Revision statement: This version of EM-20019 SEN REV 2 replaces the September 10, 2020 version of EM-20019 SEN REV 2.

Below is a summary of updates:

- Revised Section C to incorporate minor editorial changes,
- Removed the reference to priority claims when processing DDS, DPB, DPU and EST requests for in-person CE’s,
- Revised Section D.1, Failure to Attend a CE, to require DDS to make an additional contact attempt if the last attempt is more than 14 calendar days from the date of EM publication, which is consistent with our guidance in Section D.2, Failure to Cooperate with Requests for Evidence or Action and Whereabouts Unknown.
- Added language to Section D.2 to clarify that if the DDS still needs the evidence or action, the DDS should make an additional attempt to contact the claimant.

A. Purpose

This emergency message (EM) provides DDSs and Federal disability adjudicating components with disability case processing guidance for resuming additional workloads, including processing most adverse determinations and instructions for workloads that remain suspended. These temporary instructions apply to all DDSs and Federal disability case processing sites (Disability Processing Branches, Disability Processing Units, etc.) processing claims, including those working multiple shifts, reduced hours, and at alternate duty stations.

B. Background
Effective March 17, 2020, we deferred certain workloads and temporarily suspended certain adverse actions that would result in a reduction, suspension, or termination of Social Security or Supplemental Security Income benefits. Below, we provide guidance for resuming additional workloads and clarify which DDS actions remain suspended.

C. Instructions for Processing Certain Workloads

1. Resume all CDR and PH claims

   Disability examiners must have current evidence for a CDR medical determination. The nature of each impairment determines how current the medical evidence must be. Disability examiners must resolve this issue on a case-by-case basis, see DI 28030.020E.7.

2. Resume certain disability hearing (DH) claims
   a. DH claims:
      · In-person hearings continue to be suspended.
      · Telephone hearings should be conducted when the beneficiary agrees using the guidance in the attached hearing desk guide, and DI 33015.015 and DI 33025.085:

         COVID-19 Disaster Procedures for LA Changes.docx

         IMPORTANT: COVID-19 concerns are a good reason for missing, cancelling, postponing, or rescheduling a hearing.

3. Assistance Requests
   Requestors must:
      · Verify the appropriate case flag is attached to the claim and still applicable before sending the AR to the DDS.

   DDS must:
      · Process medical evidence of record (MER) requests.
      · Process requests for in-person CEs received from other DDSs, DPBs, DPUs, and ESTs.
· Process requests for in-person CEs received from Hearing Offices and Office of Hearing Operations that meet critical claims criteria as defined by the HALLEX I-2-1-40.Critical Cases:
  o Terminal Illness (TERI)
  o Veteran 100 Percent Permanent and Total (VPAT)
  o Military Casualty/Wounded Warrior (MC/WW) Case
  o Compassionate Allowances (CAL)
  o Dire Need Case (DRND) and
  o Potentially Violent (Critical Case).

· Process psychiatric and psychological video CE requests (that do not require additional testing) for cases in which the claimant’s voluntary consent to participate in the video CE is documented, using the process outlined in EM 20015 SEN REV.

**NOTE:** If a DDS suspends in-person CE scheduling due to COVID-19, or is unable to process the request due to unavailability of the requested CE provider, the DDS must notify the requesting office (e.g. Office of Hearings Operations) that the request cannot be fulfilled and close the AR.

3. Expedited Reinstatement (EXR) claims

   DDS should prioritize processing EXR claims.
   · SSA is invoking authority under disaster procedures to provide relief to claimants when an EXR cannot be processed timely due to the COVID-19 pandemic.

   · These payments will be made until a decision is effectuated or the claimant requests the benefits stop. However, SSA cannot extend Medicare benefits beyond the 6-month provisional benefit period, which will adversely affect beneficiaries who rely on continuous Medicare coverage.

D. Resumption of Insufficient Evidence (IE) Determinations

1. Failure to Attend a CE
DDS may resume processing insufficient evidence determinations based on failure to attend a CE for reasons other than COVID-19 concerns (e.g. exposure during an in-person examination).

If the DDS still needs the consultative examination(s) to make a determination (DI 22510.005) and the last claimant contact attempt is more than 14 calendar days from the date of this revised EM, adjudicators should follow the steps outlined below before closing the claim (DI 22510.016, DI 22510.019, DI 23007.005, DI 23007.010).

a. DDS must make an additional attempt to notify, as applicable, the claimant, applicant, appointed representative, or third party by telephone or by letter that we still need a consultative examination (as indicated in DI 23007.005 with an additional contact with the third party if the claimant has not been cooperative in the past and requires special handling),

b. Follow special handling procedures (DI 23007.005B) for claimants who meet the criteria defined in DI 23007.001A.

c. Adjudicators should follow the business process in EM 20015 SEN REV and EM 20023 SEN, Section E, to ensure the claimant, applicant, or beneficiary understands his or her CE options.

d. Provide a due process statement that if the claimant does not attend the consultative examination and does not provide a good reason, we will make a determination based on the evidence in file, which may result in a finding that the claimant is not disabled (DI 22510.016)

e. Allow the claimant 10 days to respond, and

f. Follow the steps in DI 23007.000 before making a determination based on the evidence in file.

NOTE: COVID 19 concerns remain a good reason for missing, cancelling, postponing, and rescheduling examinations (DI 22510.016C, DI 23007.001B).

2. Failure to Cooperate With Requests for Evidence or Action and Whereabouts Unknown

DDS may resume processing insufficient evidence determinations based on failure to cooperate with requests for evidence or action and whereabouts unknown (DI 23005.001).
If the DDS still needs the evidence or action to make a determination (DI 24501.016B) and the DDS’ last contact attempt is more than 14 calendar days from the date of this revised EM, adjudicators should follow the steps outlined below before closing the claim (DI 22505.014, DI 23007.005, DI 23007.010).

a. DDS must make an additional attempt to notify, as applicable, the claimant, applicant, appointed representative, or third party by telephone or by letter that we still need the evidence or action (as indicated in DI 23007.005 with an additional contact with the third party if the claimant has not been cooperative in the past and requires special handling),

b. Follow special handling procedures (DI 23007.005B) for claimants who meet the criteria defined in DI 23007.001A.

c. Provide a due process statement that if the claimant does not comply with our request for evidence or action, we will make a determination based on the evidence in file, which may result in a finding that the claimant is not disabled (DI 22505.014)

d. Allow the claimant 10 days to respond, and

e. Follow the steps in DI 23007.000 before making a determination based on the evidence in file.

NOTE: COVID-19 concerns remain a good reason for failure to cooperate with requests for evidence or action. For example, if a claimant contacts the DDS and indicates he or she needs assistance completing forms, and does not believe he or she can safely receive assistance due to COVID 19 concerns:

· Offer to collect the information by telephone, or if the claimant objects to completing the forms by telephone,

· Hold case processing until the claimant receives assistance completing the forms, or the agency resumes normal case processing.

3. Reopening Required for Erroneous Insufficient Evidence Determinations Made Between March 17, 2020, and the Effective Date of this Emergency Message (EM)

On March 17, 2020, the agency suspended all insufficient evidence determinations resulting from the claimant’s or beneficiary’s failure to attend a consultative examination, failure to cooperate with requests for evidence or action, and whereabouts unknown.
DDS must reactivate (see DI 81010.117) any determination made based on these suspended policies between March 17, 2020, and the effective date of this EM, and resume case processing, following the guidance in sections D.1. and D.2.

Once DDS takes the appropriate actions described in D.1. and D.2., adjudicators must follow reopening policy in DI 27505.000, reopen the determination based on error on the face of the evidence (DI 27505.010C), and issue a revised determination.

E. Processing Claims with COVID-19 Allegations

If a claimant alleges disability due to COVID-19 follow existing disability policy and procedures.

There are no special handling procedures for claims with COVID-19 allegations unless the claimant meets an existing priority (see Section C.1 above). If the claimant meets an existing priority category, add the appropriate case identifier/flag and proceed with priority handling. For a complete list of priority categories with special handling procedures, see DI 23020.001.

All cases must meet our rules including the duration requirement (DI 25505.025 and DI 25505.030). Determine on a case-by-case basis whether COVID-19 infection meets the duration requirements. Individuals may also experience damage to organ systems secondary to COVID-19 infection that could potentially result in an impairment that would meet our duration requirement. The DDS must develop evidence of any damage to organ systems that results from a COVID-19 infection based on our existing rules and the relevant body systems in the listings of impairments. Fully develop the claim and make a determination based on the facts of each case.

F. Office of Quality Review (OQR) Returns

OQR is aware the DDSs will not process any returns when:

- The return requires DDS to order a CE, and
  - the DDS has not resumed scheduling in-person CEs, or
  - o is unable to schedule the CE due to COVID-19 restrictions, or
  - o the DDS is experiencing CE provider shortages.

DDoS should accept these returns and hold them in a queue for tracking purposes until the required actions are complete.
OQR will ensure all Disability Quality Branches (DQB) are aware of these potential reasons for delayed returns from the DDS.

G. Fraud Development

Offices may continue supporting the Office of Inspector General (OIG) and Cooperative Disability Investigative (CDI) units in their fraud investigative cases.

H. Appointed Representatives

DDS should continue to follow existing procedures to forward notices of appointments and other related documents to SSA for processing. Do not conduct business with or disclose claimant information to a representative until SSA receives, accepts, and processes the notice of representative appointment, or valid consent to disclose the claimant’s information.

NOTE: During the COVID-19 emergency period, we established a temporary process for electronic signatures on certain appointment documents. This process permits SSA FO and PC staff to accept a claimant’s electronic signature on the notice of appointment (e.g., Form SSA-1696 or other written notice) and the fee agreement, if the staff can obtain the individual’s verbal confirmation of the electronic signature, including his or her intent to sign the notice of appointment. FO and PC guidance in EM-20022 REV Temporary Instructions for the documentation of the Appointment of a Representative during the Coronavirus Disease 2019 (COVID-19) Pandemic supersedes FO and PC POMS other existing instructions for reviewing signatures on representative appointment documents while the emergency message is in effect.

Resources

Direct all program-related and technical questions to your regional office support staff.

The COVID-19 Help Desk is available for DDS policy questions. DDS managers should submit requests for policy response to their Regional Centers for Disability managers. Regional managers may submit DDS questions to the Help Desk via the following link:

The Office of Disability Determinations COVID-19 website includes additional DDS resources. Users can access the website using the following link to the ODD COVID-19 site:

References

DI 22505.014 Requesting Evidence or Action from the Claimant or Third Party
DI 22505.030 Obtaining Medical Evidence by Telephone
DI 22510.016 Claimant Consultative Examination (CE) Notice and Confirmation Procedures
DI 23005.001 Processing Whereabouts Unknown Disability Cases
DI 23007.000 Failure to Cooperate Table of Contents
DI 23007.001 Failure to Cooperate and Insufficient Evidence Definitions
DI 23007.005 Contacting the Claimant, Applicant, Appointed Representative, or Third Party in Claims Involving Failure to Cooperate and Insufficient Evidence
DI 23007.010 A Reasonable Effort to Identify and Involve a Third Party in Claims Involving Failure to Cooperate and Insufficient Evidence
DI 23007.015 Making a Determination Based on the Evidence in File
DI 23020.001 Priority Cases
DI 24501.016 Evidence Evaluation
DI 25505.025 Duration Requirement for Disability
DI 25505.030 Evaluation of the Duration Requirement for Disability
DI 27501.000 General Reopening and Revision Table of Contents
DI 27501.005 Reopening and Revising a Determination or Decision
DI 27505.010 Good Cause for Reopening
DI 28030.020 Development of Medical Evidence
DI 33015.015 Conducting the Disability Hearing
DI 33025.080 Using Video Teleconferencing (VTC) Equipment to Conduct Hearings
DI 33025.085 Conducting Disability Hearings by Phone
DI 81010.117 Processing Medical Reactivations
DI 81010.030 Certified Electronic Folder (CEF) Exclusions and Limitations
EM 20010 SEN REV 4 Disaster Procedures – Coronavirus Disease 2019 (COVID-19)
Pandemic – One Time Instruction
EM-20015 SEN REV Scheduling Video Consultative Examinations during the Coronavirus Disease 2019 (COVID-19) National Public Health Emergency
EM-20022 REV Temporary Instructions for the documentation of the Appointment of a Representative during the Coronavirus Disease 2019 (COVID-19) Pandemic
EM-20023 SEN Framework for Resuming In-person Consultative Examinations (CEs) – Coronavirus Disease 2019 (COVID-19) Pandemic
HALLEX I-2-1-40.Critical Cases