Retention Date: April 22, 2022

Revision Statement: This EM replaces the revised version issued on November 18, 2020.

Summary of updates:

- Removed Section B, Background.
- Created a new Section B to:
  - Explain the need for a Privacy Act Statement.
  - Provide instructions to read individuals a summary of the Privacy Act Statement when we collect personal information by telephone that will be documented in the case file.
- Added instructions to section C.1.b., which permit the DDS Disability Hearing Units (DHU) to begin holding online video hearings using Microsoft Teams.
  - Added an “important” note, instructing the Disability Hearing Officer (DHO) to follow the instructions in Section I of the attached desk guide, before scheduling a hearing, to notify the beneficiary or recipient of: (1) the option(s) to appear at a hearing by telephone or online video, (2) Privacy Act information, and (3) The DHU must send the hearing notice at least 20 days in advance, unless the individual has waived the right to advanced notice.
  - Updated the DHU desk guide to include (but not limited to) the following:

    § Instructions to mail the beneficiary or recipient a cover letter about the option of appearing at a hearing by telephone or online video and a related hearing agreement form upon receipt of the claim in the DHU;
§ Flexibility to contact the beneficiary or recipient by telephone prior to receipt of the hearing agreement form; and
§ An abbreviated Privacy Act statement to read to beneficiaries or recipients and other individuals when we obtain consent to appear at a hearing by Microsoft Teams.

• Revised Section D, Insufficient Evidence (IE) Determinations and Failure to Cooperate (FTC) Cessation Determinations.
  o Removed instructions for reopening IE cessation determinations based on FTC made between March 17, 2020, and August 31, 2020.
  o Clarified Section D.1, when the claimant or beneficiary misses a consultative examination (CE), adjudicators must follow existing policy and follow up by telephone and by letter before making a determination based on the evidence in file.
  o Clarified Section D.3, when the claimant or beneficiary fails to comply with our request for evidence or action, adjudicators must follow existing policy and make one additional contact attempt by the method not already taken before making a determination based on the evidence in file.
• Added instructions to Section F to follow the POMS and the guidance in EM 20022 REV 2 to update an SSA-827 that is expired or submitted without a signature the agency would otherwise recognize as valid.
• Revised the title of Section G and streamlined instructions on processing cases when there is an allegation of COVID-19, or we discover an individual has a medically determinable impairment of COVID-19.

A. Purpose

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

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

This EM provides DDS and Federal disability case processing sites with workload and case processing guidance specific to the evolving COVID-19 national emergency.
B. Notice Required Under the Privacy Act of 1974

When the agency obtains personal information about an individual that we maintain in our systems of records (to include information we store in claims and hearings files), the Privacy Act requires us to provide a Privacy Act Statement explaining important information about our collection, such as why we are collecting the information and how we will use it. When we collect such information in writing (e.g. SSA-3368, SSA-3441, ADL’s and Work History forms), the Privacy Act Statement is provided as part of the form. Thus, when collecting personal information by telephone, read the following statement prior to collecting the information:

· “The Social Security Act allows us to collect the information you provide, which we will use to help in deciding your claim. Providing this information is voluntary, but not providing such may prevent a timely and accurate decision on your claim. As law permits, we may disclose your information per routine uses in our Electronic Disability Claim Folder System of Records Notice, all available at www.ssa.gov/privacy. You may locate a full Privacy Act statement on the _____ Form(s) previously mailed, which is also available at https://www.ssa.gov/forms/.”

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 28030.020D.7.
   b. DH workloads
      · The agency continues to suspend in-person hearings and video teleconferencing (VTC) hearings at SSA and DDS sites.
A DHO may conduct a hearing by telephone or online video using Microsoft Teams when the beneficiary or recipient agrees to appear in that manner.

**IMPORTANT:** Before the DHU schedules a hearing, the DHO must follow the instructions in Section I of the DHU desk guide, attached below, to notify the beneficiary or recipient (as applicable) of the following:

- The option(s) of appearing at a hearing by telephone or online video;
- A Privacy Act statement; and
- The DHU must send the hearing notice at least 20 days in advance, unless the individual has waived the right to advanced notice (DI 33010.005)

· DHU hearings conducted by telephone or online video
using Microsoft Teams must follow the existing format (DI 33015.015), except to the extent that we have provided more tailored instructions in the DHU desk guide (attached below):

DHU DeskGuide - 10-2021.docx

IMPORTANT: COVID-19 concerns (e.g. fear of contagion, sudden illness, concern with public transportation) are a good reason for missing, cancelling, postponing, or rescheduling a hearing.

C. CDR and DH 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, DPBs, DPUs, and Extended Services Teams (EST).
· Process requests for in-person CEs received from the Office of Hearings Operations (OHO) that meet the critical claims criteria in HALLEX I-2-1-40.Critical Cases:
  o Terminal Illness,
  o Veteran 100 Percent Permanent and Total,
  o Military Casualty/Wounded Warrior Case,
  o Compassionate Allowances,
  o Dire Need Case, and
  o Potentially Violent.
· Process psychiatric and psychological telehealth 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 a telehealth CE is documented, using the process outlined in EM 20015 SEN REV 2.
· Regional offices should work with each DDS and their local 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:
D. IE and FTC Cessation Determinations

1. Failure to Attend a CE

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

When the claimant or beneficiary missed a CE and the DDS needs information to make a determination (DI 22510.005), DDS must follow existing policy (DI 22510.016, DI 22510.019, DI 23007.005, DI 23007.010, DI 23007.015, DI 25205.020, DI 28020.900, DI 28075.005, DI 29005.027), and the steps outlined below before closing the claim.

a. DDS must attempt to notify, as applicable, the claimant, applicant, appointed representative, or third party contact by telephone and by letter that we still need a CE (DI 23007.005). All contact attempts may take place on the same day.

b. Provide a due process statement that if the claimant does not provide a good reason for not attending his or her scheduled CE, 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-19 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 does not provide a good reason for having failed to attend his or her scheduled CE or if the claimant fails or refuses, without good reason, to attend a rescheduled CE. Follow DI 23007.015.

NOTE: COVID-19 concerns (e.g. fear of contagion, sudden illness, concern with public transportation) 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 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. FTC with Requests for Evidence or Action and Whereabouts Unknown

DDS may continue to process IE 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).

If the claimant or beneficiary fails to comply with DDS requests for evidence or action, and DDS needs the information to make a determination (DI 22501.001, DI 24501.016B), DDS must follow existing policy (DI 22505.014, DI 23007.005, DI 23007.010, DI 25205.020, DI 28020.900, DI 28075.005, DI 29005.027) and the steps outlined below before closing the claim.

a. DDS must make an additional attempt to notify, as applicable, the claimant, applicant, appointed representative, or third party contact that we still need the evidence or action (DI 23007.005).

   · If DDS follows DI 22505.014 and attempts contact by telephone, DDS
must also follow up by letter.
· If DDS follows DI 22505.014 and sends a letter, DDS must also follow up by telephone.
· All 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 (e.g. fear of contagion, sudden illness, concern with public transportation) 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.

**REMININDER:** 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](#)).

**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 about 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 11005.056A.2 and EM 20022 REV 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. Evaluating, Processing, and Flagging Claims with COVID-19 Allegations

Follow existing disability policy and procedures when a claimant alleges disability due to COVID-19 or we discover an individual has a medically determinable impairment of COVID-19 (DI 24501.020).

For more information on evaluating cases with Coronavirus Disease (COVID-19) see EM 21032.

For more information on processing and flagging COVID-19 cases, see EM-20060.

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;
- 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 the Inspector General 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 documents, including 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) 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 2 Temporary Instructions for the Bundled Receipt and Processing of an Electronically Signed SSA-1696 and Certain Other Forms 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 25501.021 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 29005.027 Whereabouts Unknown (WU) Occurs at the Pre-Hearing (PH) Level