

§ 410.380

study or training during the semester or other enrollment period immediately after the interim; or

(ii) During periods of reasonable duration during which, in the judgment of the Administration, he is prevented by factors beyond his control from pursuing his education.

(4) A student who completes 4 years of education beyond the high school level, or whose 23rd birthday occurs during a semester or other enrollment period in which he is pursuing a full-time course of study or training shall continue to be considered a student for as long as he otherwise qualifies under this section until the end of such period.

[37 FR 20639, Sept. 30, 1972, as amended at 41 FR 7091, Feb. 17, 1976]

§ 410.380 Determination of dependency; parent, brother, or sister.

An individual who is the miner's parent, brother, or sister (see § 410.340) will be determined to have been dependent on the miner if, during the 1-year period immediately prior to such miner's death:

(a) Such individual and the miner were living in the same household (see § 410.393); and

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

[37 FR 20640, Sept. 30, 1972]

§ 410.390 Time of determinations.

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

(b) *Relationship and dependency of widow.* The determination as to whether an individual purporting to be the widow of a miner was related to or dependent upon such miner is made after such individual effectively files a claim for benefits (see § 410.227) as a widow.

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Such determination is based on the facts and circumstances with respect to the time of the miner's death (except as provided in § 410.320(d)). A prior determination that such individual was determined to be, or not to be, the wife of such miner, pursuant to §§ 410.310 and 410.350, for purposes of augmenting the miner's benefits for a certain period (see § 410.510(c)), is not determinative of the issue of whether the individual is the widow of such miner or of whether she was dependent on such miner.

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

[37 FR 20640, Sept. 30, 1972]

§ 410.391 Legal impediment.

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

[36 FR 23756, Dec. 14, 1971]

§ 410.392 Domicile.

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

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

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

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

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

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

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

(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, brother, or sister, were sharing the same residence.

(b) *Temporary absence.* The temporary absence from the same residence of either 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 considered 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 absence was due to business or employ-

ment reasons, or because of confinement in a penal institution or in a hospital, 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 future.

(c) *Death during absence.* Where the death of one of the parties occurred while away from the residence for treatment or care of an illness or an injury (e.g., in a hospital), the fact that the death was foreseen as possible or probable does not in and of itself preclude a finding that the parties were “living with” one another or were “member[s] of the same household” etc. at the time of death.

(d) *Absences other than temporary.* In situations other than those described in paragraphs (b) and (c) of this section, the absence shall not be considered temporary, and the parties may not be found to be “living with” one another or to be “member[s] of the same household” etc. A finding of temporary absence would not be justified where one of the parties was committed to a penal institution for life or for a period exceeding the reasonable life expectancy of either, or was under a sentence of death; or where the parties had ceased to live in the same place of abode because of marital or family difficulties and had not resumed living together before death.

(e) *Relevant period of time.* (1) The determination as to whether a widow had been “living with” her husband shall be based upon the facts and circumstances as of the time of death of the miner.

(2) The determination as to whether a wife is a “member of the same household” as her husband shall be based upon the facts and circumstances with respect to the period or periods of time as to which the issue of membership in the same household is material. (See § 410.510(c).)

(3) The determination as to whether a parent, brother, or sister was “living in the miner’s household” shall take