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Program Operations Manual System (POMS)

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GN 00210.002 Same-Sex Marriage - Determining Marital Status for Title II and Medicare Benefits

A. Introduction to determining marital status for same-sex marriages

Use these instructions to determine marital status for same-sex couples when the same-sex marriage is material to the Title II or Medicare entitlement determination.

If the same-sex marriage is not material, process the claim without using these instructions. For example, when a number holder (NH) in a same-sex marriage files for a retirement benefit on the his or her own record, the marital status is not material to the claim; so process the NH's claim without applying these instructions.

Follow the instructions in GN 00210.002B to determine whether to:

- recognize the marriage for purposes of determining entitlement
- refer a case for legal opinion; or
- hold a case.

For instructions on determining whether a non-marital legal relationship meets the relationship entitlement factor for benefits, see GN 00210.004. Examples of non-marital legal relationship for purposes of these instructions include civil unions, domestic partnerships, and reciprocal beneficiary relationships.

For Title XVI cases, see GN 00210.800 to determine same-sex marital status.

B. Policy for determining marital status for same-sex couples

In Title II and Medicare cases, we look to the laws of the state of the number holder's (NH's) domicile to determine whether we can recognize the marriage. If the NH is alive, we look to the NH's domicile at the time of application or while the claim is pending a final determination. If the NH has died, we look to the NH's domicile at the time of his or her death.

Document the place of domicile (city or town, and state) on the RPOC screen. MCS screens do not capture the domicile of the NH. Do not rely on the mailing address or the "place of death" entry on the DECD screen.

NOTE: If a member of the couple alleges a prior civil union to an individual other than his or her current spouse, refer the claim for a legal opinion, according to instructions in GN 01010.820.

C. How to determine marital status for same-sex couples

Use these steps to determine marital status:

Step	Action
1	<p>Consult GN 00210.000. Have we published instructions for this type of claim or action, when the case involves a same sex marriage?</p> <p>If yes, go to step 2.</p> <p>If no, hold the case according to instructions in GN 00210.005.</p>
2	<p>Is this a Title XVI or concurrent case?</p> <p>If yes, use the instructions in GN 00210.800 to develop same-sex marital status for Title XVI claims or for the Title XVI aspects of concurrent claims. Use the instructions in GN 00210.002 to develop for same-sex marital status for the Title II aspects of concurrent claims.</p> <p>If no, go to step 3.</p>
3	<p>Does the claimant allege a same-sex marriage celebrated in a foreign jurisdiction; that is, was the marriage celebrated somewhere other than in:</p> <ul style="list-style-type: none"> • the 50 United States, • the District of Columbia, • the U.S. Virgin Islands, • Puerto Rico, • Guam, • American Samoa, or • the Northern Mariana Islands?

	<p>If yes, proceed according to the instructions in GN 00210.006.</p> <p>If no, go to step 4.</p>
4	<p>Does the claimant allege that the marriage involves a transgender individual?</p> <p>If yes, go to step 5.</p> <p>If no, go to step 6.</p>
5	<p>Follow procedures in GN 00305.005B. Is this a same-sex marriage?</p> <p>If yes, go to step 6.</p> <p>If no, process the claim under existing instructions for opposite-sex marriages.</p>
6	<p>Did the couple have a ceremonial marriage?</p> <p>If yes, obtain proof of marriage as set out in:</p> <ul style="list-style-type: none"> • Spouse's Benefits – Marriage Certification (RS 00202.065) • Spouse's Benefits – Proof of Marriage (RS 00202.070) • Widow(er)'s Benefits - Table of Proofs and Development – Policy (RS 00207.004) • Evidence Requirements for the Lump-Sum Death Payment (LSDP) (RS 00210.005) • Preferred Proof of Ceremonial Marriage (GN 00305.020) • Secondary Proof of Ceremonial Marriage (GN 00305.025) • Identifying Claimants Who May Need Assistance (GN 00301.180) • Failure to Submit Essential Evidence (GN 01010.410) <p>then go to step 8.</p> <p>If no, go to step 7.</p>
7	<p>Is the claimant alleging that he or she had a non-ceremonial (common-law) marriage (GN 00305.060) or a deemed marriage (GN 00305.055)?</p> <p>If yes, refer the case for legal opinion, according to instructions in GN 01010.820.</p> <p>If no, proceed according to the instructions in GN 00210.004 to develop for a possible non-marital legal relationship.</p>
8	<p>Consult Column I and Column II in GN 00210.003 for "Date Same-Sex Marriages Were Permitted in the State." If the same-sex ceremonial marriage was celebrated:</p> <ul style="list-style-type: none"> • In a state during a period where Column II indicates "hold," hold the case according to instructions in GN 00210.005.

	<ul style="list-style-type: none"> • In a state not listed, the marriage is not recognized for benefits purposes. Process the claim according to the appropriate instructions in GN 00210.000 for the claim type. • In a state listed, but outside of the period that the laws of the state permitted same-sex marriage, the marriage is not recognized for benefits purposes. Process the claim according to the appropriate instructions in GN 00210.000 for the claim type. • In a state during a period that the laws of the state permitted same-sex marriage, go to step 9.
9	<p>Is the NH alive?</p> <p>If yes, go to step 10.</p> <p>If no, go to step 11.</p>
10	<p>Is the NH domiciled in any one of the states listed in Column I in GN 00210.003: When the claimant filed the application; or</p> <p>At any time during which the claim was pending a final determination?</p> <p>If yes, go to step 12.</p> <p>If no, go to step 13.</p>
11	<p>Consult Column I and Column III in GN 00210.003. At the time of his or death, was the deceased NH domiciled in a state that at that time recognized same-sex marriages from any other state?</p> <p>If yes, go to step 12.</p> <p>If no, go to step 13.</p>
12	<p>The claimant is in a marriage that can be recognized for purposes of determining entitlement under Title II and Medicare. Proceed to the appropriate instructions for the benefit type in GN 00210.000 and process accordingly. If there are not instructions for the claim type, hold the claim according to GN 00210.005.</p>
13	<p>The claimant is not in a marriage that can be recognized for purposes of determining entitlement under Title II and Medicare. Proceed to the appropriate instructions for the benefit type in GN 00210.000 and process accordingly. If there are not instructions for the claim type, hold the claim according to GN 00210.005.</p>

D. Examples

1. Examples of claims where there is a marriage that can be recognized for purposes of determining entitlement

1. Allison (the NH) and Liz (the claimant) marry in Massachusetts (MA) after MA permits same-sex marriage. They are domiciled in MA. Liz files for aged spouse's benefits on Allison's record while they are domiciled in MA. The marriage can be recognized for purposes of determining entitlement for Title II and Medicare benefits. Accordingly, process the case under the instructions set out in GN 00210.100.
2. Sheldon (the NH) and James (the claimant) are domiciled in Georgia (GA) when they marry while on vacation in MA after MA permits same-sex marriage. James files for aged spouse's benefits on Sheldon's record while they both live in GA. While the application is pending, James and Sheldon move to and become domiciled in MA. Because they became domiciled in MA while the application is pending, the marriage can be recognized for purposes of determining entitlement for Title II and Medicare benefits. Accordingly, process the case under the instructions set out in GN 00210.100.

2. Examples of claims where the marriage cannot be recognized for purposes of determining entitlement

1. Lily (the NH) and Wendy (the claimant) consider themselves married based on a ceremony celebrated in Washington (WA) state on August 23, 2010 (before WA permitted same-sex marriage). They are currently domiciled in WA. Wendy files a claim to receive aged spouse's benefits from Lily's record. Because the ceremony occurred before WA permitted same-sex marriage, the NH and claimant cannot be recognized as married for purposes of determining entitlement to Title II benefits or Medicare. Accordingly, process the case under the instructions set out in GN 00210.100.
2. John (the NH) and Dave (the claimant) married in New York on October 1, 2012. John died on January 31, 2013, while domiciled in Minnesota (MN), and Dave filed for surviving spouse benefits. Because the date of John's death was before the date that MN recognized same-sex marriages, the NH and claimant cannot be recognized as married for purposes of determining entitlement to Title II or Medicare benefits. Accordingly, process the case under the instructions set out in GN 00210.400.

References:

- GN 00210.003 Same-Sex Marriage – Dates States Permitted or Recognized Same-Sex Marriages
- GN 00210.004 Non-Marital Legal Relationships with Spousal Inheritance Rights (Such as Civil Unions and Domestic Partnerships)
- GN 00305.001 Determining Family Status

To Link to this section - Use this URL:

<http://policy.ssa.gov/poms.nsf/lnx/0200210002>

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