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Social Security Delays Harming Many Same-Sex Married Couples

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We understood after Obergefell (the Supreme Court case that struck down the last vestiges of state law denying equal rights to all legally married persons) that marriage-related Social Security benefits would begin to flow. For some couples or survivors, that understanding has not yet become fact.

CNN Money recently reported on a disturbing case out of Arizona where Kathy Phelan has been unable to get the Social Security Administration to make a decision as to her right to survivor benefits following the death of her spouse, Kaye. The SSA initially denied Phelan's claim prior to Obergefell, basing its decision on the fact that same-sex marriage was not yet recognized in her home state. After Obergefell, the SSA's policy should have granted Phelan spousal benefits retroactive to the date on which she initially filed her claim; however, upon a subsequent appeal, she was told in December that it could take 12 to 18 months before she will get so much as a hearing. For many older widows or widowers of same-sex couples, an 18-month delay may determine one's capacity to afford necessities like assisted care.

Susan Sommer, Senior Counsel at Lambda Legal, says that Lambda is aware of at least a dozen cases from around the country in which Social Security has been very slow in granting claims. According to CNN Money, Sommer litigated two of these cases and, after months of litigation, succeeded in getting SSA to process the claims.

Governmental agencies certainly should be prudent, especially when reforms cause watershed changes to long-held policies such as spousal benefits. The SSA's failure to handle claims arising from Obergefell expeditiously, and to grant these men and women the benefits to which they are entitled, is indicative of the delayed trickle-down in policy implementation associated with many legal milestones. Only time will tell if the delays are temporary, or are symptomatic of a larger reluctance within government to comply with the new reality of marriage in the United States.

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