



April's Best of the Listserv

Question:

Does a divorced spouse need to have been married for a certain number of years, like 10, to qualify for a spousal benefit from Social Security?

Douglas J. Sanderson
Fairfax, Virginia

Answer #1:

A divorced wife is defined as a woman who is divorced from a worker, and who had been married to that worker in excess of ten years immediately prior to the date when the divorce became effective {42 USC 416(d)(1)}. A divorced husband is defined similarly as a divorced wife, requiring ten years of marriage {42 USC 416(d)(4)}. If the spouse of a fully insured worker meets the definition of divorced wife or divorced husband, he or she is treated in the same manner as a present spouse {42 USC 402(b)}. If the former spouse qualifies for benefits because of the duration of the marriage, he or she also has the ability to continue to receive benefits if she remarries after attaining age sixty.

An important exception in consideration of a divorced spouse's benefits is that his or her benefits will be excluded from computation of maximum family benefits. Therefore, payments to a divorced spouse, or any number of divorced spouses, does not cause a reduction of benefits to any other person and payments to others will not reduce a divorced spouse's benefits {42 USC 403(a)(3)(C)}.

It is important to note that a divorced spouse may apply for benefits when his or her former spouse reaches age 60, whether or not that former spouse has applied for benefits for himself or herself.

The most important distinction between a spouse and a divorced spouse for purposes of social security benefits is the requirement that in order for a divorced spouse to receive benefits based on a former spouse's earnings record, he or she must be at least sixty-two years of age, whereas a current husband or wife can either be sixty-two or more years old, or have a minor child in his or her care {42 USC 402(b)(1)(B)}. This distinction has been ruled constitutionally valid, rationally supported by the fact that divorced persons are forced to lead independent lives, while married spouses have a greater dependency and need for support when they have minor children and their spouses become disabled, retire or die {Matthews v DeCastro, 429 US 181, 97 SCt 431, 50 LEd(2d) 389 (1976)}

Melissa Graham-Hurd

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Answer #2:

Yes. Ten years is the magic number. In addition, the spouse seeking the benefit cannot have remarried. It does not matter if the working spouse has remarried. There is terrific material about this on the SSA web site which is www.ssa.gov

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Answer #3:

Yes. http://www.ssa.gov/OP_Home/handbook/handbook.03/handbook-0311.html:

You are entitled to a divorced spouse's insurance benefits on the worker's Social Security record if:

1. The worker is entitled to retirement or disability insurance benefits;
2. You have filed an application for divorced spouse's benefits;
3. You are not entitled to a retirement or disability insurance benefit based on a primary insurance amount which equals or exceeds one-half the worker's primary insurance amount;
4. You are age 62 or over;
5. You are not married; and
6. You were married to the worker for 10 years before the date the divorce became final.

Note: You are not entitled before age 62 even if you have an entitled child in care.

The divorced spouse of a worker who is not entitled to retirement or disability insurance benefits, but who has reached age 62 and is fully insured, can become independently entitled to benefits on the worker's earnings record. To do so, however, the divorced spouse must meet the requirements in (B)-(F) above and have been divorced from the worker for not less than two continuous years.

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See also the ABA Family Law Section's Publication: "THE FAMILY LAW PRACTITIONER'S GUIDE TO SOCIAL SECURITY" by Carlton Stansbury.

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