

(b) You apply;

(c) You are age 62 or older throughout a month and you meet all other conditions of entitlement, or you are the insured's wife or husband and have *in your care* (as defined in §§ 404.348 through 404.349), throughout a month in which all other conditions of entitlement are met, a child who is entitled to child's benefits on the insured's earnings record and the child is either under age 16 or disabled; and

(d) You are not entitled to an old-age or disability benefit based upon a primary insurance amount that is equal to or larger than the full wife's or husband's benefit.

[44 FR 34481, June 15, 1979; 44 FR 56691, Oct. 2, 1979, as amended at 45 FR 68932, Oct. 17, 1980; 48 FR 21926, May 16, 1983]

§ 404.331 Who is entitled to wife's or husband's benefits as a divorced spouse.

You are entitled to wife's or husband's benefits as the divorced wife or divorced husband of an insured person who is entitled to old-age or disability benefits if you meet the requirements of paragraphs (a) through (e). You are entitled to these benefits even though the insured person is not yet entitled to benefits, if the insured person is at least age 62 and if you meet the requirements of paragraphs (a) through (f). The requirements are that—

(a) You are the insured's divorced wife or divorced husband and—

(1) You were validly married to the insured under State law as described in § 404.345 or you were deemed to be validly married as described in § 404.346; and

(2) You were married to the insured for at least 10 years immediately before your divorce became final;

(b) You apply;

(c) You are not married. (For purposes of meeting this requirement, you will be considered not to be married throughout the month in which the divorce occurred);

(d) You are age 62 or older throughout a month in which all other conditions of entitlement are met; and

(e) You are not entitled to an old-age or disability benefit based upon a primary insurance amount that is equal

to or larger than the full wife's or husband's benefit.

(f) You have been divorced from the insured person for at least 2 years.

[44 FR 34481, June 15, 1979, as amended at 48 FR 21926, May 16, 1983; 51 FR 11911, Apr. 8, 1986; 58 FR 64891, Dec. 10, 1993]

§ 404.332 When wife's and husband's benefits begin and end.

(a) You are entitled to wife's or husband's benefits beginning with the first month covered by your application in which you meet all the other requirements for entitlement under § 404.330 or § 404.331. However, if you are entitled as a divorced spouse before the insured person becomes entitled, your benefits cannot begin before January 1985 based on an application filed no earlier than that month.

(b) Your entitlement to benefits ends with the month before the month in which one of the following events first occurs:

(1) You become entitled to an old-age or disability benefit based upon a primary insurance amount that is equal to or larger than the full wife's or husband's benefit.

(2) You are the wife or husband and are divorced from the insured person unless you meet the requirements for benefits as a divorced wife or divorced husband as described in § 404.331.

(3) You are the divorced wife or divorced husband and you marry someone, other than the insured who is entitled to old-age benefits, unless that other person is someone entitled to benefits as a wife, husband, widow, widower, father, mother, parent or disabled child. Your benefits will end if you remarry the insured who is not yet entitled to old-age benefits.

(4) If you are under age 62, there is no longer a child of the insured who is under age 16 or disabled and entitled to child's benefits on the insured's earnings record. (See paragraph (c) of this section if you were entitled to wife's or husband's benefits for August 1981 on the basis of having a child in care.) (If you no longer have in your care a child who is under age 16 or disabled and entitled to child's benefits on the insured's earnings record, your benefits may be subject to deductions as provided in § 404.421.)

(5) The insured person dies or is no longer entitled to old age or disability benefits. Exception: Your benefits will continue if the insured person was entitled to disability benefits based on a finding that drug addiction or alcoholism was a contributing factor material to the determination of his or her disability (as described in §404.1535), the insured person's benefits ended after 36 months of benefits (see §404.316(e)) or 12 consecutive months of suspension for noncompliance with treatment (see §404.316(f)), and but for the operation of these provisions, the insured person would remain entitled to benefits based on disability.

(6) If your benefits are based upon a deemed valid marriage and you have not divorced the insured, you marry someone other than the insured.

(7) You die.

(8) You became entitled as the divorced wife or the divorced husband before the insured person became entitled, but he or she is no longer insured.

(c) If you were entitled to wife's or husband's benefits for August 1981 on the basis of having a child in care, your entitlement will continue until September 1983, until the child reaches 18 (unless disabled) or is otherwise no longer entitled to child's benefits, or until one of the events described in paragraph (b) (1), (2), (3), (5), (6) or (7) of this section occurs, whichever is earliest.

[44 FR 34481, June 15, 1979, as amended at 48 FR 21926, May 16, 1983; 49 FR 24115, June 12, 1984; 51 FR 11911, Apr. 8, 1986; 58 FR 64891, Dec. 10, 1993; 60 FR 8145, Feb. 10, 1995; 64 FR 14608, Mar. 26, 1999]

§ 404.333 Wife's and husband's benefit amounts.

Your wife's or husband's monthly benefit is equal to one-half the insured person's primary insurance amount. If you are entitled as a divorced wife or as a divorced husband before the insured person becomes entitled, we will compute the primary insurance amount as if he or she became entitled to old-age benefits in the first month you are entitled as a divorced wife or as a divorced husband. The amount of 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 you meet one of the conditions in paragraphs (a)(2)(i) through (iv) of this section.

(i) At the time of your marriage the insured was reasonably expected to live for 9 months, and the death of the insured was accidental. The death is accidental if it was caused by an event that the insured did not expect, if it was the result of bodily injuries received from violent and external causes, and if, 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) At the time of your marriage the insured was reasonably expected to live for 9 months, and 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) At the time of your marriage the insured was reasonably expected to live for 9 months, and you had been previously married to the insured for at least 9 months.

(iv) The insured had been married prior to his or her marriage to you and the prior spouse was institutionalized during the marriage to the insured due to mental incompetence or similar incapacity. During the period of the prior spouse's institutionalization, the insured, as determined based on evidence satisfactory to the Agency, would have divorced the prior spouse and married