

EM - Emergency Message Effective Date: 11/18/2020

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Intended Audience: RO/DDS/DPU/DPB/ESTs
Originating Office: DCO ODD
Title: Disability Determinations Services (DDS) Procedures - Coronavirus Disease 2019 (COVID-19) Crisis
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Link To Reference: `See References at the end of this EM.

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Retention Date : September 09, 2021

Revision Statement: This EM replaces the revised version issued on September 11, 2020.

Summary of updates:

- Streamlined Section A., Purpose, and omitted outdated content.
- Updated Section B, Background, to indicate this EM is specific to the evolving COVID-19 nationwide public health emergency.
- Reorganized Section C.1.and added a section to clarify Continuing Disability Review (CDR) and Disability Hearing (DH) Failure to Cooperate (FTC) cessation dates.
- Added instructions to section C.2., instructing the regional office (RO) to work with Disability Determination Services (DDS) and local Office of Hearings Operations (OHO) offices to resume scheduling non-critical, in-person consultative examinations (CE).
- Revised Section C.3. to provide DDS instructions for identifying and processing Expedited Reinstatement (EXR) workaround cases.
- Reorganized Section D., Insufficient Evidence (IE) Determinations, to include:
 - Revised the title of Section D. since this workload

resumed August 31, 2020.

- Consolidated instructions, which clarify the effective date to determine whether DDS must make an additional follow up attempt for failure to cooperate (FTC) determinations held during the COVID-19 emergency.
- Added instructions to Section D.1., to indicate that a claimant must provide a good reason to reschedule his or her CE.
- Reorganized and revised Section D.1. and D.3. instructing DDS to make additional attempts to notify the claimant that we still need a Consultative Examination (CE), evidence, or action to make a determination, effective on the date of this revised EM (November 19, 2020).
- Added new instructions, Section D.2., regarding steps adjudicators should take when a claimant refuses to wear a face covering to a CE.
- Added a reminder to Section D.3., regarding the effects of trailer mail on a determination.
- Added Section E., which discusses how issues related to COVID-19 may affect a claimant's ability to cooperate, seek treatment, or follow prescribed treatment.
- Added Section F., which provides instructions for refreshing expired SSA-827s.

A. Purpose

This emergency message (EM) provides DDSs and Federal disability adjudicating components with updated disability case processing guidance during the COVID-19 national emergency.

These temporary instructions apply to all DDSs and Federal disability case processing sites (Disability Processing Branches, Disability Processing Units, etc.).

B. Background

Effective March 17, 2020, we deferred certain workloads and temporarily suspended certain actions that would result in a reduction, suspension, or termination of Social Security or

Supplemental Security Income benefits. This EM, and our earlier archived versions, provides DDS with workload and case processing guidance specific to the evolving COVID-19 national emergency.

C. Instructions for Processing Certain Workloads

1. Continuing Disability Review (CDR), Pre-Hearing (PH), and Disability Hearing (DH) workloads

a. CDR and PH workloads

- 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](#).

b. DH workloads

- In-person hearings continue to be suspended
- Disability hearing officers (DHO) may conduct telephone hearings when the beneficiary or recipient agrees to appear in that manner. The attached desk guide provides guidance for contacting claimants about the option of appearing by telephone and conducting a hearing by telephone from a DHO's alternate duty station (see also [DI 33015.015](#) and [DI 33025.085](#)):



[DHU Desk Guide.docx](#)

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

c. CDR and DH Failure to Cooperate (FTC) Cessation Dates

For cases involving FTC, where all required follow up is complete according to Section D., and the evidence supports a cessation determination, the DDS must follow the relevant instructions below to determine the cessation date:

- Child CDR: [DI 25205.020](#)
- Adult CDR: [DI 28075.005.G.](#)
- DH: [DI 33015.021](#)

2. Assistance Requests (AR)

Requestors must:

- Verify the appropriate case flag is attached to the claim and is still applicable before sending the AR to the DDS.

DDS must:

- Process medical evidence of record requests.
- Process requests for in-person CEs received from other DDSs, Disability Processing Branches (DPB), Disability Processing Units (DPU), and Extended Services Teams.
- Process requests for in-person CEs received from the Office of Hearings Operations that meet the critical claims criteria in [HALLEX I-2-1-40.Critical Cases](#):
 - Terminal Illness,
 - Veteran 100 Percent Permanent and Total,
 - Military Casualty/Wounded Warrior Case,
 - Compassionate Allowances,
 - Dire Need Case, and
 - Potentially Violent.
- Process psychiatric and psychological video CE requests (that do not require additional testing) for cases in which the claimant's, beneficiary's, or recipient's voluntary consent to participate in the video CE is documented, using the process outlined in [EM 20015 SEN REV 2](#).
- Regional offices should work with each DDS and their local Office of Hearings Operations (OHO) office to determine an agreed upon date for the DDS to resume scheduling non-critical, in-person CEs. Once DDS and OHO determine a date, OHO may resume sending ARs for non-critical, in-person CEs to that DDS.

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., OHO) that

the request cannot be fulfilled and close the AR.

3. Expedited Reinstatement (EXR) claims

- DDS should prioritize EXR claims.
- For specific instructions on identifying and processing electronic EXR “Workaround” cases received at the beginning of the COVID-19 emergency use the attached desk guides:



[EXR Instructions for DDS..docx](#)

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[Instructions for Building a Query.docx](#)

D. Insufficient Evidence (IE) Determinations and Failure to Cooperate (FTC) Cessation Determinations

IMPORTANT: When the agency resumed issuing adverse determinations for claims involving failure to cooperate or whereabouts unknown on **August 31, 2020**, we instructed DDS to make an additional attempt to notify, as applicable, the claimant, applicant, appointed representative, or third party by telephone or by letter ([DI 23007.005](#)), before closing the claim, if:

- DDS still needs the CE to make a determination([DI 22510.005](#)), **or**
- DDS still needs the evidence or action to make a determination ([DI 24501.016B](#)), **and**
- DDS’ last contact attempt is more than 14 calendar days from the resumption of this workload (August 31, 2020).

Effective November 19, 2020, DDS must make an additional attempt to notify, as applicable, the claimant, applicant, appointed representative, or third party **by telephone and by letter** in accordance with section D1a and D3a.

([DI 22505.014](#), [DI 22510.016](#), [DI 22510.019](#), [DI 23005.001](#), [DI 23007.005](#), [DI 23007.010](#), [DI 25205.020](#), [DI 28020.900](#), [DI 28075.005](#), [DI 29005.027](#), [DI 33015.021](#), [DI 33015.033](#)).

1. Failure to Attend a CE

DDS may continue to process insufficient evidence determinations based on failure to attend a CE for reasons other than COVID-19 concerns.

Effective November 19, 2020, if the claimant missed a CE and the DDS needs additional information to make a determination ([DI 22510.005](#)), DDS must follow the steps outlined below before closing the claim ([DI 22510.016](#), [DI 22510.019](#), [DI 23007.005](#), [DI 23007.010](#), [DI 25205.020](#), [DI 28020.900](#), [DI 28075.005](#), [DI 29005.027](#), [DI 33015.021](#), [DI 33015.033](#)).

a. DDS must make the following additional attempts to notify, as applicable, the claimant, applicant, appointed representative, or third party **by telephone and by letter** that we still need a consultative examination.

- If DDS attempts contact by telephone, **DDS must also follow up by letter.**
- If DDS sends a letter, **DDS must also follow up by telephone.**
- Both contact attempts may take place on the same day.

b. Provide a due process statement that if the claimant does not attend the CE and does not provide a good reason for not attending, 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](#));

c. Follow special handling procedures ([DI 23007.005.B.](#)) for claimants who meet the criteria defined in [DI 23007.001.A.](#);

d. Allow the claimant 10 calendar days to respond;

e. Determine whether the claimant had a good reason to miss his or her scheduled CE before rescheduling (refer to the NOTE below for COVID concerns);

f. If the claimant had a good reason for missing his or her scheduled CE, adjudicators must follow the business process in [EM 20015 SEN REV 2](#), as applicable, and [EM 20023 SEN, Section E](#), to ensure the claimant, applicant, or beneficiary understands his or her CE options;

g. Follow the steps in [DI 23007.001-DI 23007.010](#); and

h. Make a determination based on the evidence in file if the claimant still fails or refuses, without good reason, to attend a CE. Follow [DI 23007.015](#).

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

2. Claimant Required to Wear a Face Covering During In-Person CEs

If State rule, local rule, or the CE provider require a claimant to wear a face covering to attend an in-person CE, the DDS must:

a. Inform the claimant, by mail or telephone, prior to the appointment that if State rule, local rule, or the CE provider, as applicable, requires him or her to wear a face covering to an in-person CE. Explain that if he or she refuses to wear a face covering for non-medical reasons and it prevents the CE provider from conducting the examination, we will make a determination based on the evidence in the file, which may result in a finding that the claimant is not disabled.

b. If the claimant did not confirm the CE by returning the CE acknowledgement form, and the DDS contacts the claimant by telephone, staff must document whether the claimant agrees to wear a face covering to an in-person CE appointment in the case file ([DI 22510.016.C](#)).

c. If the claimant states that he or she will not wear a face covering and does not present a medical reason for his or her refusal:

i. Determine whether special handling procedures apply. If special handling procedures apply, follow the instructions in section D.2.f. below.

ii. If special handling procedures do not apply and another option exists, offer that option to the claimant (e.g., schedule the claimant for an in-

person CE in another locality that does not require face coverings, or determine whether a telehealth option is available and whether the claimant consents to a telehealth CE, as described in [EM 20015 SEN REV 2](#)).

iii. If another option does not exist, inform the claimant that:

- If he or she refuses to wear a face covering to an in-person CE, the DDS will not schedule or, if already scheduled, will cancel the CE appointment;
- refusal to wear a face covering to an in-person CE, for non-medical reasons, is considered refusal to attend a CE without good reason; and
- If he or she refuses to wear a face covering to an in-person CE, for non-medical reasons, the agency will make a determination based on the evidence in the file, which may result in a finding that the claimant is not disabled.

iv. If the claimant still refuses to wear a face covering and does not present a medical reason for the refusal, DDS must follow the relevant steps in [DI 23007.015](#) and make a determination based on the evidence in file.

d. If the claimant states that he or she will not wear a face covering but presents a medical reason for his or her refusal, DDS must hold the claim until normal CE scheduling resumes.

e. If the claimant states that he or she will wear a face covering but refuses to do so at the time of the CE appointment, or during the CE appointment, the CE provider may cancel or stop the examination. In this instance, follow the applicable instructions in section D.2.c. above.

f. If the claimant states that he or she will not wear a face covering and special handling procedures apply ([DI 23007.001.A.](#)), follow guidance in [DI 23007.005](#) and involve a third party.

- i. If the claimant or third party contacts the DDS prior to case finalization and states the claimant will wear a face covering to an in-person CE, schedule or reschedule the examination ([DI 22510.016.D.2.](#)).
- ii. If the claimant or third party states the claimant will not wear a face covering, for non-medical reasons, follow the instructions in section D.2.c.ii-iv., above, making reasonable efforts to involve a third party.

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

DDS may continue to process insufficient evidence determinations based on failure to cooperate with requests for evidence or action. Follow existing policy for whereabouts unknown ([DI 23005.001](#), [DI 28075.005](#), [DI 29005.027](#), [DI 33015.033](#)).

Effective November 19, 2020, if the claimant failed to comply with DDS requests for evidence or action, and DDS needs the information to make a determination ([DI 24501.016B](#)), DDS must follow the steps outlined below before closing the claim ([DI 22505.014](#), [DI 23007.005](#), [DI 23007.010](#), [DI 25205.020](#), [DI 28020.900](#), [DI 28075.005](#), [DI 29005.027](#), [DI 33015.021](#), [DI 33015.033](#)).

a. DDS must make the following additional attempts to notify, as applicable, the claimant, applicant, appointed representative, or third party **by telephone and by letter** that we still need the evidence or action ([DI 22505.014](#)).

- If DDS attempts contact by telephone, **DDS must also follow up by letter.**
- If DDS sends a letter, **DDS must also follow up by telephone.**
- Both contact attempts may take place on the same day.

b. 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](#));

c. Follow special handling procedures [DI 23007.005B](#) for claimants who meet the criteria defined in [DI 23007.001A](#);

d. Allow the claimant 10 calendar days to respond;

e. Follow the steps in [DI 23007.001-DI 23007.010](#); and

f. Make a determination based on the evidence in file, follow [DI 23007.015](#).

NOTE: COVID-19 concerns remain a good reason for failure to cooperate with requests for evidence or action (See section E, for an explanation of a good reason). 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.

REMINDER: The DDS may receive delayed forms, medical evidence, or other documents following adjudication, known as trailer mail. The DDS must examine trailer mail to determine if it affects the determination and consider the rules for reopening and revision, if necessary ([DI 22520.000](#)).

4. Reopening Required for Erroneous Insufficient Evidence Determinations Made Between March 17, 2020, and August 31, 2020.

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 August 31, 2020 (when we reinstated this workload), resume case processing, and follow the instructions in sections D.1. and D.3., as applicable.

Once DDS takes the appropriate actions described in D.1. and D.3, as applicable, 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. COVID-19 and Failure to Cooperate, Seek Treatment, or Follow Prescribed Treatment

Issues related to COVID-19 may affect the claimant's ability to communicate with us and other individuals, e.g., a representative, about his or her claim. For example, a claimant hospitalized for a COVID-19 infection may be unable to answer a telephone call or respond to a letter from the DDS. Issues related to COVID-19 may also affect the claimant's ability to access treatment. Such issues may include, but are not limited to, evictions, medical facility closures, quarantines, job loss, and insurance loss. Adjudicators must consider these COVID-19 related issues, in the context of existing policy, when considering whether the claimant provided a good reason for failure to cooperate or failure to seek or follow prescribed treatment.

- See [DI 23007.001](#) for further information for failure to cooperate.
- See [DI 24501.021](#) for further information about considering the claimant's treatment when evaluating his or her symptoms.
- See [DI 23010.011](#) for assessing whether the individual has good cause for not following prescribed treatment.

F. SSA-827 Issues

The SSA-827 (Authorization to Disclose Information to the Social Security Administration) is valid for 12 months from the date of the signature of the person authorizing disclosure of information to the Social Security Administration. DDS may have claims with aged SSA-827s due to delays in case processing during the COVID-19 national emergency.

If any SSA-827 has expired, staff must obtain an updated, signed SSA-827 to continue case development ([DI 11005.055](#)). See [DI 11005.056.A.2](#) for acceptable signature methods for obtaining new SSA-827s.

REMINDER: The Health Information Technology (HIT) Business Process will stop a HIT request (automated or user-trigger) and produce a HIT SSA-827 issue document if the wet-signed SSA-827 is more than 9 months old from the date the SSA-827 bar code is created, or if an SSA-827 is more than 12 months old.

G. 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 ([DI 23020.001](#)). 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 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.

H. Office of Quality Review (OQR) Returns

OQR is aware the DDSs will not process any returns that require a CE if the DDS:

- has not resumed scheduling in-person CEs, or
- is unable to schedule the CE due to COVID-19 restrictions, or
- is experiencing CE provider shortages.

DDSs 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 are aware of these potential reasons for delayed returns from the DDS.

I. Fraud Development

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

J. 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 field office (FO) and processing center (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 and other existing instructions for reviewing signatures on representative appointment documents while the emergency message is in effect.

K. Resources

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

L. 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 23010.011](#) How to Make a Failure to Follow Prescribed Treatment (FTFPT) Determination

[DI 23020.001](#) Priority Cases

[DI 24501.016](#) Evidence Evaluation

[DI 25205.020](#) Establishing a Medically Determinable Impairment (MDI)

[DI 24501.021](#) Evaluating Symptoms

[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 28020.900](#) Group II Exceptions

[DI 28030.020](#) Development of Medical Evidence

[DI 28075.005](#) Failure to Cooperate (FTC) and Whereabouts Unknown (WU) During a Medical Continuing Disability Review (CDR)

[DI 29005.0.27](#) Whereabouts Unknown (WU) Occurs at the Pre-Hearing (PH) Level

[DI 33015.015](#) Conducting the Disability Hearing

[DI 33015.020](#) Writing the Disability Hearing Officer's (DHO's) Decision

[DI 33025.080](#) Using Video Teleconferencing (VTC) Equipment to Conduct Hearings

[DI 33025.085](#) Conducting Disability Hearings by Telephone

[DI 81010.117](#) Processing Medical Reactivations

[DI 81010.030](#) Certified Electronic Folder (CEF) Exclusions and Limitations

[EM 20010 SEN REV 6](#) Disaster Procedures – Coronavirus Disease 2019 (COVID-19) Pandemic – One Time Instruction

[EM-20015 SEN REV 2](#) 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](#)

EM-20019 SEN REV 3 - Disability Determinations Services (DDS) Procedures - Coronavirus Disease 2019 (COVID-19) Crisis - 11/18/2020

Link to this document:

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