

CAPE COD TIMES

March 8, 2009

Challenging the Defense of Marriage Act

Same-sex married couples face roadblocks to benefits

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March 08, 2009 6:00 AM

For Randy Lewis-Kendell, running a small gift shop has its rewards.



But making lots of money isn't one of them.

After his husband, Rob Lewis-Kendell, died of cancer in 2007, Randy applied for the \$255 lump-sum death benefit from the Social Security Administration.

The couple had been together for more than 30 years. They applied to marry in Harwich on the first day they could as a gay couple: May 17, 2004.

They met at a disco while at Trinity College in Connecticut. They clicked, and within two months they bought rings for each other.

Randy, 52, still wears his ring. He keeps Rob's driver's license in his wallet.

Both names still appear on the business card Randy hands out for The Cranberry Goose Gift Shop in Harwich Port.

But after Randy applied for the benefit, he didn't hear back.

He then tried to apply for the benefit over the phone. The person on the other end took all his information. When they tried to process it, the computer wouldn't accept the information.

"They were very helpful," Randy said. But the person suggested it was because it was a same-gender marriage.

Randy asked for the denial in writing. He decided then he needed an attorney.

Randy is one of 15 plaintiffs in a federal discrimination lawsuit filed Tuesday in Boston. The lawsuit wants to dismantle one section of the federal Defense of Marriage Act.

Federal officials cite that section to deny benefits to legally married same-sex couples, according to the legal rights group Gay & Lesbian Advocates & Defenders. The group filed suit for the plaintiffs.

The Defense of Marriage Act affects about 1,100 different types of federal benefits and services involving a spouse, according to a federal estimate.

One of those is the death benefit Randy sought.

He struggles to straighten out his finances after Rob's death. He's working with a bank on a new payment schedule for the mortgage on their condominium. He has credit card debt, partly from travel expenses for Rob's cancer treatment.

He could use the \$255.

But the harm is more than the money lost. It's in what's implied in the letters from the Social Security Administration, Randy said: that a relationship of more than 30 years means nothing.

"It's very hurtful," he said.

From the front pockets of his jeans, Jim Fitzgerald pulls out a list of five medicines he takes for his asthma.



He pays \$510 for a 90-day supply.

But he would pay at least \$165 less if he could get on his husband's federal health insurance policy.

Jim, 57, is a Southie guy, raised in South Boston. He used to think subways, high-rises and traffic was the way to go, but no more.

Not since moving to the Cape in 2005.

"They fix things down here. The roads are plowed when it snows. It's a much better way of life."

His husband, Al Koski, 66, agrees. He was raised in Brockton. He's retired from the Social Security Administration and plays bridge. He's also co-parent to one cat that goes into hiding when guests arrive. Cat figurines sit on the coffee table in their living room in Bourne. A cat rug lies in front of an easy chair. Cat toys are piled in a box near the fireplace.

It was in that same living room that a justice of the peace married the couple in 2007.

They took that step to make sure that each would be treated as a spouse if the other became ill or died.

But so far it hasn't worked that way, at least with health insurance.

Jim works full time as a recovery aide at Gosnold on Cape Cod, an addiction and mental illness treatment center. He gets health insurance through his job. But it would cost a lot less if he could get on Al's federal policy. Maybe as much as \$4,000 a year if you include premiums, prescriptions and the cost of Jim's hearing aids.

After they were married, Al applied to the federal government to put Jim on his policy.

The letter came back with a "no."

Al applied for reconsideration. But the response never came. He called U.S. Rep. William Delahunt's office for help. Finally the second rejection letter came, also with a "no."

When the couple called Gay & Lesbian Advocates & Defenders, they were asked to join the lawsuit as plaintiffs.

It's more than just the money, the couple said.

Marriage is supposed to mean something. Something unquestioned, Al said.

"We're not asking for anything special. We're just asking for the same equal rights that's afforded every other legally married couple."

Denied benefits

- Two more couples could join the lawsuit based on expected denials from the Internal Revenue Service.
- The Defense of Marriage Act was enacted in 1996.
- Same-sex couples have been able to legally marry in Massachusetts since 2004. About 11,700 have married in Massachusetts.
- Same-sex couples have been able to legally marry in Connecticut since 2008. The number married in that state was not available.
- The defendants in the lawsuit are the federal Office of Personnel Management, the United States Postal Service, John E. Potter as Postmaster General, Michael J. Astrue as Commissioner of the Social Security Administration, Hillary Rodham Clinton as Secretary of State and Eric H. Holder, Jr. as Attorney General.

SOURCES: Gay & Lesbian Advocates & Defenders, Mass. Dept. of Public Health