the widow of such miner or of whether
she was dependent on such miner.

(c) Relationship and dependency of sur-
viving divorced wife. The determination
as to whether an individual purporting
to be a surviving divorced wife of a
miner was related to or dependent upon
such miner is made when such individ-
ual effectively files a claim for ben-
efits (see §410.227) as a surviving di-
vorced wife. Such determination is
made with respect to the time of the
miner’s death. A prior determination
that such individual was, or was not,
the divorced wife of such miner, pursu-
ant to §§410.311 and 410.351, for pur-
poses of augmenting the miner’s bene-
fits for a certain period (see §410.510(c)), is not
determinative of the issue of whether
the individual is the surviving divorced
wife of such miner or of whether she
was dependent on such miner.

[37 FR 20640, Sept. 30, 1972]

§410.391 Legal impediment.

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

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

§410.392 Domicile.

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

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

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

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

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

§410.393 “Member of the same house-
hold”; “living with”; “living in the
same household”; and “living in the
miner’s household”.

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

(2) The term living in the miner’s
household as used in section 412(a)(5) of
the Act (with respect to a parent,
brother, or sister (see §410.380)), means
that the miner and such parent, broth-
er, or sister, were sharing the same res-
idence.

(b) Temporary absence. The temporary
absence from the same residence of ei-
ther the miner, or his wife, parent,
brother, or sister (as the case may be),
does not preclude a finding that one
was living with the other, or that they
were members of the same household, etc.
The absence of one such individual
from the residence in which both had
customarily lived shall, in the absence
of evidence to the contrary, be consid-
ered temporary;

(1) If such absence was due to service
in the Armed Forces of the United
States; or

(2) If the period of absence from his
or her residence did not exceed 6
months, and neither individual was
outside the United States, and the ab-
sence was due to business or employ-
ment reasons, or because of confine-
ment in a penal institution or in a hos-
pital, nursing home, or other curative
institution; or

(3) In any other case, if the evidence
establishes that despite such absence
they nevertheless reasonably expected
to resume physically living together at
some time in the reasonably near fu-
ture.

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