

your monthly benefit may change as explained in § 404.304.

[51 FR 11912, Apr. 8, 1986]

§ 404.335 How do I become entitled to widow's or widower's benefits?

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:

(1) Your relationship to the insured as a wife or husband lasted for at least 9 months immediately before the insured died.

(2) Your relationship to the insured as a wife or husband did not last 9 months before the insured died, but at the time of your marriage the insured was reasonably expected to live for 9 months, and you meet one of the conditions in paragraphs (a)(2)(i) through (iii) of this section:

(i) The death of the insured was accidental. The death is accidental if it was caused by an event that the insured did not expect; it was the result of bodily injuries received from violent and external causes; and as a direct result of these injuries, death occurred not later than 3 months after the day on which the bodily injuries were received. An intentional and voluntary suicide will not be considered an accidental death.

(ii) The death of the insured occurred in the line of duty while he or she was serving on active duty as a member of the uniformed services as defined in § 404.1019.

(iii) You had been previously married to the insured for at least 9 months.

(3) You and the insured were the natural parents of a child; or you were married to the insured when either of you adopted the other's child or when both of you adopted a child who was then under 18 years old.

(4) In the month before you married the insured, you were entitled to or, if you had applied and had been old enough, could have been entitled to any of these benefits or payments: widow's, widower's, father's (based on the record of a fully insured individual),

mother's (based on the record of a fully insured individual), wife's, husband's, parent's, or disabled child's benefits; or annuity payments under the Railroad Retirement Act for widows, widowers, parents, or children age 18 or older.

(b) You apply, except that you need not apply again if you meet one of the conditions in paragraphs (b)(1) through (4) of this section:

(1) You are entitled to wife's or husband's benefits for the month before the month in which the insured dies and you have attained full retirement age (as defined in § 404.409) or you are not entitled to either old-age or disability benefits.

(2) You are entitled to mother's or father's benefits for the month before the month in which you attained full retirement age (as defined in § 404.409).

(3) You are entitled to wife's or husband's benefits and to either old-age or disability benefits in the month before the month of the insured's death, you are under full retirement age (as defined in § 404.409) in the month of death, and you have filed a Certificate of Election in which you elect to receive reduced widow's or widower's benefits.

(4) You applied in 1990 for widow's or widower's benefits based on disability and you meet both of the conditions in paragraphs (b)(4)(i) and (ii) of this section:

(i) You were entitled to disability insurance benefits for December 1990, or eligible for supplemental security income or federally administered State supplementary payments, as specified in subparts B and T of part 416 of this chapter, respectively, for January 1991.

(ii) You were found not disabled for any month based on the definition of disability in §§ 404.1577 and 404.1578, as in effect prior to January 1991, but would have been entitled if the standard in § 404.1505(a) had applied. (This exception to the requirement for filing an application is effective only with respect to benefits payable for months after December 1990.)

(c) You are at least 60 years old; or you are at least 50 years old and have a disability as defined in § 404.1505 and you meet all of the conditions in paragraphs (c)(1) through (4) of this section:

(1) Your disability started not later than 7 years after the insured died or 7

years after you were last entitled to mother's or father's benefits or to widow's or widower's benefits based upon a disability, whichever occurred last.

(2) Your disability continued during a waiting period of 5 full consecutive months, unless months beginning with the first month of eligibility for supplemental security income or federally administered State supplementary payments are counted, as explained in the Exception in paragraph (c)(3) of this section. The waiting period may begin no earlier than the 17th month before you applied; the fifth month before the insured died; or if you were previously entitled to mother's, father's, widow's, or widower's benefits, the 5th month before your entitlement to benefits ended. If you were previously entitled to widow's or widower's benefits based upon a disability, no waiting period is required.

(3) Exception: For monthly benefits payable for months after December 1990, if you were or have been eligible for supplemental security income or federally administered State supplementary payments, as specified in subparts B and T of part 416 of this chapter, respectively, your disability need not have continued through a separate, full 5-month waiting period before you may begin receiving benefits. We will include as months of the 5-month waiting period the months in a period beginning with the first month you received supplemental security income or a federally administered State supplementary payment and continuing through all succeeding months, regardless of whether the months in the period coincide with the months in which your waiting period would have occurred, or whether you continued to be eligible for supplemental security income or a federally administered State supplementary payment after the period began, or whether you met the nondisability requirements for entitlement to widow's or widower's benefits. However, we will not pay you benefits under this provision for any month prior to January 1991.

(4) You have not previously received 36 months of payments based on disability when drug addiction or alcoholism was a contributing factor material to the determination of disability

(as described in § 404.1535), regardless of the number of entitlement periods you may have had, or your current application for widow's or widower's benefits is not based on a disability where drug addiction or alcoholism is a contributing factor material to the determination of disability.

(d) You are not entitled to an old-age benefit that is equal to or larger than the insured person's primary insurance amount.

(e) You are unmarried, unless for benefits for months after 1983 you meet one of the conditions in paragraphs (e)(1) through (3) of this section:

(1) You remarried after you became 60 years old.

(2) You are now age 60 or older and you meet both of the conditions in paragraphs (e)(2)(i) and (ii) of this section:

(i) You remarried after attaining age 50 but before attaining age 60.

(ii) At the time of the remarriage, you were entitled to widow's or widower's benefits as a disabled widow or widower.

(3) You are now at least age 50, but not yet age 60 and you meet both of the conditions in paragraphs (e)(3)(i) and (ii) of this section:

(i) You remarried after attaining age 50.

(ii) You met the disability requirements in paragraph (c) of this section at the time of your remarriage (*i.e.*, your disability began within the specified time and before your remarriage).

[68 FR 4704, Jan. 30, 2003]

§ 404.336 How do I become entitled to widow's or widower's benefits as a surviving divorced spouse?

We will find you entitled to widow's or widower's benefits as the surviving divorced wife or the surviving divorced husband 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 surviving divorced wife or surviving divorced husband and you meet both of the conditions in paragraphs (a)(1) and (2) of this section:

(1) You were validly married to the insured under State law as described in