

A the ALERT

Social Security Benefits and “Grey” Divorce

Divorce is on the rise among seniors. Seniors in reasonably good health can envision many more active years, and they want those years to be happy ones; thus, an increasing number will get a divorce rather than remain in an unhappy marriage.

An important issue in the “grey divorce” is the economic security of both spouses after the divorce. While divorces almost always involve financial issues, such as division of marital assets, divorced seniors often struggle financially as they typically do not have as many years of working and saving left as younger divorcing couples.

For women, the financial impact of divorce can be especially devastating as they are half as likely as men to receive their own pension income. While a wife may be awarded a share of her husband’s pension benefits in a divorce, frequently there are no pension benefits or they are inadequate to provide financial security for both divorced spouses. More often than not, the only retirement benefit available to either spouse is Social Security.

As a part of Social Security’s “basic level of protection,” a woman may be eligible for Social Security benefits as a result of her husband’s earnings and payments into the

Social Security system. These “derivative benefits” are payable at wife’s retirement age (62 or older), *even if wife and husband are later divorced*. To be eligible for **former spouse** benefits, you must have been married to your former spouse at least 10 years “immediately before the date the divorce became final.” The magic number is 10 years – plus one day.

The **former spouse** rule benefits the woman who has never worked or worked sporadically during the marriage but is not eligible for Social Security benefits in her own right. Even if a woman is eligible for benefits based on her own work, many women may get a higher benefit based on their ex-husband’s work. The benefits payable are equal to one-half the amount the husband is eligible to collect, based on his earnings over his entire career. As women have typically earned less than men, the increase in benefit amount may be significant.

If you are contemplating divorce, you should be aware of the requirements to receive Social Security benefits based on a former spouse’s work. The rules apply to either former spouse. Thus, a divorced husband may receive benefits based on an ex-wife’s Social Security earnings record.

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Web site:
www.lasclev.org

SS Benefits and Divorce

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If your former spouse is living, you can receive benefits based on the former spouse's work if:

- Your marriage lasted 10 years or longer;
- You are currently unmarried;
- You are age 62 or older;
- The benefit you are entitled to receive based on your own work is less than the benefit you would receive on your spouse's work; and
- Your former spouse is entitled to receive Social Security retirement or disability benefits.

Even if your former spouse has not applied for benefits, you may still be able to receive benefits based on the former spouse's earnings record, so long as the former spouse: (1) can qualify for benefits; (2) is age 62 or older, and (3) you have been divorced for at least two years. Generally, if divorced spouses remarry, they are no longer eligible for benefits from the previous former spouse. If the remarriage terminates, the divorced spouse once again becomes eligible for benefits from the previous former spouse.

If your former spouse is deceased, you can receive benefits if:

- You are age 60 (or age 50 and disabled);
- You are unmarried (or were remarried after age 60);
- Your marriage lasted at least 10 years;

- You are not entitled to a higher benefit on your own record.

If you are divorced and have never asked Social Security about qualifying for "former spouse" benefits, you should do so. You can contact your local Social Security Administration office or visit the Social Security website at www.ssa.gov for further information. When applying for "former spouse" benefits, you will need: (1) proof of your age; (2) proof of marriage (usually the original marriage certificate or certified copy); (3) proof of the divorce (certified copy of the final decree); and (4) your former spouse's Social Security number or date and place of birth and parents' names.

If you are currently contemplating divorce, don't forget the 10-year rule. If you do not qualify for Social Security benefits or have earned less than your spouse, and are just short of that magic number, you may want to wait to file for divorce or delay finalizing the divorce until after the 10-year mark.



This article was written by Deborah Dallmann, Esq., a Legal Aid staff attorney in Legal Aid's Elyria office who handles family, benefits and education cases.

Domestic Violence and Divorce in Later Years

One out of four women will experience domestic violence in her lifetime. For many reasons, victims of domestic violence in the elder population may feel there are more barriers to leaving the abuser and living independently. This issue of The Alert provides information on some of the financial and health care resources people have while going through a "grey" divorce. It is important that victims of domestic violence know what resources are available to them. Here is a list of some of

the resources in the five counties the Legal Aid Society of Cleveland serves.

Domestic violence shelters provide different services, though they all will provide a safe place to stay in a supportive environment. Some shelters have support groups, counseling, referrals to community resources, clothing, and financial services. In order to learn what services the domestic violence shelter in your county

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Domestic Violence

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offers, you can reach them at the following numbers:

Ashtabula County- Homesafe- 1.800.952.2873;

Cuyahoga County- Domestic Violence Center- 216.391.4357;

Geauga County- WomanSafe- 1.888.285.5665;

Lake County - Forbes House – 440.357.1018;

Lorain County - Genesis House – 440.244.1853.

In any county, you can also contact the National Domestic Violence Hotline at 1.800.799.SAFE(7233) for assistance.

The Western Reserve Area Agency on Aging (WRAAA) serves the Cuyahoga, Geauga, Lake and Lorain areas. Their mission is to empower and support older adults to maintain wellness, independence and dignity. They offer many different programs, referrals and in-home help. Their services include, among others, transportation, meal delivery and help with household chores. WRAAA can be reached at 1-800-626-7277. The sister program of WRAAA in Ashtabula County is the **Area Agency on Aging**. You can reach them at 1.800.686.7367.

Additionally, each county has its own County Office on Aging which can provide socialization and support

services, help obtaining medications and transportation, along with numerous other services.

Ashtabula County- Council on Aging- 440.998.6750;

Cuyahoga County- Department of Senior and Adult Services- 216.420.6750;

Geauga County- Department on Aging- 440.279.2130;

Lake County- Council on Aging- 440.205.8111;

Lorain County- Office on Aging- 440.326.4800.

When in doubt about where to call, start with United Way's First Call for Help at 2-1-1. 2-1-1 is a toll free number and provides information and referrals to other social service agencies in the caller's county.

If you are a low-income senior and would like assistance in filing for a civil protection order or a divorce, you can contact The Legal Aid Society of Cleveland at 1.888.817.3777.



This article was written by Jennifer Becker, Esq., a staff attorney in Legal Aid's Eastern County offices who handles family and housing cases.

Health Insurance After Divorce – Options for Seniors

With the increasing cost of medical care in the United States, health insurance is a must for seniors. Unfortunately, divorce can cause major problems with health insurance benefits, especially for seniors with limited financial resources. It is not unusual for a spouse to have been a stay-at-home parent and have no health insurance benefits. A spouse's employer or former employer often provides health insurance. Upon divorce the insurance will no longer cover the former spouse.

In a divorce, a court may order a spouse to pay the health insurance premium for the dependent spouse, but this is

not always financially feasible or ordered if the marriage has not been a long one. Aside from the dependent spouse purchasing his or her own individual health insurance policy, the options are limited. COBRA continuation coverage, Medicare and Medicaid may provide some help for seniors after a divorce.

COBRA

Federal law known as COBRA permits a dependent spouse to continue his or her health coverage if current coverage is terminated due to a "qualifying event,"

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including divorce or legal separation from the covered employee/spouse. A dependent spouse can elect COBRA continuation coverage for 36 months from the date the divorce or legal separation is final.

While COBRA does not define the term “legal separation,” in Ohio a legal separation does not occur until the separation is actually finalized by the court and the parties receive a “decree of legal separation.” Parties considering a legal separation in the hopes of retaining health insurance coverage should also read the insurance policy language very carefully. Some insurance companies now include language which causes coverage to end upon legal separation. Simply living apart, waiting for the divorce to be final, or entering into an informal separation agreement does not make the separation a “legal separation” recognized by the state. Insurance coverage should continue throughout this period, which is why many seniors considering divorce may elect to stay married.

Whether triggered by divorce or legal separation, continuation of coverage under COBRA is expensive. A monthly premium must be paid by the dependent spouse. The premium is equal to 100% of the premium paid by the former spouse’s employer, plus an administrative fee. Average COBRA premiums exceed \$400 a month for individuals, making the COBRA continuation coverage in some instances too expensive. Additionally, since COBRA coverage ends after 36 months, a divorced spouse will eventually have to purchase their own insurance or rely on Medicare or Medicaid benefits if eligible.

Medicare

For seniors divorcing near or after age 65, Medicare may be the only affordable health care coverage available. Medicare is a federal program that pays for certain health care expenses for people aged 65 or older. People who are disabled or have permanent kidney failure can get Medicare at any age. Individuals must pay deductibles and co-payments, but much of their medical costs are covered. Medicare is an important source of post-retirement health care for many. Medicare has four parts:

- Hospital insurance (Part A) helps pay for inpatient

hospital care and certain follow-up services.

- Medical insurance (Part B) helps pay for doctors’ services, outpatient hospital care and other medical services.
- Medicare Advantage plans (Part C) are available in many areas. People with Medicare Parts A and B can choose to receive all of their health care services through a provider organization under Part C.
- Prescription drug coverage (Part D) helps pay for medications doctors prescribe for medical treatment.

Most individuals do not pay a monthly premium for Part A coverage because they (or their spouse) paid Medicare taxes for at least 10 years. This is called “premium-free Part A.” People who are not eligible for premium-free Part A may be able to buy Part A for a monthly premium if they have received Social Security disability benefits for 24 months. A former spouse who has not worked and is not eligible for Medicare in her or his own right may qualify for Medicare (and Social Security retirement benefits) if the parties were married for at least 10 years. (See Alert article on page one.)

Unlike Part A, everyone must pay a premium for Part B Medicare. For those new to the Medicare program in 2011, the Part B premium monthly cost is \$115.40. In Ohio, you may be able to get some help with the payment of Medicare premiums if you qualify for one of the four “Medicare Savings Programs.” To qualify a single individual cannot have assets over \$6,680 and income more than \$928 or \$1109 monthly depending on the program.

Medicare Part C or a Medicare Advantage Plan is like an HMO or PPO. They are offered by private companies approved by Medicare and the plan will provide all of your Part A and B coverage, plus offer extra coverage such as vision, hearing, and dental. Usually you will pay one monthly premium for the services included.

Prescription drug coverage, Part D, is available to anyone who has Medicare Part A or Part B. Joining a Medicare prescription drug plan is voluntary and you pay an additional monthly premium for the coverage. The cost of Part D coverage varies greatly.

Medicaid

Medicaid is a joint federal and state program which provides health coverage to low-income people, including children up to age 19, pregnant women, people with disabilities and the elderly (age 65 and over). Medicaid is a means-tested program, based on limited income and financial resources. In Ohio, an individual over 65 or an individual at any age with a disability may qualify for Medicaid if their income is less than \$589 a month and have assets less than \$1,500. Countable assets include checking and savings accounts, IRAs, stocks, and basically all money and property or any item that can be valued and turned into cash. Some property is exempt, such as the home in which an individual lives, household and personal belongings, and an automobile.

A Medicaid spend-down program is also available for those who meet all Medicaid eligibility guidelines except their income is too high. Individuals may use monthly paid or incurred medical expenses to qualify for Medicaid coverage for the remainder of the month. The program is similar to paying a monthly deductible or out-of-pocket expenses.

Unlike Medicare, an individual need not pay a monthly premium for Medicaid coverage. The Medicaid program provides coverage for services including hospital stays, physician services, dental services, and nursing home stays. Prescription drug coverage is also provided under Medicaid.

Staying Together for Insurance?

Divorce is difficult at any age. For seniors struggling financially and facing health issues, loss of insurance coverage is devastating. Before deciding to divorce, you may want to review potential coverage under COBRA, Medicare and Medicaid. If you are currently covered under your spouse's health insurance, contact the plan administrator regarding the cost of continuing coverage under COBRA. For more information regarding Medicaid, contact your county Job and Family Services. 1-800-MEDICARE provides answers to Medicare coverage questions.



This article was written by Deborah Dallmann, Esq., a staff attorney in Legal Aid's Elyria office who handles family, benefits and education cases.

Get Free Help with Pension Problems and Questions

Adequate pensions are important for older persons to maintain financial security and independence. The U. S. Administration on Aging funds six regional Pension Counseling Projects which help workers, retirees and their families with pension problems. Elder Law of Michigan and Pro Seniors operate the Mid-American Pension Rights Project (the Project) for residents of Michigan, Ohio, Indiana, Kentucky, Pennsylvania and Tennessee. Since 2001, the Ohio office has helped people obtain more than \$20 million in pension and other retirement benefits. Any Ohio resident can contact the Project for assistance at no charge.

The Project handles pension benefits issues such as

eligibility and vesting, military pensions, union pensions, 401(k) plans, survivor, divorce and common-law marriage pension benefits. The Project answers pension questions and handles cases at the administrative level. If necessary, the Project will help find a pension attorney to bring a case to court.

Lost pensions are a common problem. Individuals who worked for a company prior to a merger or before it went out of business often have no idea how to apply for pension benefits because the company has moved, changed names or closed down. The Project maintains

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Free Help for Pension Problems

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a database of pension plan administrators and plans and also has contacts and expertise to help former employees find their lost pensions.

Surviving and divorced spouses may not know what pension benefits they are entitled to or how to get them. In one case, a widow was told by her deceased husband's employer that she would get nothing from her late husband's pension. She contacted the Project and learned that she was in fact entitled to survivor's benefits. The Project requested the benefits from the company on her behalf and she recovered what she was entitled to.

Anyone with questions about a pension or other retirement benefit can call the Project at 1.800.488.6070 or visit the Project's web site at http://www.proseniors.org/oh_pension.html or http://www.elderlawofmi.org/pension_rights_project.



This article was written by Gail W. Webb, Esq., the Managing Attorney for the Mid-American Pension Rights Project, and adapted for The Alert by Jennifer Becker, Esq., a staff attorney with The Legal Aid Society of Cleveland.

New Protection for Federal Benefits

Effective May 1, 2011, there is more protection for retirees, veterans and disabled persons who use bank accounts for their federal benefits such as Social Security, SSI, VA and other federal benefits.

Even though federal and state law protects these benefits from seizure by private creditors, all too often creditors obtain court orders that allow banks to freeze bank accounts containing protected funds. A beneficiary may be unable to get urgently needed funds for weeks or months. Often, the paper work and procedures needed to end an illegal freeze prove too daunting for a recipient, so that the bank turns over supposedly "untouchable"

funds to the creditor.

The Treasury Department's new rule requires all banks to determine whether an account contains protected funds. **If an account contains protected funds, the bank is required to protect two months of benefit payments from attachment.** Protection of more than two months of benefit payments still requires additional court filings by the beneficiary.



This information was adapted from a press release issued by the National Consumer Law Center, www.nclc.org.

Local Farms Help Seniors

The Ohio Senior Farmers' Market Nutrition Program (SFMNP) began in June 2011 and will be available through the Western Reserve Area Agency on Aging (WRAAA) in Cuyahoga, Geauga, Lake, Lorain and Medina Counties through October 31, 2011.

Each eligible participant will receive one set of coupons worth \$50.00 to redeem for fresh produce and fruit grown locally by WRAAA-approved farmers.

Eligible participants must be at least 60 years of age at

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the time of application and meet the required annual household income level. Applications are available at WRAAA-authorized senior centers. For contact information on participating senior centers call 216.621.0303.

The **City Fresh Program** is also authorized to accept SFMNP coupons. You may visit the City Fresh website at www.cityfresh.org for more information about how this program works.

In Memoriam: Betty Klaric

Betty Klaric passed away on February 24, 2011 at age 79. For over 10 years, Betty edited this newsletter. *The Alert* was done professionally because that was Betty's profession. If you have received any benefit from *The Alert* or the many brochures and pamphlets Legal Aid publishes, it was due to the talent and writing skills of Betty Klaric. She was the cornerstone of Legal Aid's community education program.

In her career at the *Cleveland Press*, Betty rose from "copy boy" in 1955 to award-winning journalist when the Press closed in 1982. Betty was one of the most highly honored newspaperwomen in Cleveland and one of the first full-time environmental writers on a

major daily newspaper. Betty won more than 40 local, state and national awards, including a Presidential Citation, the Ohio Governor's award and the national Edward J. Meeman Conservation Award. She also won three "Best of Industry" awards from the Press Club, and she was the first woman president of the Cleveland Newspaper Guild. In 1999, Betty was inducted into the Journalism Hall of Fame. She went on to be a trial attorney at the U.S. Department of Labor.

Betty Klaric will be missed. She was a valued member of The Legal Aid Society and the Greater Cleveland community.

FREE LEGAL ADVICE

2011 Brief Advice and Referral Clinics • Civil Matters Only (*Not Criminal*)

First-come, first-served. Bring important papers with you! Questions? Call 216-687-1900 or visit www.lasclev.org for updated clinic listing. Clinics are from 9:45 a.m. to 12:00 p.m. unless otherwise indicated.

WEDNESDAY, JUNE 29

4:00 p.m. – 6:00 p.m.

Maple Heights Senior Center
15901 Libby Road
Maple Heights, Ohio 44137

SATURDAY, JULY 9

Langston Hughes Center,
Senior Outreach Services (SOS)
2390 East 79th Street
Cleveland, Ohio 44104

SATURDAY, JULY 23

Thea Bowman Center
11901 Oakfield Avenue
Cleveland, Ohio 44105

SATURDAY, AUGUST 6

West Side Catholic Center
3135 Lorain Avenue
Cleveland, Ohio 44113

SATURDAY, AUGUST 13

St. Martin de Porres Family Center
123rd Street
Cleveland, Ohio 44108

SATURDAY, SEPTEMBER 17

Spanish American Committee
4407 Lorain Avenue
Cleveland, Ohio 44113

*Attorneys available for brief advice and referral only. Clinic attorneys do NOT represent you.
If you need legal representation you may be referred to The Legal Aid Society of Cleveland or another service provider.



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RETURN SERVICE REQUESTED

The Legal Aid Society of Cleveland offers free legal services to low-income seniors.

For help from Legal Aid,
call 216.687.1900 or
888.817.3777.



If you qualify for our services and we have the resources to assist you, we will either give you advice or educational information to help you with the next steps in the legal process, refer you to a volunteer attorney, or represent you in your legal matter.

You may need to meet with an attorney. If you are unable to come to a Legal Aid office, an attorney can arrange to meet you at a senior citizen center or some other office near your home.

Visit Legal Aid's new web site at www.lasclev.org.



This pamphlet is meant to give you general information and not to give you specific legal advice. This information cannot take the place of advice from a lawyer. Each case is different and needs individual legal advice. You should contact a lawyer if you need representation or if you have questions.

If you have a communications limitation, contact us through the Ohio Relay Service. Interpretation services are available so that anyone can communicate with us in his or her dominant and/or preferable language.

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