

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF RHODE ISLAND

CIVIL ACTION
NO.

DEBORAH TEVYAW,)
Plaintiff,)
)
v.)
)
CAROLYN W. COLVIN, in her official capacity)
as the Acting Commissioner of the Social Security)
Administration,)
Defendant.)

COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF

INTRODUCTION

This case challenges the Social Security Administration’s (SSA) erroneous interpretation and application of the statutes governing widow’s insurance and lump sum death benefits to gay and lesbian widow/ers, resulting in the denial of Plaintiff Deborah (“Deb”) Tevyaw’s application for those benefits. Deb is a Rhode Island resident and was validly married to her spouse Patricia (“Pat”) Baker until Pat’s death in 2011. Deb later applied for widow’s insurance and lump sum death benefit based upon Pat’s Social Security earnings record. Even though Deb meets all of the statutory criteria for such benefits, the SSA denied her application based upon an erroneous interpretation and application of relevant law.

- Specifically, SSA is directed by statute to base determinations of family status for the purpose of awarding spouse-based benefits on an analysis of how “the courts of the State” in the insured’s state of domicile at the time of application (or if deceased, at the time of death) would assess the applicant’s spousal status. 42 U.S.C.

§ 416(h)(1)(A). The SSA has wrongly concluded that a gay or lesbian widow/er can only qualify for Social Security survivor benefits under 42 U.S.C. § 416(h)(1)(A)(i), if the courts of the state of domicile would have recognized the applicant as “validly married” under that state’s law, rather than as “validly married” in the state where the marriage was celebrated. A proper construction of § 416(h)(1)(A)(i) only requires that the courts of the state of domicile would find that the couple was “validly married,” which Deb and Pat were when they married in Massachusetts.

- Even if, *arguendo*, SSA’s reading of § 416(h)(1)(A)(i) were correct, it has compounded its errors through Program Operations Manual System (“POMS”) GN 00210.002(C) and GN 00210.003. These POMS establish state-specific dates of recognition for marriages of same-sex couples and several, including that for Rhode Island, are patently wrong. The dates used in the POMS provide that Rhode Island’s courts would not have recognized the marriages of same-sex couples at the time of Pat’s death, despite Rhode Island’s long-standing judicial recognition of out-of-state marriages even when those out-of-state marriages could not be validly entered into in Rhode Island. *See Ex Parte Chace*, 58 A. 978 (R.I. 1904) (establishing respect for lawfully solemnized out-of-state marriages as valid under principles of interstate comity).
- In addition, the SSA fails to recognize that even if Rhode Island’s courts would not have generally recognized marriages of same-sex couples for all purposes at the time of Pat’s death in 2011, Deb would still qualify under subsection (ii) of the statute, which allows someone to be recognized as a widow for purposes of

Social Security survivor benefits if the state of residence would accord that person “the same status with respect to the taking of [personal] property” as a widow.

Deb meets that standard under Rhode Island intestacy law.

- Finally, even if the SSA’s interpretation of § 416(h)(1)(A) and its implementation of the statute by regulation and POMS are correct, the statute, regulations and POMS are unconstitutional as violative of Equal Protection and Due Process.

JURISDICTION AND VENUE

1. This action arises under the Constitution of the United States and the laws of the United States, including 42 U.S.C. § 402. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, 42 U.S.C. § 405(g), and 28 U.S.C. § 2201.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e), because Plaintiff Deborah Tevyaw resides in this district, and the events giving rise to her claims arose in this district.

PARTIES

3. Plaintiff DEBORAH TEVYAW is a citizen of the State of Rhode Island and the United States of America, and she resides in Warwick, Rhode Island.

4. Defendant CAROLYN W. COLVIN is currently the Acting Commissioner of the Social Security Administration, an independent agency of the United States Government. In her official capacity, she is responsible for the administration and enforcement of the Social Security Act.

FACTS

5. Deborah (“Deb”) Tevyaw is 58 years old and currently resides in Warwick, Rhode Island.

6. Deb was in a lifelong, committed relationship with her same-sex partner and spouse, Patricia (“Pat”) Baker.

7. Deb and Pat met in 2002 through friends and began dating a year later.

8. On August 4, 2005, they were validly married in Massachusetts.

9. On August 14, 2011, Pat passed away due to cancer at the age of 55. At the time of Pat’s death, Deb and Pat lived in the same household in Johnston, Rhode Island.

10. Deb is listed as Pat’s spouse on Pat’s death certificate, which was issued by the Rhode Island Department of Health.

11. Pat, a long time corrections officer for Rhode Island, was fully insured by the Social Security program when she died.

12. Following Pat’s death, on December 27, 2011, Deb timely applied for Social Security disabled widow’s insurance benefits and lump sum death payment based upon Pat’s earnings record.

13. Under 42 U.S.C. § 402(i) and 20 C.F.R. §§ 404.390-404.391 and 404.347, a surviving spouse is entitled to a lump-sum death payment of \$255 if the surviving spouse was “living in the same household with the deceased at the time of death,” if the surviving spouse applies for the benefit “prior to the expiration of two years after the date of death . . .,” and if the deceased spouse was “fully or currently insured” at the time of death.

14. Deb meets these requirements for the lump-sum death payment.

15. Under 42 U.S.C. § 402(e), a widow is entitled to insurance benefits equal to the primary insurance amount earned by her deceased spouse if the widow is not

married, has attained age 50 but has not attained age 60 and is under a disability, has filed application for widow's insurance benefits, and is not entitled to old-age insurance benefits or is entitled to old-age insurance benefits each of which is less than the primary insurance amount of the deceased spouse.

16. Deb meets these requirements for widow's benefits.

17. By letter dated January 17, 2012, the SSA informed Deb that her claim was denied because the SSA had determined that Deb did "not meet the marriage requirement." The letter further stated: "You can not [sic] get benefits because your marriage does not meet the requirements under Federal law for payment of Social Security spouse's or widow's benefits."

18. Deb timely filed a request for reconsideration on March 6, 2012.

19. By letter dated November 5, 2012, the SSA informed Deb that upon reconsideration, the SSA's "first decision was correct" because Deb was "not entitled to benefits because you are not the spouse of Patricia Baker under Social Security law." In the enclosed "Reconsideration Determination (Form SSA-662)," the SSA further explained: "The Defense of Marriage Act (DOMA) and Social Security law preclude the surviving partner of a same-sex marriage or union from qualifying as a surviving spouse or widow(er) regardless of that partner's status under State law."

20. Section 3 of DOMA, 1 U.S.C. § 7, provided that:

[i]n determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife.

21. On January 3, 2013, Deb timely appealed the denial of reconsideration and requested a hearing by an administrative law judge. Her request stated that “the reason for the denial of my claim is unconstitutional.”

22. By letter dated April 17, 2013, Deb received notice that her hearing had been scheduled for July 30, 2013.

23. On June 26, 2013, the U.S. Supreme Court held in U.S. v. Windsor, 133 S. Ct. 2675 (2013), that Section 3 of DOMA violated constitutional equal protection guarantees.

24. Following the Windsor decision, the SSA announced that it would hold the processing of all applications for same-sex spousal and survivor benefits pending further guidance from the SSA regarding the implementation of its legal obligations under Windsor.

25. On July 10, 2013, Deb received notice from the SSA that her hearing scheduled on July 30, 2013 had been postponed.

26. After ten months of having her application on hold, on May 14, 2014, Deb received a decision “fully favorable to the claimant” from Administrative Law Judge Barry H. Best, which is attached as Exhibit A. In support of the decision, Judge Best made the following pertinent findings of fact and conclusions of law:

- “The claimant entered into a valid same-sex marriage with the number-holder on August 4, 2005.”
- “The sole basis for finding that the claimant was not eligible for disabled widow’s benefits and a lump sum death payment was the operation of the Defense of Marriage Act.... This Act has been found unconstitutional by Decision of the United States Supreme Court.... On that basis, the threshold impediment to the claimants’ [sic] eligibility for disabled widow’s benefits and the lump sum death payment has been removed.”

- “Under Social Security statutes and regulations her marriage to her spouse is recognized as having been as valid as any other marital union.”
- “[D]uring all periods relevant to claims presented in this case, and for all purposes relevant to benefit programs administered by the Social Security Administration, the claimant and the number holder were married, and the claimant was the spouse of the number holder.”

27. On July 11, 2014, Deb received a “Notice of Appeals Council Action” from the SSA’s Office of Appellate Operations, informing her that the SSA’s Appeals Council had decided to review Judge Best’s decision in her case, because it “found that there is an error of law.”

28. As the basis for its decision to review Judge Best’s decision, the Office of Appellate Operations referred to a memorandum from the Northeastern Program Service Center dated June 23, 2014 (hereinafter “NPSC memorandum”), which was provided to Deb.

29. The NPSC memorandum asked that the Office of Appellate Operations review Judge Best’s decision because it asserted that his determination that Deb met “the marriage requirement ... is incorrect.” It further stated:

The claimant’s marriage ended upon the death of the wage earner on August 14, 2011. Reg. §404.345 requires that SSA look to the laws of the State where the wage earner was domiciled when they died. Since the marriage ended before Rhode Island recognized same-sex marriage it was never a valid marriage under Rhode Island State law. This is consistent with the policy provided in POMS GN 00210.002C Steps 11 and 13 and GN 00210.002D. Example 2.2. [emphasis added]

30. The NPSC memorandum stated that the first date on which “Rhode Island recognized same-sex marriages from any other state” was May 14, 2012. Accordingly, the memorandum asked that Judge Best’s decision be reversed and Deb’s application be denied.

31. 20 C.F.R. § 404.345, to which the NPSC memorandum cites, states that to determine whether an applicant qualifies as a widow/er, the SSA will “look to the laws of the State where the insured had a permanent home when he or she died.” It continues: “If you and the insured were validly married under State law ... the relationship requirement will be met. The relationship requirement will also be met if under State law you would be able to inherit a wife’s, husband’s, widow’s, or widower’s share of the insured’s personal property if he or she were to die without leaving a will.”

32. 20 C.F.R. § 404.345 is an attempt to implement 42 U.S.C. § 416(h)(1)(A). That statute provides two means by which a person may qualify as a widow/er for survivor benefits. Subsection (i) of § 416(h)(1)(A) states that “[a]n applicant is the ... widow ... of a fully or currently insured individual ... [if] the courts of the State in which he was domiciled at the time of death ... would find that such applicant and such insured individual were validly married ... at the time he died.” Subsection (ii) states that “[i]f such courts would not find that such applicant and such insured individual were validly married at such time, such applicant shall, nevertheless be deemed to be the ... widow... of such insured individual if such applicant would, under the laws applied by such courts in determining the devolution of intestate personal property, have the same status with respect to the taking of such property as a wife, husband, widow, or widower of such insured individual.”

33. In an attempt to implement 42 U.S.C. § 416(h)(1)(A), the SSA has also issued POMS GN 00210.002, which was also cited in the NPSC memorandum.

34. POMS, or Program Operations Manual System, are the “[i]nstructions used by employees and agents of SSA to carry out the law, regulations, and rulings” (<http://www.ssa.gov/regulations/#a0=3>).

35. Step 11 of POMS GN 00210.002, which is attached as Exhibit B, instructs the SSA to ask: “At the time of his or [sic] death, was the deceased NH [Number Holder] domiciled in a state that at that time recognized same-sex marriages from any other state?” If the answer is no, the POMS concludes that “[t]he claimant is not in a marriage that can be recognized for purposes of determining entitlement.”

36. In order to answer the question in Step 11, the POMS references a chart contained in POMS GN 00210.003, which is attached as Exhibit C. That chart describes May 14, 2012 as the first date “same-sex marriages from any other states were recognized” in Rhode Island.

37. The starting date on which any given state would have recognized a marriage of a same-sex couple is not relevant to 42 U.S.C. § 416(h)(1)(A), which asks instead whether the courts of the state of domicile would have found that the couple were “validly married.”

38. Even if the date of recognition were relevant to 42 U.S.C. § 416(h)(1)(A), May 14, 2012 is not the correct starting date on which Rhode Island’s courts would have recognized the marriage of a same-sex couple.

39. Instead, Rhode Island’s courts have long recognized out-of-state marriages under principles of comity, even where the Rhode Island couple could not have married in Rhode Island. *See Ex Parte Chace*, 58 A. 978 (R.I. 1904) (establishing respect for lawfully solemnized out-of-state marriages as valid under principles of interstate comity).

40. The SSA chose May 14, 2012 as the starting date of recognition presumably because that is the date on which Rhode Island Governor Lincoln Chafee issued an executive order instructing executive state departments, agencies, and offices to comply with existing Rhode Island law by recognizing the lawful marriages of same-sex couple. As its basis, the executive order recognizes that “since at least 1904, Rhode Island has recognized marriages validly celebrated in other states and countries under the principle of comity, regardless of whether the couple could have married in Rhode Island” and cites *Ex Parte Chace*, 58 A. 978 (R.I. 1904). The executive order also cites to a 2007 opinion by the Rhode Island Attorney General stating that “same-sex marriages from other jurisdictions do not violate this state’s public policy and therefore must be recognized under principles of comity and full faith and credit.” A copy of the executive order is attached as Exhibit D.

41. On July 8, 2014, in response to the SSA’s adoption of May 14, 2012 as Rhode Island’s recognition date, Governor Chafee sent separate and identical letters to Defendant Colvin and Stuart F. Delery, Assistant Attorney General for the U.S. Department of Justice, explaining that the May 14, 2012 executive order “did not establish May 14, 2012 as the date upon which Rhode Island would first recognize out of state, same-sex marriages.” Instead, Governor Chafee’s letters stated that the executive order “clarified that Rhode Island courts have recognized marriages validly celebrated in other states since at least 1904.” The letters expressed “concern that the Social Security Administration (SSA) is applying May 14, 2012 as the date of recognition of out of state marriages” and asked that the SSA “review its policy manuals and ensure that any SSA

applications that have been affected or denied based upon this misinterpretation be remedied as quickly as possible.”

42. Governor Chafee’s letters also asserted that even if the SSA is unwilling to correct the “date of recognition” for Rhode Island, “a married, same-sex couple would have independently qualified for benefits pursuant to 42 U.S.C. § 416(h)(1)(A)(ii)” because “such applicant would, under the laws applied by such courts in determining the devolution of intestate personal property, have the same status with respect to the taking of such property as a wife, husband, widow, or widower of such insured individual.” A copy of Governor Chafee’s letter to Defendant Colvin is attached as Exhibit E.

43. On July 24, 2014, the entire Rhode Island Congressional delegation signed joint letters to Defendant Colvin and Attorney General Eric Holder to express their agreement and “support of Rhode Island Governor Lincoln Chafee’s letter requesting that the Social Security Administration (SSA) review its policies and procedures with respect to the effective date of Rhode Island’s recognition of out-of-state, same-sex marriages.” A copy of the Rhode Island Congressional delegation’s letter to Acting Commissioner Colvin is attached as Exhibit F.

44. Prior to Governor Chafee’s and the Rhode Island Congressional delegation’s letters, representatives from lesbian, gay, bisexual, and transgender (LGBT) advocacy organizations submitted three memoranda to the SSA and the Department of Justice (DOJ), urging the SSA to adopt the correct interpretation of 42 U.S.C. § 416(h)(1)(A).

45. On August 21, 2013, LGBT advocacy organizations Gay & Lesbian Advocates & Defenders (GLAD) and Lambda Legal submitted a memorandum to the

SSA and DOJ. That memorandum asserted that the valid marriage of a same-sex couple should be recognized pursuant to 42 U.S.C. § 416(h)(1)(A), regardless of where the couple resided at the time of death, that SSA should look to the whole law of the state (including comity law) in predicting which marriages state courts would recognize, and that “it would be reasonable for SSA to interpret the statute [to] make eligible for spouse-based benefits all validly married same-sex couples” to avoid constitutional problems.

46. On December 16, 2013, GLAD and Lambda Legal submitted a memo to Defendant Colvin. That memorandum asserted that constitutional imperatives applicable to the federal government and statutory construction principles “should result in SSA guidance allowing spousal and survivor benefits for those in marriages valid where celebrated.” In addition, the memorandum urged “SSA to eliminate the ‘recognition’ column from the chart” contained in GN 00210.003, because the “dates in that column of that chart are simply inaccurate,” including the May 14, 2012 recognition date for Rhode Island.

47. On May 14, 2014, GLAD submitted a memorandum to the SSA and DOJ addressing the chart contained in GN 00210.003 and asserted that the “dates for when marriages from other states were first recognized should be earlier than stated in the POMS.” This memorandum specifically addressed the May 14, 2012 recognition date for Rhode Island and argued that such date is “incorrect,” because “[f]or 110 years, Rhode Island has respected marriages as valid when lawfully solemnized out-of-state even when they cannot be certified in-state.”

48. Despite these numerous requests from Rhode Island elected officials and LGBT advocacy organizations beginning as early as August 2013, the SSA has refused to

treat as irrelevant under 42 U.S.C. § 416(h)(1)(A) the date it deems any given state to have begun recognizing out-of-state marriages of same-sex couples.

49. Despite these numerous requests from Rhode Island elected officials and LGBT advocacy organizations beginning as early as August 2013, the SSA has refused to correct the “date of recognition” for Rhode Island in the chart contained in POMS GN 00210.003.

50. Despite these numerous requests from Rhode Island elected officials and LGBT advocacy organizations beginning as early as August 2013, the SSA has refused to reverse its stated position that Judge Best’s decision was “incorrect” and to withdraw its review of Deb’s fully favorable decision from Judge Best by the Appeals Council.

51. Because the SSA has and continues to wrongly interpret and apply 42 U.S.C. § 416(h)(1)(A), Deb has suffered specific, concrete, and irreparable harm, and will continue to suffer such harm.

52. Because the SSA has and continues to wrongly interpret and apply 42 U.S.C. § 416(h)(1)(A), Deb’s monthly income has been reduced to \$732 a month, with her SSDI disability benefits as her only source of income. If she were to receive the survivor benefits, she believes that her income would increase to over \$2,000 a month.

53. Because the SSA has and continues to wrongly interpret and apply 42 U.S.C. § 416(h)(1)(A), Deb was unable to afford the mortgage on the home that she owned for over 38 years and that she and Pat shared for the entirety of their marriage. As a result, she was forced to sell that home in June 2013, the proceeds from which she used to pay off outstanding debts.

54. Due to the denial of benefits, Deb has been rendered destitute and without her own home.

**COUNT I: DECLARATORY JUDGMENT ACTION
PURSUANT TO 28 U.S.C. § 2201**

55. Plaintiff Deborah Tevyaw repeats and realleges the allegations set forth in Paragraphs 1-55 as if fully set forth herein.

56. The Social Security Act is codified in Chapter 7 of Title 42 of the United States Code. See generally 42 U.S.C. §§ 301 et seq.

57. Pursuant to 42 U.S.C. § 902, Defendant Colvin enforces federal law relative to eligibility of benefits through her supervision of the SSA.

58. Under federal law, 42 U.S.C. § 402(e), the qualified widow of a deceased insured shall receive insurance benefits up to the primary insurance amount earned by her insured deceased spouse.

59. Under federal law, 42 U.S.C. § 402(i), the qualified widow of a deceased person shall receive a lump-sum of \$255 after the death of her spouse.

60. Deb meets all of the statutory requirements to receive the widows' insurance benefit and the lump-sum death benefit under the Social Security Act, but for the SSA's incorrect interpretation and application of 42 U.S.C. § 416(h)(1)(A) to her application.

61. It would be futile for Deb to proceed further with the SSA because she cannot obtain the widows' insurance benefit or the lump-sum benefit solely because of the SSA's error of law in its incorrect interpretation and application of 42 U.S.C. § 416(h)(1)(A), as reflected in both its implementing regulations and POMS.

62. An actual controversy exists between the parties.

**CLAIM II: VIOLATION OF CONSTITUTIONAL EQUAL PROTECTION AND
DUE PROCESS
(U.S. Const. Amend. V)**

63. Plaintiff Deborah Tevyaw repeats and realleges the allegations set forth in Paragraphs 1-63 as if fully set forth herein.

64. If the SSA's interpretation and application of 42 U.S.C. § 416(h)(1)(A) is correct, then it violates Deb's equal protection and due process rights secured by the Fifth Amendment of the Constitution of the United States.

65. It would be futile for Deb to proceed further with the SSA because she cannot obtain the widows' insurance benefit or lump sum benefit solely because of the SSA's interpretation and application of 42 U.S.C. § 416(h)(1)(A), as reflected in both its implementing regulations and POMS.

66. Deb will be providing notice of this claim and this complaint to the Attorney General of the United States, pursuant to Federal Rule of Civil Procedure 5.1.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff Deborah Tevyaw prays that this Court:

1. Declare that POMS GN 00210.002(C), Step 11; POMS GN 00210.003, Column II; and 20 C.F.R. § 404.345 are invalid and contrary to the governing Social Security statutes.
2. Declare that Deborah Tevyaw meets the requirements of 42 U.S.C. § 416(h)(1)(A).
3. Declare that a widow/er previously married to someone of the same sex meets the requirements of 42 U.S.C. § 416(h)(1)(A)(i), so long as the courts of the state

in which the insured individual is domiciled at the time of death would find that the marriage was validly entered into in the state where the marriage was celebrated.

4. Declare that at the time of Ms. Baker's death, Rhode Island's courts would have recognized the marriages of same-sex couples.

5. Declare that at the time of Ms. Baker's death, Rhode Island's courts would have found that a widow/er previously married to someone of the same sex has the same status with respect to the taking of personal property as a wife, husband, widow, or widower of the insured individual under Rhode Island law.

6. Find that 42 U.S.C. § 416(h)(1)(A), as interpreted and applied by the SSA through its implementing regulations and POMS, violates constitutional equal protection and due process protections.

7. Enjoin the Defendant Colvin to process Plaintiff Deborah Tevyaw's application for widow's and lump sum death benefits without consideration of POMS GN 00210.002(C), Step 11; POMS GN 00210.003, Column III; or 20 C.F.R. § 404.345.

8. Enjoin the Defendant Colvin to process Plaintiff Deborah Tevyaw's application for widow's and lump sum death benefits based upon the determination that Ms. Tevyaw has met the requirements of 42 U.S.C. § 416(h)(1)(A).

9. Award attorney's fees and costs to plaintiffs pursuant to 28 U.S.C. § 2412 or any other applicable statutory provision.

10. Grant such other relief as is just and appropriate.

DATED: September 29, 2014

Respectfully submitted,

DEBORAH TEVYAW
By her attorneys,

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