

§ 130.11

and HIV, the lawful spouse with HIV or the former lawful spouse with HIV.

§ 130.11 Who is eligible for payment under the Act—survivors of persons with HIV.

(a) Survivors of persons with HIV, as described in § 130.10, are eligible for payment under the Act if:

(1) The person with HIV dies before filing a petition under the Act. In this case, an eligible survivor may file a petition as a survivor of the person with HIV, as set forth in § 130.22; or

(2) The person with HIV has filed a petition under the Act, but dies before payment is made. In this case, an eligible survivor must file an amendment to the petition in order to retain the assigned order number and to receive payment under the Act, as set forth in § 130.23.

(b) Payments to survivors shall be made in the following order:

(1) If the person with HIV is survived by a spouse who is living at the time of payment, the payment shall be made to the surviving spouse (*hereinafter* referred to as “the surviving spouse”).

(2) If the person with HIV is not survived by a living spouse, the payment shall be made in equal shares to all children of the individual who are living at the time of payment (*hereinafter* referred to as “the surviving child/children”).

(3) If the person with HIV is not survived by a spouse or children who are living at the time of payment, the payment shall be made in equal shares to the parents of the individual who are living at the time of payment (*hereinafter* referred to as “the surviving parent(s)”).

(c) If the person with HIV is not survived at the time payment is to be made by any of the survivors listed in paragraph (b) of this section, no payments will be made for the person with HIV and the payment will revert back to the Fund.

(d) For purposes of this section, the following definitions apply:

(1) The term *spouse* means a person who was lawfully married to the person with HIV according to the laws of the place where the person resided at the time of death.

42 CFR Ch. I (10–1–00 Edition)

(2) The term *child* includes a recognized natural child, a stepchild who lived with the person with HIV in a regular parent-child relationship, and an adopted child.

(3) The term *parent* includes fathers and mothers through adoption.

Subpart C—Documentation Required for Complete Petitions

§ 130.20 Form of medical documentation.

In all instances in which medical documentation is referred to, medical documentation may be submitted in the following forms:

(a) Copies of relevant portions of medical records, records maintained by a physician, nurse, or other licensed health care provider, test results, prescription information, or other documentation deemed credible by the Secretary; or

(b) An affidavit, signed under penalty of perjury, by a physician or nurse practitioner, verifying that the medical criteria necessary for a petitioner to be eligible for payment under the Act are satisfied. Such an affidavit must include the physician or nurse practitioner’s State and license number. A sample affidavit is set forth at Appendix B to this part.

§ 130.21 What documentation is required for petitions filed by living persons with HIV?

The following rules apply to all petitions filed by persons with HIV:

(a) All petitions filed under the Act must include written medical documentation showing the following:

(1) That the individual described in § 130.10(a) has (or had) a blood-clotting disorder, such as hemophilia;

(2) That the individual with a blood-clotting disorder and HIV was treated with antihemophilic factor at any time between July 1, 1982, to December 31, 1987; and

(3) That the individual with a blood-clotting disorder and HIV has (or had) an HIV infection under any of the criteria set out in the definition of HIV infection at § 130.2(i).

(b) *The individual.* Petitions filed by the individual with a blood-clotting disorder and HIV need only include the

documentation described in paragraph (a) of this section.

(c) *The lawful spouse.* Petitions filed by the lawful spouse with HIV must include the following written documentation:

(1) The documentation described in paragraph (a) of this section;

(2) Medical documentation showing that the lawful spouse with HIV has an HIV infection; and

(3) A marriage certificate or other proof of a lawful marriage, which shows that the lawful spouse with HIV and the individual with a blood-clotting disorder and HIV are married.

(d) *The former lawful spouse.* Petitions filed by the former lawful spouse with HIV must include the following written documentation:

(1) The documentation described in paragraph (a) of this section;

(2) Medical documentation showing that the former lawful spouse with HIV has an HIV infection;

(3) A marriage certificate or other proof of a lawful marriage, which shows that the former lawful spouse with HIV and the individual with a blood-clotting disorder and HIV were married at any time after the date of the individual's treatment with antihemophilic factor (this date of treatment must have been between July 1, 1982, to December 31, 1987);

(4) A divorce certificate or other proof of termination of the marriage between the former lawful spouse with HIV and the individual with a blood-clotting disorder and HIV; and

(5) Medical documentation which shows with reasonable certainty that the former lawful spouse with HIV contracted HIV from the person with a blood-clotting disorder and HIV.

(e) *The child.* Petitions filed by the child with HIV must include the following written documentation:

(1) The documentation described in paragraph (a) of this section;

(2) Medical documentation showing that the child with HIV has an HIV infection;

(3) A birth certificate or other proof, which shows that the child with HIV is the child of:

(i) The individual with a blood-clotting disorder and HIV;

(ii) The lawful spouse with HIV; or

(iii) The former lawful spouse with HIV;

(4) A marriage certificate or other proof of a lawful marriage, which shows that the lawful spouse with HIV or the former lawful spouse with HIV and the individual with a blood-clotting disorder and HIV are/were married, *except* where the individual with a blood-clotting disorder and HIV is the mother of the child with HIV;

(5) Medical documentation showing that the child with HIV acquired an HIV infection through perinatal transmission from a parent who is:

(i) The individual with a blood-clotting disorder and HIV;

(ii) The lawful spouse with HIV; or

(iii) The former lawful spouse with HIV; and

(6) Where the child with HIV acquired an HIV infection through perinatal transmission from the former lawful spouse with HIV, medical documentation which shows with reasonable certainty that the former lawful spouse with HIV contracted HIV from the person with the blood-clotting disorder and HIV.

§ 130.22 What documentation is required for petitions filed by survivors of persons with HIV, which are filed in cases where the person with HIV dies before filing a petition?

(a) In those cases in which the person with HIV, as described in § 130.10, dies before filing a petition under the Act, a survivor of that person, as described in § 130.11, may file a petition.

(b) Petitions filed by survivors must include two types of information:

(1) Documentation regarding the person with HIV; and

(2) Documentation regarding the eligibility of the survivor to receive payments as a survivor of the person with HIV.

(c) Petitions filed by survivors must include the following information regarding the person with HIV:

(1) *The individual.* Petitions filed by a survivor of the individual with a blood-clotting disorder and HIV must include the documentation described in § 130.21(b).

(2) *The lawful spouse.* Petitions filed by a survivor of the lawful spouse with