The Supreme Court victory in United States v. Windsor striking down the discriminatory federal Defense of Marriage Act (DOMA) affirms that all loving and committed couples who are married deserve equal legal respect and treatment from the federal government. The demise of DOMA marks a turning point in how the United States government treats the relationships of married same-sex couples for federal programs that are linked to being married. At the same time, a turning point is part of a longer journey, not the end of the road. There is much work ahead before same-sex couples living across the nation can enjoy all the same protections as their different-sex counterparts.

SUPPLEMENTAL SECURITY INCOME FOR AGED, BLIND, AND DISABLED (SSI)

The Supplemental Security Income (SSI) program pays a modest cash benefit to people who are at least age 65 and meet financial limits or have severe disabilities and very limited income and resources. See [www.ssa.gov/pbgm/ssi.htm](http://www.ssa.gov/pbgm/ssi.htm).

How does marital status matter for SSI purposes?

Being recognized as married generally makes it more difficult for someone to qualify for SSI when the couple is living together. A married couple living together where both spouses are at least age 65 or meet the Social Security Act disability standard must apply for SSI as a couple. The limit on allowable resources for a couple to be eligible for SSI is 50% higher than for an individual, and in most states, the limit on allowable income for a couple is also 50% higher than for an individual. Very few married couples will qualify.

If a married couple lives together, but only one spouse meets the age or disability standard, then that spouse must apply as an individual, but the income and resources of the ineligible spouse will be “deemed” to the spouse applying for SSI (i.e., considered to be income and resources of the spouse applying for SSI) under a formula set forth in the SSI regulations. Relatively few will qualify if they are subject to deeming.

If a married couple lives apart from each other, they will be treated the same as unmarried individuals for SSI purposes.


Caution: For most couples, being married is not beneficial for SSI purposes. People receiving SSI should, if possible, consult an attorney who is knowledgeable about the SSI program before deciding to marry.

How is marital status determined for SSI?

The Social Security Act defines the rules for determining marital relationships for SSI recipients. See 42 U.S.C. § 1382c(d). Marital status is based under the statute on “appropriate State law,” and regulations further specify that the law of the state of domicile—where the couple principal lives—at the time of application should apply. Under additional statutory provisions, even if the marriage is not recognized by the state where the couple lives, the couple will nevertheless be considered married for SSI purposes if they can inherit personal property from the other without a will under the state’s law as would a spouse.
What does this mean for a married same-sex couple who lives in a state that respects their marriage?

A married same-sex couple living in a state that respects their marriage should be regarded as married for SSI purposes, and the income and resources of both spouses would be taken into account to determine SSI eligibility and benefits.

What does this mean for a married same-sex couple who lives in a state that does not respect their marriage?

The answer is uncertain. The couple would not be regarded as married under the law of their state of domicile. But it is possible that the couple nevertheless could be determined to be “holding themselves out” as married to the community, and hence subject to the rules for married couples for federal SSI purposes. A section of the Social Security Act provides that even if there is no recognized marital relationship, if two individuals hold themselves out as “husband and wife” to the community in which they reside, they will be treated the same as a married couple for SSI eligibility purposes. See 42 U.S.C. 1382e(d)(2). Efforts may be made in non-recognition states to apply this “holding out” provision to same-sex partners in evaluating eligibility for SSI. Whether a couple is “holding out” as a couple is an intensely factual determination. The fact that the couple was married in another state or shares all expenses should not be decisive.

What does this mean for a same-sex couple who has a civil union or comprehensive domestic partnership and lives in a state that recognizes the status?

A couple in a civil union or registered domestic partnership in a state that recognizes their relationship will be treated as married if under the law of the state they would be treated the same as married individuals for purpose of intestate succession of personal property (i.e., they would inherit from each other under state law without a will).

Seek counsel from an attorney in your state for advice about your eligibility for SSI benefits and consequences to you of entering into a marriage, civil union, domestic partnership, or other potentially legally recognized relationship.

FOR MORE INFORMATION, CONTACT

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