Department of Veterans Affairs

Memorandum

Date: June 17, 2014

VAOPGCPREC 4-2014

From: General Counsel (022)

Subj: Reliance on State Law to Determine Validity of Same-Sex Marriage

To: Under Secretary for Health (10); Under Secretary for Benefits (20); Under Secretary for Memorial Affairs (40)

QUESTION PRESENTED:

How will the Department of Veterans Affairs (VA) administer spousal benefits in accordance with 38 U.S.C. § 103(c) in light of variances in state law on the issue of same-sex marriage?

HELD:

1. The plain language of section 103(c) requires that a person be married to a Veteran to be considered the "spouse" of the Veteran and requires VA to look to state law to determine the validity of a marriage. A domestic partnership or civil union that is not recognized as a "marriage" under state law cannot be considered a valid marriage for VA purposes.

2. Section 103(c) provides two alternative bases for determining the validity of a marriage. Section 103(c) provides that VA shall look to "the law of the place where the parties resided at the time of the marriage *or* the law of the place where the parties resided when the right to benefits accrued" (emphasis added). Under this standard, if a marriage is valid in one of the places of residence identified in the statute, it will be valid for VA purposes, even if it was not recognized as valid under the laws of any other place in which the parties resided.

3. Under section 103(c), "at the time of the marriage" means when the parties entered into the marriage. If the parties' marriage is valid under the law of the place where they resided at the time of the inception of their marriage, it is valid for VA purposes.

4. We construe the term "when the right to benefits accrued" in section 103(c) to refer to: (1) the point in time at which the claimant filed a claim that is ultimately found to be meritorious in establishing entitlement to a benefit or increased benefit for which a marriage to a Veteran is a prerequisite; or (2) if entitlement cannot be established as existing at the time the claim is submitted, then at such later date as of which all requirements of entitlement are met. Once VA has determined a marriage valid under section 103(c), such determination shall be recognized in subsequent adjudicatory decisions involving the same or other VA benefits unless there is a change in marital status through death or judicial action.

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5. The phrase "place where the parties resided" is interpreted to mean the place where the parties regularly lived or had their home, as distinguished from a place in which they were present on a temporary basis. The provision includes parties who lived in a place continuously for a reasonable period of time and those who relocated to a place with the intent to live there either permanently or for a reasonable period of time. A party's temporary absence from the place they ordinarily lived would not defeat the finding that they resided in that place. If the parties resided in different jurisdictions at their time of marriage, VA may consider the marriage valid for VA purposes if it is valid under the law of either jurisdiction. In addition to U.S. states, the term "place" may include U.S. territories and possessions, the District of Columbia, foreign nations, and other areas governed by a recognized system of laws pertaining to marriage, such as tribal laws.[1]

6. The plain language of section 103(c) applies only to determine the validity of a marriage to a Veteran. It thus applies for purposes of establishing eligibility or ineligibility for benefits or services provided on the basis of the marriage of a "veteran" (including, in some instances, active-duty service members and others defined to be "veterans" under certain statutory provisions). In other instances, however, when VA provides benefits or services based on the marital status of an individual who is not considered a Veteran, section 103(c) generally would not apply in determining the validity of a marriage to such an individual.

COMMENTS:

Background

1. VA administers benefits and programs that depend on "spouse" and "surviving spouse" status. *See, e.g.,* 38 U.S.C. §§ 1115 (providing additional compensation to a disabled Veteran who has a spouse), 1311 (authorizing dependency and indemnity compensation to the surviving spouse of a Veteran). On June 26, 2013, the Supreme Court held, in *United States v. Windsor*, No. 12-307, 133 S. Ct. 2675 (2013), that section 3 of the Defense of Marriage Act, 1 U.S.C. § 7 (DOMA), violates Fifth Amendment principles by discriminating against legally married same-sex couples. On September 4, 2013, the Attorney General announced that the President had directed the Executive Branch to cease enforcement of similar provisions in 38 U.S.C. § 101(3) and 101(31), defining "surviving spouse" and "spouse," to the extent that they limit Veterans' benefits to opposite-sex couples. VA will administer spousal benefits to same-sex married couples, provided their marriages meet the requirements of 38 U.S.C. § 103(c). Section 103(c) provides, "[i]n determining whether or not a person is or

[1] For the purpose of brevity, the terms "state" and "state law" are used throughout this opinion to include all of the jurisdictions and systems of laws that would qualify as a "place" or the "law of the place."

was the spouse of a veteran, their marriage shall be proven as valid for the purposes of all laws administered by the Secretary according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued." 38 U.S.C. § 103(c); *see also* 38 C.F.R. § 3.1(j) (defining "marriage"). Questions have arisen as to how section 103(c) should be applied when determining the validity of a marriage in light of the variances in state law governing same-sex marriages. Although the question presented arises because of the removal of certain impediments to VA recognizing same-sex marriages for the purpose of Veterans' benefits, this opinion interprets 38 U.S.C. § 103(c) for purposes of both opposite-sex marriages and same-sex marriages of Veterans.

Requirement of a Valid Marriage

2. For Veterans' benefits purposes, spousal status is predicated on a valid marriage under state law.[2] *See* 38 U.S.C. § 103(c). In interpreting section 103(c), the starting point is the language of the statute itself. *Santa Fe Indus., Inc. v. Green,* 430 U.S. 462, 472 (1977). Under the plain-meaning rule, if the language of the statute is clear there is no need to look outside the statute to ascertain its meaning. *Sullivan v. Stroop*, 496 U.S. 478, 482 (1990) ("If the statute is clear and unambiguous that is the end of the matter, for the court must give effect to the unambiguously expressed intent of Congress.") (internal quotation marks and citations omitted). Some aspects of section 103(c) are clear. The plain language of section 103(c) makes clear that an individual must be married to a Veteran in order to be considered the "spouse" of the Veteran. The use of the term "marriage" in section 103(c) precludes the recognition of other legal unions, such as domestic partnerships or civil unions, unless such relationships are considered marriages under state law. *See Henderson v. Shinseki*, No. 10-3934, 2012 WL 1948875 (Vet. App. May 31, 2012) (unpublished) (a domestic partnership that, according to state law, entitles the parties to the same rights and responsibilities as spouses, but is not considered a marriage under state law, is not a marriage for VA purposes).

3. In addition, the plain language of section 103(c) requires VA, in most cases, to look to state law to determine the validity of a marriage. *Burden v. Shinseki*, 727 F.3d 1161, 1168 (Fed. Cir. 2013). This is consistent with the fact that there is no Federal law defining "marriage" and matters related to marriage have long been considered to be the domain of the states. *Id.* "By history and tradition the definition and regulation of marriage . . . has been treated as being within the authority and realm of the separate States." *Windsor*, 133 S. Ct. at 2689-90; *Trammel v. United States*, 445 U.S. 40, 63

[2] A limited exception provided in 38 U.S.C. § 103(a) permits VA, for the purpose of gratuitous death benefits, to recognize certain marriages that are not valid under state law. Guidance regarding the potential application of section 103(a) to claims involving same-sex marriage is forthcoming.

Under Secretary for Health (10); Under Secretary for Benefits (20); Under Secretary for Memorial Affairs (40)

(1980) ("[T]he law of marriage and domestic relations are concerns traditionally reserved to the states.").

Choice of Law

4. Section 103(c) provides that the validity of a marriage is determined "according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued" (emphasis added). Congress's use of the disjunctive "or" signifies that meeting either of the two listed conditions will satisfy the statute's requirements. *See, e.g., Zorich v. Long Beach Fire Dept. and Ambulance Serv.*, Inc. 118 F.3d 682, 684 (9th Cir. 1997); *United States v. O'Driscoll*, 761 F.2d 589, 597 (10th Cir. 1985); *see also* 1A Norman J. Singer, *Sutherland Statutory Construction* § 21.14 (7th ed. 2009) ("The literal meaning of these terms ["and" and "or"] should be followed unless it renders the statute inoperable or the meaning becomes questionable."). Thus, if a marriage is valid in at least one place of residence identified in the statute, it will be valid for VA purposes, even if it was not recognized as valid under the laws of any other place in which the parties resided. This is consistent with the way that VA has historically interpreted this provision. *See, e.g.*, VAOPGC 13-61 (10-31-61) (noting that "[i]f either of the jurisdictions described in [section 103(c)] would recognize a divorce decree rendered under the circumstances of the sort involved in the particular instance, the subsequent marriage may be recognized as valid").

5. A review of legislative history shows that, beginning in 1882, Congress provided that marriages shall be proven valid for the purposes of pension benefits[3] according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided at the time when the right to pension accrued. Act of Aug. 7, 1882, ch. 438, 22 Stat. 345 (1882). Similar provisions were included in subsequent statutes and made applicable for purposes of other benefits. *See, e.g.*, Act of Oct. 6, 1917, ch. 105, § 22(5), 40 Stat. 398, 401 (1917); *see also World War Veterans' Act, 1924*, ch. 320, § 20, 43 Stat. 607, 613 (providing that the marriage of a claimant should be shown by such testimony as the Director of the Veterans' Bureau might prescribe by regulations); Veterans' Bureau Regulation No. 75, sec. 34 (Sept. 4, 1924) (prescribing standards similar to current section 103(c) to implement the World War Veterans' Act, 1924). In 1937, Congress expanded the statutory list of the laws under which a marriage could be proven valid to include the law of the place where the marriage was celebrated. Act of Aug. 16, 1937, ch. 659, § 4(c), 50 Stat. 660, 661 (1937). However, within a year this option was removed. Act of May 13, ch. 214, §§ 3,

[3] At that time, the term "pension" referred to payment for disability or death due to injury or disease incurred in the line of duty in service, similar to the benefits now known as disability compensation and dependency and indemnity compensation. *See* Act of March 3, 1873, ch. 234, §§ 1, 8, 17 Stat. 566, 569.

4, 52 Stat. 352, 353 (1938); *see also United States v. Snyder*, 177 F.2d 44, 47 (D.C. Cir. 1949) (finding VA's regulation omitting the "place-of-ceremony" criterion consistent with Congress's intention in removing that criterion from the statute). It is unclear from the legislative history why consideration of the law of the place of celebration was added or subsequently eliminated. However, in 1951, the Ninth Circuit Court of Appeals, in *Barrons v. United States*, opined that the short-lived provision was "manifestly unsatisfactory" because it "would recognize as valid a marriage celebrated elsewhere which conflicted with the explicit policy of the state of residence (and perhaps of all other states), and which therefore might not be recognized [in the state of residence] for any purpose." 191 F.2d 92, 95 (9th Cir. 1951). Since the two-pronged test based exclusively on places of residence was restored in 1938, the law has consistently required marriages to be proven valid for the purposes of Veterans' benefits according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided at the time when the right to benefits accrued. *See* Pub. L. No. 85-857, § 103(c), 72 Stat. 1105, 1110 (1958); 38 U.S.C. § 103(c). The legislative history gives no indication that Congress intended anything other than that the use of the disjunctive "or" in referring to the two statutory criteria for marriage validity would have its plain meaning of referencing alternative means of establishing validity. Further, the circumstances of the 1937 and 1938 amendments confirm that validity of a marriage in the place of celebration alone is insufficient to establish the validity of the marriage for purposes of section 103(c).

Defining the Time of the Marriage

6. Section 103(c) provides that a marriage may be proven valid according to the law of the place where the parties resided "at the time of the marriage." Congress's use of the phrase "the time" suggests a focus on a single identifiable point in time. We interpret this provision to mean at the inception of the marriage, and to refer to the law that was in effect at that time. Evaluating the marriage at the time it was entered into is consistent with the way that VA and courts have interpreted the phrase "at the time of the marriage" in the past. *See, e.g., Barrons,* 191 F.2d 92, 94 (describing at the time of the marriage to mean "[a]t the time of the ceremony"); 15 P.D. 308, 311 (12-15-1904) (holding that a marriage is valid for pension purposes if valid according to the law of the place where the parties resided at the time it was contracted)[4]. Accordingly, if the parties' marriage is valid under the law of the place where they resided at the inception of their marriage, it is valid for VA purposes.

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[4] "P.D." refers to decisions of the Department of the Interior on Pensions and Bounty Land. The Department of the Interior had jurisdiction over claims for service pensions prior to the creation of the United States Veterans' Bureau, the predecessor of the Veterans Administration and the Department of Veterans Affairs. These decisions do not bear precedential value, but are cited to show how section 103(c) has been interpreted over time.

Under Secretary for Health (10); Under Secretary for Benefits (20); Under Secretary for Memorial Affairs (40)

Defining When the Right to Benefits Accrued

7. Section 103(c) also provides that a marriage will be recognized as valid for VA purposes if it is valid under the law of the place where the parties resided "when the right to benefits accrued." The language of the current statute is silent as to when exactly the right to benefits "accrues." In the context of Veterans' benefits, there are several factors that may affect when a right to benefits "accrues." First, many benefits payable by reason of a marriage depend in part upon facts relating to the Veteran's disability status. *See, e.g.*, 38 U.S.C. § 1115 (authorizing additional compensation to a married Veteran having a service-connected disability rated not less than 30-percent disabling); § 1521(a) and (c) (authorizing benefits to a married Veteran who is permanently and totally disabled due to non-service-connected disability). Accordingly, changes in a veteran's disability status may affect when the right to benefits "accrues." Second, in many instances, the act of entering into a marriage may be the very step that gives rise to potential eligibility for certain benefits. For example, if a Veteran had a service-connected disability rated 30-percent disabling prior to marrying, the Veteran's marriage would give rise to potential eligibility for a dependent's allowance under 38 U.S.C. § 1115. Similarly, because the spouse of a Veteran is eligible for burial in a national cemetery, marriage would give rise to potential eligibility for that benefit. 38 U.S.C. § 2402(a)(5). Of course, treating the date of marriage as the "date entitlement arose" in such instances would have the effect of collapsing the two-pronged standard of section 103(c) into a single "date of marriage" standard in a substantial number of cases. Third, pursuant to 38 U.S.C. § 5101(a)(1), "a specific claim . . . must be filed in order for benefits to be paid or furnished to any individual." In view of this requirement, it is reasonable to conclude that, although a claimant's circumstances may give rise to potential eligibility for certain benefits, the right to such benefits cannot accrue until a specific claim has been filed. *See Jones v. West*, 136 F.3d 1296, 1299 (Fed. Cir. 1998) (describing section 5101 as a statute of "general applicability" that "mandates that a claim must be filed in order for any type of benefit to accrue or be paid"). That view finds some support in 38 U.S.C. § 5110(a), which provides that, with limited exceptions, a claimant is entitled to payment of VA compensation, pension, or dependency and indemnity compensation only for periods on and after the date of application, even if the claimant met the factual eligibility criteria at an earlier date.

8. In discussing statutes of limitations, the Supreme Court has explained that "[i]n common parlance a right accrues when it comes into existence." *United States v. Lindsay*, 346 U.S. 568, 569 (1954). The Supreme Court has further explained that "the 'standard rule' is that a claim accrues 'when the plaintiff has a complete and present cause of action.'" *Gabelli v. S.E.C.,* 133 S. Ct. 1216, 1220 (2013) (quoting *Wallace v. Kato,* 549 U.S. 384, 388 (2007)). But the Court has also considered whether, for purposes of a particular statute, the word "accrued" may have "taken on an established technical meaning which Congress must have had in mind," provided the legislative history shows "that such a meaning was suggested to Congress before the Act was

passed." *Lindsay*, 346 U.S. at 570. The Court has also emphasized that statutory terms must be understood in light of their context. *See United States v. Morton*, 467 U.S. 822, 828 (1984) ("We do not . . . construe statutory phrases in isolation; we read statutes as a whole."); *see also Mitchell v. Cohen*, 333 U.S. 411, 418 (1948) (defining the scope of the term "servicemen" as used in the Veterans' Preference Act of 1944, 58 Stat. 387, by "examination of the statutory scheme rather than by reliance on dictionary definitions").

9. In the context of determining the validity of a Veteran's marriage, legislative history suggests that "when the right to benefits accrued" is most logically construed to refer to the date when VA received the claim for the benefit rather than the date the factual predicate for the claim arose. Language similar to that of section 103(c) previously appeared in the context of Civil War pension statutes, which required that a marriage be proven valid "according to the law of the place where the parties resided at the time of the marriage or at the time when the right to pension accrued." Act of Aug. 7, 1882, ch. 438, 22 Stat. 345 (1882). At the time when that language was enacted, previously enacted statutes indicated that "when the right to pension accrued" referred to the time when pension became payable, *i.e.,* the effective date of the pension. *See* Act of March 3, 1873, ch. 234, § 16, 17 Stat. 566, 572 (stating that "the right of persons entitled to pensions shall be recognized as accruing at the date . . . stated for the commencement of such pension"). Initially, Congress in 1873 defined the time for commencement of pension as the date of the Veteran's death or discharge, provided a claim was filed within five years of that date, and provided that, "otherwise the pension shall commence from the date of filing the last evidence necessary to establish the same." *Id.* § 15. In 1879, however, Congress amended this provision to state that, for all pension claims filed after July 1, 1880, and relating to disability or death after March 4, 1861, "the pension shall commence from the date of filing the application." Act of Mar. 3, 1879, ch. 187, § 2, 20 Stat. 469, 470 (1879). Therefore, at the time Congress first prescribed the standard now in section 103(c) for determining the validity of a marriage, the reference to when the right to benefits accrued plainly referred to the time the application for benefits was filed.

10. This legislative history establishes a specific meaning for the phrase "when the right to pension accrued," sufficient to distinguish the use of the term "accrued" in this context from its use in statutes of limitation. Rather than referring to the time when the factual predicate for the claim arose, as in statutes of limitation, the 1882 precursor to section 103(c) used "when the right to pension accrued" to refer to when the benefit in question became payable. For claims received after July 1, 1880, this generally meant the date of filing the application. *See* Act of March 3, 1879, ch. 187, § 2, 20 Stat. at 470. The concept of the right to benefits "accruing" or "commencing" on the date when the claim is filed remains relevant to the current VA benefit scheme, as evidenced by current law requiring that a specific claim be filed for every Veterans' benefit and the general rule of assigning effective dates in connection with the date that the claim or application was filed. *See* 38 U.S.C. § 5101(a)(1) ("a specific claim . . . must be filed in

order for benefits to be paid or furnished to any individual"); 38 U.S.C. § 5110(a) ("Unless specifically provided otherwise . . . the effective date of an award . . . shall not be earlier than the date of receipt of application"). Consistent with how the phrase "when the right to pension accrued" was applied in 1882 and the general effective date rule under current law, we interpret the "when the right to benefits accrued" in current section 103(c) to refer to the time at which a meritorious claim is filed or when factual entitlement to the claimed benefit thereafter arises.

11. The phrase "when the right to benefits accrued" in the context of VA benefits serves a very different purpose from the general use of the term "accrue" in statutes of limitations. Statutes of limitations designate a specific point in time at which to commence the time period for the filing of a claim. Statutes of limitations "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Railroad Telegraphers v. Railway Express Agency, Inc.,* 321 U.S. 342, 348–349 (1944). The laws "inevitably reflect[] a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones." *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 463-64 (1975). The same concerns do not apply when determining whether a marriage is valid for the purpose of Veterans' benefits. As the Supreme Court has stated, "[t]here is no statute of limitations" on the filing of claims for VA disability benefits. *Walters v. National Assoc. of Radiation Survivors*, 473 U.S. 305, 311 (1985). Thus, pinpointing the date when a claimant for VA benefits could have first filed a claim would generally serve no practical purpose. Moreover, if VA were to interpret "when the right to benefits accrued" in the same way that accrual is generally defined in statutes of limitations, practical difficulties would arise. Interpreting the phrase to mean when the claimant first meets the factual criteria for entitlement to benefits would, in many instances, effectively collapse the two-pronged test of section 103(c) into a single "date of marriage" test, since the marriage itself is often the last eligibility requirement met, as described in paragraph 7, above. Further, to the extent such an interpretation may turn, in some cases, upon when a Veteran's disability first reached a certain level of severity – such as permanent and total disability – it could require significant evidentiary development and factual findings that may be burdensome and difficult to make with precision. Additionally, it is possible that a claim may be filed several years after both the date of the marriage and the date the claimant first met the factual criteria for eligibility for the benefit. In providing alternative dates for determining the validity of a marriage, it is more likely that Congress intended to permit consideration of the claimant's present circumstances at the time entitlement to benefits is being determined, rather than requiring VA to look solely to two different past periods, both of which may be remote in time.

12. Consistent with the above-referenced legislative history, certain other aspects of section 103(c) weigh in favor of interpreting "when the right to benefits accrued" to mean the date when VA received the claim or such later point in time when all requirements

for entitlement are met. First, in providing two distinct times at which the validity of the marriage may be established, section 103(c) appears to be designed to operate in a liberal manner, and our interpretation should preserve and further this liberal purpose to the extent feasible. Second, the statute contemplates that there generally will be a specific, identifiable point in time at which the right to benefits "accrues." With these principles in mind, we conclude that the phrase "when the right to benefits accrued" is most reasonably construed to refer to the point in time at which the claimant files a claim that is ultimately found to be meritorious in establishing entitlement to a benefit or increased benefit for which marriage is a prerequisite or, if entitlement cannot be established at the time such claim is filed, the date thereafter on which the claimant satisfies the eligibility criteria for the benefit. This interpretation generally would lead to a specific and readily identifiable point in time, which would be consistent for all types of claims and would give due consideration to the claimant's present circumstances.[5] Further, this interpretation construes "when the right to benefits accrued" to encompass both the factual criteria for benefit eligibility and the claim-filing requirement necessary to authorize benefits. Basing a determination on the time a *meritorious* claim was filed also furthers the statute's beneficial purpose by ensuring that an adverse determination concerning the validity of a Veteran's marriage does not bar a later finding that the marriage is valid, if circumstances change to permit VA to recognize the marriage with respect to a later claim.

13. Construing "when the right to benefits accrued" to refer to the date of application comports with the historical context in which that term was established and reflects the general effective date provision in 38 U.S.C. § 5110(a). Under current law, however, the date of application may differ from the effective date ultimately assigned to the award of benefits. *See* 38 U.S.C. § 5110 and VAOGCPREC 1-13. We recognize that, under current law, a myriad of exceptions to the general effective date rule may provide claimants earlier effective dates than the date of filing. These exceptions did not exist when Congress originally employed the phrase "when the right to pension accrued" for purposes of determining marriage validity. In 1882, the law of Civil War pensions provided a single type of benefit, and the date when the right to benefits accrued was tied to a point in time that was readily identifiable as part of the claim process. The broader range of effective dates available under current law gives rise to the question whether the phrase "when the right to benefits accrued" should be interpreted to refer to the date of application in all cases or to refer to the date that VA ultimately finds to be the effective date of the particular benefit claimed, which would often, but not always, be

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[5] For the purpose of section 103(c), in instances where a party to the marriage is deceased, VA considers the party's last place of residence while alive to be the place where that party resided at the time of claim. This furthers the two-pronged standard set out in the statute by ensuring that, even in claims for survivor, death, and burial benefits, consideration is given to both parties' most recent place of residence in addition to their place of residence at the time of marriage.

the date of application. We have found no legislative history subsequent to 1882 providing guidance on that question. However, viewing section 103(c) in relation to the overall statutory scheme, we believe that provision is most logically read to refer to the date of application in all cases. That interpretation would preserve the central feature of the original statutory language in referring to a uniform date that generally can be readily identified at the time a claim is made. In contrast, construing the operation of current section 103(c) to vary in accordance with the more complex effective-date rules now in effect would lead to potentially complex, burdensome, and ultimately unnecessary adjudicative proceedings. Claims for VA disability benefits generally consist of multiple elements that are adjudicated sequentially. *See, e.g., D'Amico v. West*, 209 F.3d 1322, 1326 (Fed. Cir. 2000) ("A claim for veteran's disability benefits has five elements: (1) veteran status; (2) existence of a disability; (3) service connection of the disability; (4) degree of disability; and (5) effective date of the disability."). An individual's status as a Veteran or a spouse with potential eligibility for benefits based on such status is a preliminary issue in that sequential analysis. In contrast, an effective-date determination is the last element that is addressed in a benefit claim, as it necessarily follows from factual determinations pertaining to the disability at issue. *See Young v. Shinseki*, 25 Vet. App. 201, 204 (2012) ("assignment of an effective date . . . is a 'downstream issue' that does not become relevant until VA grants the benefit sought"). Construing "when the right to benefits accrued" to refer to the effective date ultimately assigned for the benefit would, oddly, require VA to fully adjudicate all factual elements of the claim in order to make the threshold determination of whether an individual is a spouse or surviving spouse for purposes of the claimed benefit. Accordingly, we believe it is more consistent with the statutory scheme and with the legislative history of section 103(c) to construe "when the right to benefits accrued" to refer to the date of application.

14. If entitlement to the benefit in question cannot be established as of the time the claim was filed, we believe it is reasonable to interpret "when the right to benefits accrued" to be such later point in time when all requirements of entitlement are met. This interpretation gives effect to Congress's use of the disjunctive "or" in section 103(c) by continuing to provide an alternative to "the time of the marriage." For example, a Veteran may file a claim for a benefit but have it properly denied due to lack of evidence showing a necessary element of the claim. However, if the Veteran later submits new evidence that shows that his or her circumstances changed so that the criteria for entitlement are satisfied while the claim or an appeal is still pending, the date the right accrued will be after the claim was received. The same result would apply if VA receives evidence of such changed circumstances during the appeal period following the initial denial of a claim. *See* 38 C.F.R. § 3.156(b). Accordingly, we believe this interpretation best reconciles the language and purpose of section 103(c) with the practical considerations of the current Veterans' benefits scheme.

15. Section 103(c) is unclear as to whether it requires a separate determination of validity for each benefit or increased benefit for which a claimant applies. The statute's

use of the general term "benefits," rather than a narrower term such as "the benefit sought," is compatible with the view that a marriage found valid for purposes of one VA benefit may be considered valid for the purpose of other benefits, even if the right to the latter benefits may have accrued at a different time.[6] The legislative history shows no basis to infer that Congress intended disparate results concerning the same marriage based on when a particular Veterans' benefit is sought. As noted above, when Congress in 1882 first provided for determining the validity of marriage based on the law of the place the parties resided "when the right to pension accrued," that standard applied to a single benefit, then known as "pension." Congress clearly did not, at that time, contemplate the need to reconsider the validity of a marriage once it had been established, and none of the subsequent enactments incorporating the language of the 1882 statute suggest any such purpose. Finding a person to be a spouse or surviving spouse for purposes of one benefit but not another would be anomalous, would likely lead to confusion and administrative difficulties, and would likely be contrary to congressional intent. The statutory benefits scheme logically favors continuing to recognize a marriage once VA has found it valid to establish that a person is a spouse or surviving spouse. Thus, we believe that it is reasonable to interpret the term "benefits" to mean not only the benefits sought in the claim or application under consideration, but also any Veterans' benefit that has been previously granted or awarded based on the marriage at issue. This means that once VA has determined a marriage valid under section 103(c) for a VA-benefit purpose, such determination should control for purposes of subsequent VA-benefit decisions unless there is a factual change in marital status, such as through death or judicial action. This interpretation is consistent with the fact that eligibility for various spousal benefits, such as dependents' educational assistance and CHAMPVA[7] medical benefits, are often predicated on eligibility determinations made on other VA claims, such as compensation dependency claims and dependency and indemnity compensation (DIC) claims. *See* 38 U.S.C. §§ 1781(a); 3501(a)(1). In view of the clear and purposeful interdependency of these VA benefit determinations, it would be incongruous for VA to not recognize a marriage in determining the eligibility for the subsequent benefit. This interpretation is also consistent with title 38 statutes providing that, when VA recognizes a marriage as an

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[6] For example, if a Veteran and a same-sex spouse lived in a recognition state at the time of their application for a VA home loan guaranty, but then moved to a non-recognition state when the Veteran applied for additional disability compensation for his or her spouse, VA may rely on its previous determination that the marriage was valid for the purpose of the home loan guaranty benefit to show that the marriage is valid for the subsequently filed dependency benefit. This does not mean, however, that if VA previously recognized a Veteran's marriage in error, or based on incorrect or inaccurate information, VA would be obligated to continue to recognize the marriage in a subsequent VA benefit determination.

[7] The Civilian Health and Medical Program of the Department of Veterans Affairs.

impediment to benefits (*e.g.*, when the remarriage of a surviving spouse would preclude the surviving spouse from receiving certain Veterans' benefits), the impediment can be removed only if there is a change in the marital relationship through annulment, divorce, or death. *See* 38 U.S.C. § 103(d), 5110(k) and (l). Moreover, VA outreach provisions, 38 U.S.C. §§ 6301 and 6303, further suggest that a VA determination that a person is a spouse or a surviving spouse for purposes of one benefit would require VA to provide the individual with information on his or her potential eligibility for other benefits as a spouse or surviving spouse. These provisions suggest that Congress intended to provide a person eligible for one benefit as a spouse or surviving spouse with the full range of benefits provided based on marital status.

16. However, if a marriage has been determined invalid for the purposes of a particular Veterans' benefit, and the underlying factual conditions are not the same at the time of a subsequent benefit claim, then VA should determine the marriage's validity based on the circumstances as they exist at that time. As stated above, we construe the phrase "when the right to benefits accrued" in 38 U.S.C. § 103(c) to refer to the time when a meritorious application was filed, such that an adverse determination on a prior claim does not bar a later finding that the marriage is valid. This is also consistent with the principle that finality does not bar consideration of an issue previously decided where there exists a new factual basis. *See* 38 U.S.C. §§ 5108, 7104(b); 38 C.F.R. § 3.104(a). Moreover, a claimant who was previously denied benefits based on the invalidity of his or her marriage, but then is later determined to have a valid marriage with regard to any Veterans' benefit administered by VA, could reopen his or her claim for the former benefits based on new and material evidence. *See* 38 C.F.R. § 3.156(a). Again, we note that the date used to determine the validity of the marriage for VA purposes may differ from the effective date assigned to the award of benefits.

Determining Place of Residence

17. In addition to defining the points in time that are relevant to determining a marriage's validity, section 103(c) also requires determining which state's law should be considered. This determination requires interpreting the phrase "the place where the parties resided." In using the broad term "place", rather than a more specific term such as "state," the statute reflects a clear intent to encompass not only U.S. states and the District of Columbia, but foreign jurisdictions as well. *See* VAOPGC 8-86 (4-16-86) (noting that historically VA has relied on state and foreign law in claims involving the validity of marriage). We note further that "place" generally may be interpreted to refer, in appropriate circumstances, to other areas governed by a recognized system of laws pertaining to marriage. For example, if, in a particular area, marriage is governed not by national or state law, but by tribal law, VA may consider such law consistent with the plain language of section 103(c). *See Montana v. United States*, 450 U.S. 544, 564 (1981) (explaining that Indian tribes retain the inherent power to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members); *see also, e.g.*, 15 P.D. 283 (11-30-1904) (applying the tribal

Under Secretary for Health (10); Under Secretary for Benefits (20); Under Secretary for Memorial Affairs (40)

laws of the Choctaw Nation to determine if the claimant was the widow of the Veteran).

18. The term "resided" as used in 38 U.S.C. § 103(c) and the implementing regulation is not defined by statute or regulation. The term "reside" is a somewhat variable concept that the Merriam-Webster Dictionary defines to mean either "to dwell permanently or continuously" or "to occupy a place as one's legal domicile."[8] *Reside Definition*, merriam-webster.com, http://www.merriam-webster.com/dictionary/reside (last visited Sept. 17, 2013); *see also Nielson v. Shinseki*, 607 F.3d 802, 805-06 (Fed. Cir. 2010) (explaining that, in interpreting a statute, terms may be deemed to have their ordinary dictionary meaning). Similarly, BLACK'S LAW DICTIONARY defines the noun "resident" to mean "[a] person who lives in a particular place" or "[a] person who has a home in a particular place," but notes that that person "is not necessarily either a citizen or a domiciliary." *Resident Definition*, BLACK'S LAW DICTIONARY (9th ed. 2009). Consistent with these definitions, courts often have defined the term "reside" in relation to the legal term "domicile." It is generally accepted that "domicile" has a more restrictive meaning than "reside," and a residence may be of a more temporary character than a "domicile." *See, e.g., Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989) (explaining that "'[d]omicile' is not necessarily synonymous with 'residence,'" and that "one can reside in one place but be domiciled in another"); *Eastman v. Univ. of Michigan*, 30 F.3d 670, 673 (6th Cir. 1994) (explaining that "domicile is an individual's permanent place of abode where he need not be physically present, and residence is where the individual is physically present much of the time" and that "[a]n individual consequently may have several residences, but only one domicile"); *Transatlantica Italiana v. Elting*, 74 F.2d 732, 733 (2d Cir. 1935) (explaining that "residence demands less intimate local ties than domicile" and that "domicile allows longer absences"). We see no reason to go beyond the ordinary meaning of "reside," and we view the term to mean where one regularly lives or has his or her home, as distinguished from a place in which the person is present on a temporary basis. *See United States v. Namey*, 364 F.3d 843, 845 (6th Cir. 2004) ("An ordinary person would understand that a person resides where the person regularly lives or has a home as opposed to where the person might visit or vacation"); *see also, e.g.*, 38 C.F.R. § 36.4401 (defining "reside" for the purpose of specially adapted housing benefits to mean "[t]o occupy (including seasonal occupancy) as one's residence"); *but see, e.g.*, 38 C.F.R. § 3.42 (defining "Residing in the U.S." for the purpose of compensating certain Filipino Veterans residing in the United States at full dollar amount to mean "that an individual's principal, actual dwelling place is in the U.S."). This definition would apply to parties who lived in a location continuously for a reasonable period of time as well as to those who relocated to a place with the intent to live there either permanently

[8] The Merriam-Webster Dictionary defines "domicile" to mean "a dwelling place: place of residence" or "a person's fixed, permanent, and principle home for legal purposes." *Domicile Definition*, merriam-webster.com, http://www.merriam-webster.com/dictionary/domicile (last visited Sept. 17, 2013).

or for a reasonable period of time. However, "reside" ordinarily would not include a visit to or a temporary stay in a location, and parties' temporary absences from the places they ordinarily live would not defeat the finding that they reside in that place. We believe that this definition makes sense when addressing possible marriages of military personnel because they often move more frequently than other individuals and are often stationed away from their permanent homes or domiciles. Nothing in the statute or the ordinary meaning of "reside" suggests a specific time period or other specific facts that are minimally necessary to establish residence. Accordingly, whether the parties reside or resided in a particular state must be determined on the facts of each case, in view of the above principles and the principle of resolving reasonable doubt in favor of Veterans.

19. In instances when the parties resided in different jurisdictions at their time of marriage, VA may consider the marriage valid for VA purposes if it is valid under the law of either jurisdiction. Although section 103(c) uses the singular term in referring to the "place" the parties resided at the time of the marriage, it is well established that, unless the context indicates otherwise, "words importing the singular include and apply to several persons, parties, or things." 1 U.S.C. § 1; *see Barrons*, 191 F.2d at 95-96 (analyzing the law of the two states where the parties resided at time of marriage). Section 103(c) speaks in terms of a marriage being "proven as valid" and provides alternative bases for doing so, suggesting an intent by Congress favoring recognition of the validity of marriages. This is consistent with the manner in which VA has previously applied section 103(c) and its predecessors in non-precedential opinions. If the marriage is valid for VA purposes in at least one of the places in which a party resided at the time of marriage, it will be valid for VA purposes, even if it was not recognized as valid under the laws of another place where the other party resided. *See, e.g.*, VAOPGC 40-58 (12-16-58) (recognizing validity of marriage under the law of Japan, where the ceremony was performed and one party resided, without regard to the law of Hawaii, where the Veteran resided); *see also* 45 Op. Sol. 898, 904 (8-31-39)[9] (stating "the validity of this marriage may be decided under the laws of the State of residence of either party" and noting the common-law presumption of its validity).

20. Further, we note that VA has interpreted section 103(c) to require not that the marriage could have been performed under the laws of the place(s) in which the parties resided at the relevant time, but only that the marriage, being valid in the place in which it was celebrated, was recognized as valid in the place where the parties resided during the relevant period under the theories of comity or full faith and credit. *See Barrons*, 191 F.2d 92 (interpreting a VA regulation nearly identical to current 38 U.S.C. § 103(c) in determining whether a proxy marriage conducted in Nevada would be recognized as valid under the laws of the states where the spouses resided, Texas and California,

[9] "Op. Sol." refers to opinions of the Solicitor of the Veterans Administration.

which did not permit proxy marriage); *see also* VAOPGC 6-70 (12-8-70) (holding that "[o]rdinarily, as a matter of comity, [the states in question] will recognize a marriage in a foreign jurisdiction if it is valid under the law of that jurisdiction"). Historically, in the United States, "[m]arriages not polygamous or incestuous, or otherwise declared void by statute, will, if valid by the law of the state where entered into, be recognized as valid in every other jurisdiction." *Loughran v. Loughran*, 292 U.S. 216, 223 (1934); *see also Barrons*, 191 F.2d at 95 ("A marriage is generally recognized as valid in any state if it was valid in the state where it was celebrated, at least unless it collides with some strong public policy of the state of residence."). VA must determine whether the marriage is valid under the law of the state of residence. However, where the parties married in a state other than the state in which they resided, that determination would involve the question of whether the marriage was valid in the state in which it was celebrated and, if so, whether the state of residence would recognize the marriage. *See* 15 P.D. 308, 311 (12-15-1904) ("As a general rule, of course, when parties reside in one State and temporarily go into another State to be married, the courts of the place of residence will follow the lex loci contractus in determining the validity of the marriage."). We recognize that this principle does not always hold true with respect to states' recognition of same-sex marriages performed in other jurisdictions. *See, e.g., In re Marriage of J.B. & H.B.*, 326 S.W.3d 654, 669 (Tex. App. 2010) (noting that "Texas has repudiated the place-of-celebration rule with respect to same-sex unions on public-policy grounds"). However, to the extent the state in which a claimant resides recognizes as valid a same-sex marriage performed in another state, the marriage would be considered to be valid under the law of the claimant's residence.

Section 103(c) Applies to Veterans

21. Section 103(c) provides standards for "determining whether or not a person is or was *the spouse of a veteran*." (Emphasis added). The plain language of section 103(c) limits its application to determining the validity of a Veteran's marriage as opposed to determining the validity of the marriage of other individuals. We recognize that there are benefits that VA provides to other individuals, such as servicemembers, based on their spousal status. The benefits that VA provides to servicemembers appear to fall primarily into two categories. In some instances, the statutes governing a particular benefit include servicemembers in the definition of "veteran" for that benefit. *See, e.g.*, 38 U.S.C. § 1301 (including "a person who died in active military, naval or air service" in the definition of Veteran for the purpose of DIC); 38 U.S.C. § 2402(a)(1) (including "a person who died in the active military, naval, or air service" in the definition of a Veteran for the purpose of burial and memorialization benefits). In those instances, section 103(c) applies in determining the validity of the marriage. In other instances, however, VA provides benefits or services based on the marital status of an individual who is not considered a Veteran. *See, e.g.*, 38 U.S.C. § 3501(a)(1)(C) (including the spouse of certain members of the Armed Forces in its definition of an "eligible person" for certain educational benefits); 38 U.S.C. § 1965 (defining the term "widow" for purposes of certain insurance programs to mean "a person who is the lawful spouse of the insured

member at the time of his death" and defining "member" to include "a person on active duty, active duty for training, or inactive duty training" as well as other individuals that do not have Veteran status). Section 103(c), by its plain language, would not be applicable in determining whether a marriage to such an individual is a valid marriage. Moreover, we are unaware of any other statutory provision that would be controlling in these instances. Thus, it would be prudent for the VA programs that are affected by the marital status of individuals who are not Veterans to consider whether regulations should be issued to govern determinations of the validity of marriages of those individuals.

22. We further note that there are instances in which VA takes into account the marriage of a third party in providing benefits to a Veteran. For example, VA provides dependency benefits to a Veteran for a child; however if the child marries, such benefits are discontinued. *See* 38 U.S.C. §§ 101(4)(A) (defining a child as "a person who is unmarried") and 1115(1)(B),(C) and (F) (providing additional disability compensation where the Veteran has a child). Because section 103(c) expressly states that it applies in "determining whether or not a person is or was the spouse of a veteran," it would not apply in determining the validity of the Veteran's child's marriage. However, VA regulations pertaining to disability compensation, pension, and dependency and indemnity compensation provide more broadly that, "[*m*]*arriage* means a marriage valid under the law of the place where the parties resided at the time of marriage, or the law of the place where the parties resided when the right to benefits accrued." 38 C.F.R. § 3.1(j). As this regulation is not limited to marriages of Veterans, it would apply on its face in determining the validity of the marriage of a child for purposes of those benefits. *See* 38 C.F.R. § 3.57(a)(1) and (2) (referring to the child of a Veteran as an unmarried person). Because section 103(c) does not require VA to apply its standard to the marriage of a child, VA could revise its regulations to prescribe a different standard for determining the validity of a child's marriage.

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