is not recognized for benefits purposes. Process the claim according to the appropriate instructions in GN 00210.000 for the claim type. • In a state listed, but outside of the period that the laws of the state permitted same-sex marriage, the marriage is not recognized for benefits purposes. Process the claim according to the appropriate instructions in GN 00210.000 for the claim type. • In a state during a period that the laws of the state permitted same-sex marriage, go to step 9.
9	Is the NH alive? If yes, go to step 10. If no, go to step 11.
10	Was the NH domiciled in any one of the states listed in Column I in GN 00210.003: • When the claimant filed the application; or • At any time during which the claim was pending a final determination?

Step	Action
	NOTE: If the NH was domiciled in a foreign country, use the District of Columbia entry in GN 00210.003. If yes, go to step 12. If no, go to step 13.
11	Consult Column I and Column III in GN 00210.003. At the time of his or death, was the deceased NH domiciled in a state that at that time recognized same-sex marriages from any other state? NOTE: If the deceased NH was domiciled in a foreign country, use the District of Columbia entry in GN 00210.003. If yes, go to step 12. If no, go to step 13.
12	The claimant is in a marriage that can be recognized for purposes of determining entitlement under Title II and Medicare. Proceed to the appropriate instructions for the benefit type in GN 00210.000 and process accordingly. If there are not instructions for the claim type, hold the claim according to GN 00210.005.
13	The claimant is not in a marriage that can be recognized for purposes of determining entitlement under Title II and Medicare. Proceed to the appropriate instructions for the benefit type in GN 00210.000 and process accordingly. If there are not instructions for the claim type, hold the claim according to GN 00210.005.

D. Examples

1. Examples of claims where there is a marriage that can be recognized for purposes of determining entitlement

1. Allison (the NH) and Liz (the claimant) marry in Massachusetts (MA) after MA permits same-sex marriage. They are domiciled in MA. Liz files for aged spouse's benefits on Allison's record while they are domiciled in MA. The marriage can be recognized for purposes of determining entitlement for Title II and Medicare benefits. Accordingly, process the case under the instructions set out in [GN 00210.100](#).
2. Sheldon (the NH) and James (the claimant) are domiciled in Georgia (GA) when they marry while on vacation in MA after MA permits same-sex marriage. James files for aged spouse's benefits on Sheldon's record while they both live in GA. While the application is pending, James and Sheldon move to and become domiciled in MA. Because they became domiciled in MA while the application is pending, the marriage can be recognized for purposes of determining

entitlement for Title II and Medicare benefits. Accordingly, process the case under the instructions set out in [GN 00210.100](#).

2. Examples of claims where the marriage cannot be recognized for purposes of determining entitlement

1. Lily (the NH) and Wendy (the claimant) consider themselves married based on a ceremony celebrated in Washington (WA) state on August 23, 2010 (before WA permitted same-sex marriage). They are currently domiciled in WA. Wendy files a claim to receive aged spouse's benefits from Lily's record. Because the ceremony occurred before WA permitted same-sex marriage, the NH and claimant cannot be recognized as married for purposes of determining entitlement to Title II benefits or Medicare. Accordingly, process the case under the instructions set out in [GN 00210.100](#).
2. John (the NH) and Dave (the claimant) married in New York on October 1, 2012. John died on January 31, 2013, while domiciled in Minnesota (MN), and Dave filed for surviving spouse benefits. Because the date of John's death was before the date that MN recognized same-sex marriages, the NH and claimant cannot be recognized as married for purposes of determining entitlement to Title II or Medicare benefits. Accordingly, process the case under the instructions set out in [GN 00210.400](#).

References:

- [GN 00210.003](#) Same-Sex Marriage – Dates States Permitted or Recognized Same-Sex Marriages
- [GN 00210.004](#) Non-Marital Legal Relationships with Spousal Inheritance Rights (Such as Civil Unions and Domestic Partnerships)
- [GN 00305.001](#) Determining Family Status

EXHIBIT C

GN 00210.003 Same-Sex Marriage – Dates States Permitted or Recognized Same-Sex Marriage

As set out in [GN 00210.002](#), consult this chart to determine:

- which states have laws permitting same-sex marriages;
- the date when the states listed first permitted same-sex marriages;
- which states recognize same-sex marriages from other states; and
- for claims involving a deceased number holder (NH), the date when the states listed first began to recognize same-sex marriages from other states.

COLUMN I	COLUMN II	COLUMN III
State	Date Same-Sex Marriages Were Permitted in the State	Date Same-Sex Marriages from Any Other State Were Recognized
California (See NOTE)	June 17, 2008 – November 4, 2008 June 26, 2013 - present	June 17, 2008 – November 4, 2008 June 26, 2013 - present
Connecticut	November 12, 2008	November 12, 2008
Delaware	July 1, 2013	July 1, 2013
District of Columbia	March 9, 2010	July 7, 2009
Hawaii	December 2, 2013	December 2, 2013
Illinois	December 16, 2013	February 21, 2014
Indiana	Hold per instructions in GN 00210.005	Hold per instructions in GN 00210.005
Iowa	April 20, 2009	April 30, 2009
Maine	December 29, 2012	December 29, 2012
Maryland	January 1, 2013	February 23, 2010
Massachusetts	May 17, 2004	May 17, 2004
Minnesota	August 1, 2013	August 1, 2013
New Hampshire	January 1, 2010	January 1, 2010

COLUMN I	COLUMN II	COLUMN III
State	Date Same-Sex Marriages Were Permitted in the State	Date Same-Sex Marriages from Any Other State Were Recognized
New Jersey	October 21, 2013	Continue to hold per instructions in GN 00210.005 .
New Mexico	August 21, 2013 Per GN 00210.005 , hold all claims in which same-sex couples allege a ceremonial marriage in New Mexico based on a marriage license issued by Sandoval County in 2004.	January 4, 2011
New York	July 24, 2011	February 1, 2008
Oregon	May 19, 2014	October 16, 2013
Pennsylvania	May 20, 2014 Per GN 00210.005 , hold all claims in which same-sex couples allege a marriage in Pennsylvania based on a marriage license issued prior to this date.	May 20, 2014
Rhode Island	August 1, 2013	May 14, 2012
Vermont	September 1, 2009	September 1, 2009
Washington	December 6, 2012	December 6, 2012

NOTE - CALIFORNIA MARRIAGES: Although the laws regarding same-sex marriage in California changed, and there was a period of time when the state did not permit any same-sex marriages, we consider any same-sex marriage celebrated between June 17, 2008 and November 4, 2008, to have been valid since the date of celebration.

For example, if a claimant married a number holder (NH) in California on October 30, 2008, and the NH died while domiciled in California on October 30, 2011, we would recognize the marriage as having duration of three full years for purposes of determining the claimant's entitlement to survivor benefits or the lump sum death payment.

Reference:

[GN 00210.002](#) Same-Sex Marriage - Determining Marital Status for Title II and Medicare Benefits

EXHIBIT D



2012 MAY 14 PM 2:55

State of Rhode Island and Providence Plantations

State House, Room 224
Providence, Rhode Island 02903
401-222-2080

TS
SECRETARY OF STATE
OFFICE OF THE SECRETARY OF STATE

Lincoln D. Chafee
Governor

EXECUTIVE ORDER

12-02

May 14, 2012

RECOGNITION OF OUT OF STATE, SAME-SEX MARRIAGES

WHEREAS, since at least 1904, Rhode Island has recognized marriages validly celebrated in other states and countries under the principle of comity, regardless of whether the couple could have married in Rhode Island, *Ex Parte Chace*, 58 A. 978 (R.I. 1904); and

WHEREAS, many Rhode Island same-sex couples have been validly married in other states and countries; and

WHEREAS, the Rhode Island Attorney General issued a formal opinion in 2007 stating that same-sex marriages from other jurisdictions do not violate this state's public policy and therefore must be recognized under principles of comity and full faith and credit, *Op. R.I. Att'y Gen.* (February 20, 2007); and

WHEREAS, the principles articulated in that formal opinion remain unaltered despite regular legislative and judicial attention to same-sex relationships; and

WHEREAS, Rhode Island law does not explicitly prohibit or state any public policy against recognizing the lawful, out of state marriages of same-sex couples—indeed, through both legislation and case law, Rhode Island has long established an affirmative policy of preventing discrimination on the basis of sexual orientation and of supporting the personal, emotional, and legal commitments of same-sex couples; and

WHEREAS, the Rhode Island civil union law expands the state's public policy of supporting the legal commitments of same-sex couples, and extends recognition for alternative spousal relationships of same-sex couples from other states; and

WHEREAS, the recognition of out of state, same-sex couples' marriages comports with this state's law and public policy and ensures that those couples and their children have equal access to the protections and obligations already extended by the State to different-sex married couples and couples who enter civil unions; and

WHEREAS, the Governor, as Chief Executive of this State, is obligated to ensure that all executive state departments, agencies, and offices execute their duties and functions consistent with state law and policy.

NOW, THEREFORE, I, LINCOLN D. CHAFEE, by virtue of the authority vested in me as Governor of the State of Rhode Island and Providence Plantations, do hereby order as follows:

1. All executive state departments, agencies, and offices shall recognize the lawful marriages of same-sex couples as valid for any purpose arising within the execution of its duties.
2. Every department, agency, and office shall conduct a review of policy statements and regulations, and those statutes whose construction is within their purview, to ensure that terms relating to a spousal or familial relationship, including but not limited to "spouse," "husband," and "wife," are construed in a manner that encompasses lawful marriages of same-sex couples, unless some other provision of law or controlling court decision would bar their ability to do so. Where multiple constructions of statutory provisions are possible, all departments, agencies and offices shall adopt the interpretation that favors recognition of, and equal extension of benefits, protections, obligations, or responsibilities to, the marriages of same-sex couples.
3. Upon completing its review, each department, agency, or office shall: (i) take steps to direct staff on the proper construction of relevant terms in statutes, regulations, or policies, whether through internal memorandum or policy statement; (ii) initiate the processes to amend any regulation in need of alteration to comply with this Order; and (iii) review and, where necessary, amend all forms used or issued by the State to ensure that all terms connoting a marital or familial relationship are phrased so as to apply to all married couples, including same-sex couples.

This Order shall take effect immediately.

So Ordered:

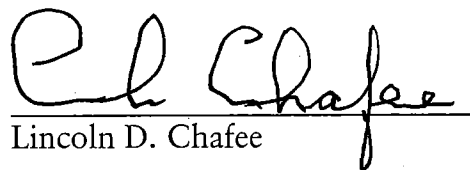

Lincoln D. Chafee

EXHIBIT E



State of Rhode Island and Providence Plantations
State House, Room 224
Providence, Rhode Island 02903
401-222-2080

Lincoln D. Chafee
Governor

July 8, 2014

Carolyn W. Colvin
Acting Commissioner
Social Security Administration
6401 Security Boulevard, Suite 900
Baltimore, MD 21235-0001

Dear Ms. Colvin:

On May 14, 2012, I signed Executive Order 12-02, "Recognition of Out of State, Same-Sex Marriage." This Executive Order did not establish May 14, 2012 as the date upon which Rhode Island would first recognize out of state, same-sex marriages. Rather, the Executive Order clarified that Rhode Island courts have recognized marriages validly celebrated in other states since at least 1904. The Executive Order also noted that in 2007, the Rhode Island Attorney General opined that same-sex marriages from other jurisdictions do not violate Rhode Island's public policy. Taking these facts into consideration, the Executive Order instructed all Rhode Island Executive state departments, agencies and offices to recognize all lawful marriages of same-sex couples without requiring the marriage to have occurred on or subsequent to any specific date.

I am writing to express my concern that the Social Security Administration (SSA) is applying May 14, 2012 as the date of recognition of out of state marriages, lawful in their jurisdictions of celebration, since 1904. This misinterpretation has and will continue to have harmful consequences for Rhode Island citizens, and I ask the SSA to review its policy manuals and ensure that any SSA applications that have been affected or denied based upon this misinterpretation be remedied as quickly as possible.

I. Eligibility under 42 U.S.C. § 416 (h)(1)(A)(i).

42 USC § 416 (h)(1)(A)(i) states that “[a]n applicant is the wife, husband, widow, or widower of a fully or currently insured individual ... if the courts of the State in which such insured individual is domiciled at the time such applicant files an application, or, if such insured individual is dead, the courts of the State in which he was domiciled at the time of death ... would find that such applicant and such insured individual were validly married at the time such applicant files such application or, if such insured individual is dead, at the time he died.”

In an effort to provide guidance to local offices in applying § 416(h)(1)(A)(i), the SSA issued Program Operations Manual Systems (POMS) GN 00210.003 "Same-Sex Marriage - Benefits for Aged Spouses," which includes a chart reflecting “dates[s] same-sex marriages from any other state were recognized” in various states. In this chart, SSA has incorrectly identified the date of recognition in Rhode Island as May 14, 2012. The POMS directs that applications where the date of application or death precedes May 14, 2012 be denied.

Presumably, the SSA based this date on the Executive Order. However, reliance upon the date of this Executive Order is misplaced. For 110 years, Rhode Island’s courts have respected lawfully solemnized out-of-state marriages as valid, even if they could not be certified in-state. *Ex Parte Chace*, 58 A. 978, 981 (R.I. 1904) (recognizing as valid the marriage of a Rhode Island ward who evaded state law and married in Massachusetts without his guardian’s permission).

No state supreme court ruling (or any other reported Rhode Island decision) has repudiated or questioned *Chace*. The general principle remains that “the capacity or incapacity to marry depends on the law of the place where the marriage is celebrated.” *Id.* at 979. While *Chace* acknowledges a possible exception to comity where a marriage is “odious by the common consent of nations, or its influence is thought dangerous to the fabric of society,” citing the *sui generis* and jurisprudentially unique examples of polygamous and incestuous marriages, *id.*, no Rhode Island law has ever explicitly prohibited the licensing or recognition of same-sex couples’ marriages, declared such marriages “void,” or prohibited or rendered void marriages of residents who marry outside of Rhode Island. Only when a legislature has spoken with unmistakable clarity in denying any and all respect for a marriage have courts viewed themselves as constrained to follow such rigid public policy. See, e.g., Scores & Hay, *Conflict of Laws*, § 13.9, at 575 (“it should take an exceptional case for a court to refuse recognition of a valid foreign marriage of one of its domiciliaries even in the face of a local prohibition”); Joseph Story, *Commentaries on the Conflict of Laws* § 113 (7th ed. 1972) (recognizing exception to general rule of recognition for marriages “positively prohibited by the public law of a country, from motives of policy”) (emphasis added). No such positive prohibition or public policy regarding the marriages of same-sex couples exists or has ever existed in Rhode Island.

The Executive Order intended only to affirm Rhode Island's longstanding commitment to comity and the belief that Rhode Island courts under existing law would be required to recognize the validity of marriages of same-sex couples performed in other states. It did not intend to signal a change in Rhode Island's law of recognition. The Executive Order clearly states that "since at least 1904, Rhode Island has recognized marriages validly celebrated in other states and countries under the principle of comity, regardless of whether the couple could have married in Rhode Island." It further states that "Rhode Island does not explicitly prohibit or state any public policy against recognizing the lawful, out of state marriages of same-sex couples." Accordingly, the Executive Order simply confirmed Rhode Island's existing law recognizing the legitimacy of out-of-state marriages of same-sex couples and directed the Executive branch to conform its policies and actions to comply with existing law.¹

Finally, Rhode Island's longstanding doctrine of comity remains undisturbed by the Rhode Island Supreme Court's decision in *Chambers v. Ormiston*, 935 A.2d 956, 963 (R.I. 2007). The only question that *Chambers* answered was whether the Rhode Island family court, a court of limited statutory jurisdiction, had divorce jurisdiction to dissolve the valid marriage of a same-sex couple performed in Massachusetts. *Id.* at 962-3. Concluding that the divorce statute failed to grant such jurisdiction, the Rhode Island Supreme Court did not inquire into whether marriages between same-sex couples would be recognized in the state. *Id.* at 964. In fact, the *Chambers* Court saw no need to address issues of comity, finding that "considerations of comity ... do not come into play if the court lacks jurisdiction over the case before it." *Id.* at 963, n.14 (emphasis added). Importantly, *Chambers* never engaged in an analysis of the whole public policy of Rhode Island law required under a comity analysis to determine whether an exception to its general rule of comity should apply,² despite briefing by the parties and amici.³ Instead, the Court

¹ The Executive Order, attached, also pointed to a 2007 Rhode Island's Attorney General, which stated that "same-sex marriages from other jurisdictions do not violate this state's public policy and therefore must be recognized under principles of comity and full faith and credit." That 2007 opinion goes on to state that "Rhode Island will recognize same sex marriages lawfully performed in Massachusetts as marriages in Rhode Island." Even as early as October 2004, the state Attorney General advised the Employees' Retirement System of Rhode Island that a same-sex spouse of a retired state employee, married in Massachusetts, would be eligible for spousal benefits under the state's pension system.

² Such an analysis would include consideration of Rhode Island's existing statutes prohibiting discrimination against gay people; R.I. Gen. Laws, §§ 28-5-6 (employment); 34-37-3 (housing); 11-24-2.1 (public accommodations); extending insurance benefits to the domestic partners of state employees; R.I.G.L. 1956 §§ 36-12-1 & -4; extending COBRA benefits to domestic partners of state employees; R.I.G.L. 1956 § 36-12-2.4; extending the state Parental and Family Medical Leave Act to domestic partners; R.I.G.L. 1956 § 28-48-1; and extending the one-time line-of-duty death benefit for police, fire, and correctional officers to domestic partners; R.I.G.L. 1956 § 45-10-4.3

emphasized that the issue before it was “rather narrow” and could be “decided entirely on the statutory level.” *Id.* at 961.

However, even were *Chambers* relevant to whether Rhode Island would recognize out-of-state marriages of same-sex couples, its ruling does not complete that inquiry. Simply because the Rhode Island family court – a court of limited jurisdiction – lacked authority to dissolve a marriage of a same-sex couple does not imply that other state courts, such as the superior courts, would have been unable or unwilling to recognize such marriages for other purposes.⁴ Unlike the family courts, Rhode Island’s superior courts are courts of general jurisdiction with equitable authority. R.I. G.L. § 8-2-13 (1956).⁵ We believe that prior to May 14, 2012, the superior courts would have recognized a marriage of a same-sex couple for other purposes even without explicit statutory authority, such as for loss of consortium claims, spousal privilege, and the doctrine of necessities.⁶

For example, in *Landmark Med. Ctr. v. Gauthier*, 635 A.2d 1145, 1155 (R.I. 1994), the Rhode Island Supreme Court extended the doctrine of necessities to impose liability on a wife for her husband’s medical expenses, even though the doctrine previously had been applied only to impose liability on husbands. In its reasoning, the Court noted that the profound social change regarding the rights of women clearly “foreshadowed” such a reinterpretation of the doctrine and that to continue to adhere to “outdated policy” about the proper roles of a husband and wife would be “utterly unfair.” *Id.* at 1152. In other words, Rhode Island case law explicitly recognizes that the institution of marriage must evolve to keep pace with society. This understanding, coupled with established comity

³ As the State of Rhode Island noted in its amicus brief in *Chambers*, principles of comity compel recognition of valid marriages where courts otherwise have jurisdiction. Response of Amicus Curiae State of Rhode Island, *Chambers v. Ormiston*, 935 A.2d 956 (R.I. 2007) (No. 2006–340), 2007 WL 6149057, at *3 (“Should this Court desire to issue an advisory opinion on any other issue, it should show the respect for our co-equal sovereign that long-standing principles of comity require”).

⁴ See, e.g., *Martinez v. Cnty. of Monroe*, 50 A.D.3d 189, 192–93 (N.Y.A.D. 2008) (holding that a married same-sex couple is entitled to recognition for purposes of spousal health benefits absent express legislation to the contrary and distinguishing a past case refusing to recognize the right of same-sex couples to marry).

⁵ See also *La Petite Auberge, Inc. v. R.I. Comm’n for Human Rights*, 419 A.2d 274 (R.I. 1980) (holding that “the superior court is a court of general equitable jurisdiction and, though its jurisdiction is not limitless, it possesses, as a matter of fundamental judicial power, the jurisdiction to hear and confront the merits of any case wherein the power of determination has not been specifically conferred upon another tribunal).

⁶ See Andrew Koppelman, *Interstate Recognition of Same-Sex Marriages and Civil Unions: A Handbook for Judges*, 153 U. Pa. L. Rev. 2143, 2157 (2005) (noting that courts may recognize particular incidents of marriages even in a state with a strong public policy, stated in its statutes, against marriages of same-sex couples).

principles, strongly suggests that Rhode Island superior courts would have recognized the marriage of a same-sex couple prior to May 14, 2012, notwithstanding any contrary the narrow construction of Rhode Island's divorce jurisdiction statute for the family court.

II. Eligibility under 42 U.S.C. § 416(h)(1)(A)(ii).

GN 00210.003's "date of recognition" for Rhode Island is also incorrect because prior to May 14, 2012, a married, same-sex couple would have independently qualified for benefits pursuant to 42 U.S.C. § 416 (h)(1)(A)(ii).⁷ This section provides an alternative path to eligibility where even if Rhode Island's courts would not have found that an applicant and such insured individual were validly married at such time, such applicant shall nevertheless be deemed to be the wife, husband, widow, or widower, as the case may be, of such insured individual if such applicant would, under the laws applied by such courts in determining the devolution of intestate personal property, have the same status with respect to the taking of such property as a wife, husband, widow, or widower of such insured individual.

First, Rhode Island's probate statute does not use the terms husband or widow in a way that restricts recognition to different-sex couples. R.I.G.L. § 33-1-5 (1956).⁸ By referring to the surviving husband or wife of the intestate, the statute permits the same-sex surviving spouse to inherit via intestate succession. While the *Chambers* decision limited the term "marriage" to different-sex couples, the same limitation would make no sense when construing the terms "husband or wife." And even were the terms "husband or wife" amenable to the same construction as in *Chambers*, that limitation would be inappropriate in the context of intestacy laws where the probate court has broad equitable authority. In contrast to the family court, the Rhode Island probate court is granted "the power to follow the course of equity insofar as necessary to fulfill the mandates of title 33 of the General Laws." R.I.G.L. § 8-9-9 (1956); *see Buford v. Estate of Skelly*, 699 A.2d 854, 856 (R.I. 1997) (affirming "inherent power of the Probate Courts of this state to do all which is necessary and incidental to the jurisdictional powers provided in § 8-9-9"). This equitable authority counsels courts to recognize the marriage of a same-sex couple beyond the strict interpretation of the statute, where doing so would fulfill the broader purposes of the intestacy law. Relying on this equitable authority, we believe that

⁷ While SSA has issued GN 210.004 to allow local offices to recognize a Rhode Island civil union partner as a spouse under 42 U.S.C. § 416 (h)(1)(A)(ii), there is no guidance as to whether a same-sex, married spouse also can qualify independently under the same statute. It would certainly seem perverse for a Rhode Island resident in a civil union to have fewer rights and protections than one who entered into a marriage.

⁸ "Whenever the intestate dies without issue and leaves a husband or wife surviving, the real estate of the intestate shall descend and pass to the husband or wife for his or her natural life." *Id.*

a Rhode Island probate court would have recognized a married same-sex couple for purposes of intestate succession prior to May 14, 2012. The question of the correct "date of recognition" in Rhode Island thus becomes irrelevant in light of this alternate means of eligibility and should not be used to deny any applications of validly married, Rhode Island same-sex couples. It is my position that Rhode Island courts would have recognized the marriage of a same-sex couple regardless of the date of marriage. I urge the SSA to correct this misunderstanding to avoid further hardship to Rhode Island citizens.

Sincerely,

A handwritten signature in black ink, appearing to read "Lincoln Chafee", written over a horizontal line.

Lincoln Chafee
Governor

attachment: Executive Order 12-02

cc: David F. Black, General Counsel, Social Security Administration
Nancy Martinez, Associate Commissioner for the Office of Income Security Programs,
Social Security Administration
Stuart F. Delery, Assistant Attorney General, U.S. Department of Justice
James Cox, Counsel to the Assistant Attorney General, U.S. Department of Justice

EXHIBIT F

Congress of the United States

Washington, DC 20515

July 24, 2014

Ms. Carolyn W. Colvin
Acting Commissioner
Social Security Administration
6401 Security Boulevard, Suite 900
Baltimore, MD 21235-0001

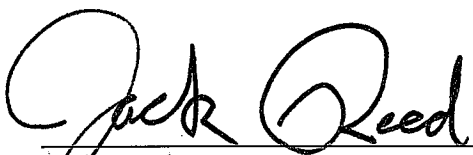
Dear Ms. Colvin:

We write in support of Rhode Island Governor Lincoln Chafee's letter requesting that the Social Security Administration (SSA) review its policies and procedures with respect to the effective date of Rhode Island's recognition of out-of-state, same-sex marriages.

Currently, SSA considers Rhode Island's date of recognition for out-of-state, same-sex marriages to be May 14, 2012. In his letter, Governor Chafee explains that his Executive Order 12-02, "Recognition of Out of State, Same-Sex Marriages," dated May 14, 2012, makes clear that Rhode Island courts have a long-standing record of recognizing marriages validly celebrated in other states. The Executive Order directed all Executive state departments, agencies and offices to recognize all lawful marriages of same-sex couples without regard to the date of the marriage.

The SSA's Program Operations Manual System (POMS) currently directs that claims submitted by same-sex spouses be denied if the date of application or death precedes May 14, 2012. We believe that the Administration's use of the May 14, 2012, date of recognition has caused, and will continue to cause unnecessary burdens on Rhode Island citizens. Therefore, we urge you to review Governor Chafee's letter pursuant to all rules and regulations of your agency. We look forward to your response and thank you for your attention to this important request.

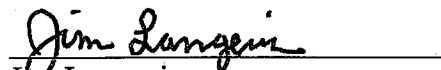
Sincerely,



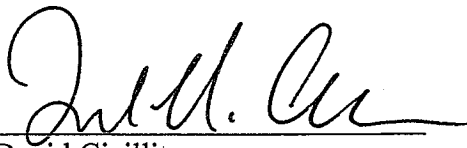
Jack Reed
United States Senator



Sheldon Whitehouse
United States Senator



Jim Langevin
Member of Congress



David Cicilline
Member of Congress

Enclosure: Governor Lincoln Chafee's letter to the Social Security Administration re: Out of State, Same-Sex Marriages

Cc: The Honorable Eric Holder, Attorney General, United States Department of Justice