

have resulted in a valid marriage except for a legal impediment. A legal impediment includes only an impediment which results because a previous marriage had not ended at the time of the ceremony or because there was a defect in the procedure followed in connection with the intended marriage. For example, a defect in the procedure may be found where a marriage was performed through a religious ceremony in a country that requires a civil ceremony for a valid marriage. Good faith means that at the time of the ceremony you did not know that a legal impediment existed, or if you did know, you thought that it would not prevent a valid marriage.

(b) *Entitlement based upon a deemed valid marriage.* To be entitled to benefits as a wife, husband, widow or widower as the result of a deemed valid marriage, you and the insured must have been living in the same household (see § 404.347) at the time the insured died or, if the insured is living, at the time you apply for benefits. However, a marriage that had been deemed valid, shall continue to be deemed valid if the insured individual and the person entitled to benefits as the wife or husband of the insured individual are no longer living in the same household at the time of death of the insured individual.

[44 FR 34481, June 15, 1979, as amended at 45 FR 65540, Oct. 3, 1980; 48 FR 21927, May 16, 1983; 58 FR 64892, Dec. 10, 1993]

§ 404.347 "Living in the same household" defined.

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

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

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

(c) It was for an extended separation, regardless of the duration, due to the

confinement of either you or the insured in a hospital, nursing home, or other medical institution, if the evidence indicates that you were separated solely for medical reasons and you otherwise would have resided together; or

(d) It was based on other circumstances, and it is shown that you and the insured reasonably could have expected to live together in the near future.

[61 FR 41330, Aug. 8, 1996]

§ 404.348 When is a child living with me in my care?

A child who has been living with you for at least 30 days is *in your care* unless—

(a) The child is in active military service;

(b) The child is 16 years old or older and not disabled;

(c) The child is 16 years old or older with a mental disability, but you do not actively supervise his or her activities and you do not make important decisions about his or her needs, either alone or with help from your spouse; or

(d) The child is 16 years old or older with a physical disability, but it is not necessary for you to perform personal services for him or her. Personal services are services such as dressing, feeding, and managing money that the child cannot do alone because of a disability.

[44 FR 34481, June 15, 1979, as amended at 48 FR 21927, May 16, 1983; 73 FR 40967, July 17, 2008]

§ 404.349 When is a child living apart from me in my care?

(a) *In your care.* A child living apart from you is in your care if—

(1) The child lived apart from you for not more than 6 months, or the child's current absence from you is not expected to last over 6 months;

(2) The child is under 16 years old, you supervise his or her activities and make important decisions about his or her needs, and one of the following circumstances exist:

(i) The child is living apart because of school but spends at least 30 days vacation with you each year unless some event makes having the vacation unreasonable; and if you and the child's

§ 404.350

other parent are separated, the school looks to you for decisions about the child's welfare;

(ii) The child is living apart because of your employment but you make regular and substantial contributions to his or her support; see § 404.366(a) for a definition of *contributions for support*;

(iii) The child is living apart because of a physical disability that the child has or that you have; or

(3) The child is 16 years old or older, is mentally disabled, and you supervise his or her activities, make important decisions about his or her needs, and help in his or her upbringing and development.

(b) *Not in your care.* A child living apart from you is not in your care if—

(1) The child is in active military service;

(2) The child is living with his or her other parent;

(3) The child is removed from your custody and control by a court order;

(4) The child is 16 years old or older, is mentally competent, and either has been living apart from you for 6 months or more or begins living apart from you and is expected to be away for more than 6 months;

(5) You gave your right to have custody and control of the child to someone else; or

(6) You are mentally disabled.

[44 FR 34481, June 15, 1979, as amended at 48 FR 21927, May 16, 1983]

CHILD'S BENEFITS

§ 404.350 Who is entitled to child's benefits?

(a) *General.* You are entitled to child's benefits on the earnings record of an insured person who is entitled to old-age or disability benefits or who has died if—

(1) You are the insured person's child, based upon a relationship described in §§ 404.355 through 404.359;

(2) You are dependent on the insured, as defined in §§ 404.360 through 404.365;

(3) You apply;

(4) You are unmarried; and

(5) You are under age 18; you are 18 years old or older and have a disability that began before you became 22 years old; or you are 18 years or older and

qualify for benefits as a full-time student as described in § 404.367.

(b) *Entitlement preclusion for certain disabled children.* If you are a disabled child as referred to in paragraph (a)(5) of this section, and your disability was based on a finding that drug addiction or alcoholism was a contributing factor material to the determination of disability (as described in § 404.1535) and your benefits ended after your receipt of 36 months of benefits, you will not be entitled to benefits based on disability for any month following such 36 months regardless of the number of entitlement periods you have had if, in such following months, drug addiction or alcoholism is a contributing factor material to the later determination of disability (as described in § 404.1535).

[44 FR 34481, June 15, 1979, as amended at 48 FR 21927, May 16, 1983; 60 FR 8146, Feb. 10, 1995; 61 FR 38363, July 24, 1996]

§ 404.351 Who may be reentitled to child's benefits?

If your entitlement to child's benefits has ended, you may be reentitled on the same earnings record if you have not married and if you apply for reentitlement. Your reentitlement may begin with—

(a) The first month in which you qualify as a full-time student. (See § 404.367.)

(b) The first month in which you are disabled, if your disability began before you became 22 years old.

(c) The first month you are under a disability that began before the end of the 84th month following the month in which your benefits had ended because an earlier disability had ended; or

(d) With respect to benefits payable for months beginning October 2004, you can be reentitled to childhood disability benefits at anytime if your prior entitlement terminated because you ceased to be under a disability due to the performance of substantial gainful activity and you meet the other requirements for reentitlement. The 84-month time limit in paragraph (c) in this section continues to apply if your