

Surviving Spouses of LGBTQ+ and Survivor Benefits

On Thursday, October 13, 2022, VA announced that effective immediately, certain survivors of LGBTQ+ veterans are eligible to apply for VA survivor benefits. This new policy affords survivor benefits eligibility to those who were unable to wed until the 2015 Obergefell v. Hodges Supreme Court decision, and who, therefore, were not married to their now-deceased veteran spouses for a long enough period to qualify for survivor benefits. VA has addressed this issue by counting the duration of the marriage from when the surviving spouse can establish a “marriage-type” relationship to the veteran.

VA has issued an instruction that allows surviving spouses of a same-sex marriage who were married between June 26, 2015, and June 26, 2017, where the veteran passed away before the one-year marriage requirement could be met to be potentially eligible for DIC or Survivors Pension.

To qualify for Survivors Pension or Dependency and Indemnity Compensation (DIC), the law requires that a couple be married for at least one-year prior to the veteran’s death. To qualify for enhanced DIC, the 8x8 benefit requires that a veteran be rated totally and permanently disabled (including a rating based on individual unemployability) for 8 years prior to death and the surviving spouse was married to the veteran for that same 8-year period.

All other eligibility criteria must have been met and the surviving spouse must demonstrate that they were in a committed relationship for a minimum of one year prior to the veteran’s death for the duration of marriage to be considered satisfied. To qualify for Enhanced DIC, the evidence should show the same-sex couple cohabitated and held themselves out to the public as being in a committed relationship akin to that of marriage for the same continuous eight years the veteran was in receipt of, or entitled to receive, compensation for a service-connected disability that was rated totally disabling (including a rating based on individual unemployability) immediately preceding death.

Evidence that should be provided to prove a veteran and a same sex surviving spouse meet the marriage duration requirements are:

- Proof of marriage to the veteran at the time of death
- Continuous cohabitation for at least one year prior to the veteran's death
- Proof of a committed relationship for one year prior to the veteran's death and eight years if they are seeking the 8x8 benefits.
- Lease agreements
- Joint bank statements
- Utility bills
- Tax returns
- Insurance forms
- Employment records and any other documents requiring the individual to indicate marital status
- Lay statements from family or friends indicating that they knew the couple to hold themselves out as being in a committed relationship

To establish that the couple held themselves out to the public in a committed relationship akin to that of marriage, the surviving spouse should complete and return VA Form 21-4170, Statement of Marital Relationship. They should also have two people who know that the relationship existed as a result of personal observation complete separate VA Form 21P-4171s, Supporting Statement Regarding Marriage.

Please note, these benefits are not retroactive, therefore any surviving spouses who apply in the next year will receive benefits backdated to October 11, 2022.

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