

## Instruction

<b>Identification Number</b>	<b>AM-18029 REV</b>	<b>Effective Date:</b> 02/14/2019
<b>Intended Audience:</b>	RCs/ARCs/ADs/FOs/DDSs/OQR/OCO/OCO-CSTs	
<b>Originating Office:</b>	ORDP ODP	
<b>Title:</b>	<b>Collateral Estoppel and the Revised Mental and Immune System Disorders Listings</b>	
<b>Type:</b>	AM - Admin Messages	
<b>Program:</b>	Title II (RSI); Title XVI (SSI); Disability	
<b>Link To Reference:</b>	See <a href="#">References</a> at the end of this AM.	

**Retention Date: August 14, 2020**

Revised 02/14/2019 - The purpose of this administrative message (AM) is to:

- clarify that as of the effective date of this AM, the field office will no longer make collateral estoppel decisions in disability determination, regardless of the impairment, that the DDS has jurisdiction for all potential collateral estoppel issues, and
- explain how the DDS will process cases with potential collateral estoppel issues.

### A. Purpose

In September 2016 and December 2016, we published final rules, effective January 17, 2017, that revised the medical criteria for evaluating the Mental Disorders (sections 12.00 & 112.00) Listings and human immunodeficiency virus (HIV) infection under the Immune System Disorders (sections 14.00 & 114.00) Listings.

When the DDS receives a case with a potential collateral estoppel issue, they may not use collateral estoppel on a new disability claim involving a mental disorder or HIV infection when:

- The new claim has a filing date (or protective filing) on or after January 17, 2017, and

- The basis of the prior favorable determination or decision was the claimant's having met or equaled a Mental Disorders or Immune System Disorders Listing in effect prior to January 17, 2017. (See impairment codes listed below)

For cases meeting these criteria, the DDS will make a new determination. For all other cases with potential collateral estoppel issues, the DDS will follow the instructions in DI 27515.000.

## **B. Field Office (FO) instructions.**

If a subsequent T2 or T16 application for disability is filed by an individual with a current existing medical allowance, forward the subsequent claim to the DDS for a disability determination. The FO will no longer make collateral estoppel decisions regardless of the impairment. The DDS has jurisdiction for the disability determination for all subsequent claims.

The new subsequent filing is considered a new initial claim. Take the necessary action to complete the full front-end disability claim and non-disability development (such as SSA 3368, SSA 827, and sections of the SSA 3367). For existing guidance on processing new initial disability claims, see DI 11000.000 and DI 11055.000.

Add a message to the case in EDCS "Existing favorable decision on (T2 or T16) dated MM/DD/YY. Collateral Estoppel does not apply.

Document ALL prior filings with a medical determination or decision, or SGA denial on the paper Form SSA-3367-F5 (or the EDCS 3367). This includes the current/existing allowance decision. Include the statement, "Potential Collateral Estoppel Issues Apply".

If the prior folder is required, FO and DDS technicians will follow existing guidance for requesting prior folders on initial claims. See DI 20505.010.

**NOTE:** These instructions supersede [DI 11011.001](#) and [DI 11011.005](#).

## **C. Summary of Changes in the Mental and HIV listings**

### **1. The Final rule changes to the listings include the following changes to the Mental Disorders Listings:**

- updated the titles of most of the listings,
- updated the "paragraph A criteria" and revised the "paragraph B criteria" and the "paragraph C criteria" in each listing,
- defined each of the five points of the rating scale used to rate the degree of limitation in

each of the “paragraph B” areas of mental functioning,

- reorganized and simplified listing 12.05 – intellectual disorder, and
- added listings 12.11 (neurodevelopmental disorders), 12.13 (eating disorders), 12.15 (trauma- and stressor-related disorders), and 112.14 (developmental disorders in infants and toddlers).

**2. The Final rule changes to the listings include the following changes to the Immune Systems Disorders Listings:**

- revised and expanded the introductory text for evaluating HIV infection for both adults (Section 14.00) and children (Section 114.00),
- revised the introductory text for evaluating functional limitations resulting from immune system disorders for both adults and children,
- added listings for HIV infection (listings 14.11 and 114.11),
- removed criteria for HIV infection that no longer represented impairments of listing-level severity, and
- re-designated and revised current criteria under listing 14.11 or 114.11, as appropriate

**D. Disability Determination Services (DDS) instructions on evaluating new claims with prior favorable determinations or decisions based on meet or equaling a mental disorders or HIV infection in effect prior to January 17, 2017.**

If the new disability claim has a filing (or protective filing) date on or after January 17, 2017, and we previously made a favorable determination or decision finding the claimant met or equaled a mental or HIV listing in effect before January 17, 2017, do not apply collateral estoppel to the new disability application. Fully develop the claim and make a new medical determination. The determination on the new claim may be fully favorable, partially favorable, or unfavorable.

**E. Chart with Body Systems and Impairment Codes (For DDS Use Only)**

Effective January 17, 2017, the medical criteria for evaluating the Mental Disorders (sections 12.00 & 112.00) Listings and HIV infection under the Immune System Disorders (sections 14.00 & 114.00) Listings changed. Identified below are the listings

with the impairment codes affected by this change. Although not listed, this also applies to the equivalent childhood listings.

<b>Listing (Body Systems)</b>	<b>Diagnostic Category</b>	<b>Impairment Code</b>
Mental Disorders (12)		
12.02	Neurocognitive Disorders	2940
12.03	Schizophrenia Spectrum and Other Psychotic Disorders	2950
12.04	Depressive, Bipolar and Related Disorders	2960
12.05	Intellectual Disorder	3180
12.06	Anxiety and Obsessive-Compulsive Disorders	3000
12.07	Somatic Symptom and Related Disorders	3060
12.08	Personality Disorders	3010
12.08	Impulse-Control Disorders	3120
12.10	Autism Spectrum Disorders	2990
12.11	Attention Deficit/Hyperactivity Disorder	3140
12.11	Learning Disorder	3152
12.13	Eating Disorders	3070
12.15	Trauma- and Stressor-Related Disorders	3090

For determinations or decisions made prior to 01/17/2017, identify HIV infection codes as follows:

<b>Listing (Body Systems)</b>	<b>Diagnostic Category</b>	<b>Impairment Code</b>
14.11	Human Immunodeficiency Virus (HIV) Infection	0430

## F. Handling Denials

If the new claim determination is a medical denial or a partially favorable determination (because collateral estoppel does not apply), DDS adjudicators will add a remark in Line 34 of the SSA 831 "Collateral Estoppel Does Not Apply- Existing favorable decision on (T2 or T16) dated MM/DD/YY based on prior listing rules."

If a claimant or appointed representative disagrees with the new initial determination or decision they may request further review under the existing appeal process as described in [GN 03101.001](#). Technicians will follow normal procedures to assist a claimant or appointed representative with filing an appeal.

**NOTE: DDS will advise field office technicians if they must initiate a CDR on the existing claim using existing instructions in DI 27515.050.**

**Field office technicians should not initiate a CDR on the previously allowed claim, unless instructed by DDS to do so. If required, the DDS will advise the FO to initiate a CDR on the existing allowance decision via EDCS Assistance Request.**

## G. Frequently Asked Questions

1. **Q:** What if the claimant met or equaled a mental disorder listing or the HIV infection listing prior to 1/17/2017 (the effective date of the new listings) and we applied collateral estoppel to a case filed after the effective date of the new listings but on or before the effective date of AM-18029 revised?

**A:** Collateral estoppel applies. The provisions in this AM are for cases that we decided as of the effective date of the AM or later.

2. **Q:** What if the claimant's previous allowance was based on a medical-vocational rule prior to 1/17/2017 (the effective date of the new listings), and he or she files a subsequent claim?

**A:** Collateral estoppel applies. The provisions in this AM are for cases in which (1) we allowed a claim as meeting or equaling a mental disorder listing or the HIV infection listing prior to 1/17/2017 and (2) there is a subsequent filing on 1/17/17 or later. The change that prevents collateral estoppel for a subsequent claim filed on 1/17/2017 (the date the new listings became effective) or later and decided 7/7/18 (the date after AM-18029 was published) or later is the revision of the listings. The revisions to the mental disorders listings and the HIV infection listings made no changes to our rules about medical-vocational allowances.

3. **Q:** What if the previous allowance was based on meeting or equaling a listing other than a mental disorder or HIV infection, but that listing has changed substantially since the case was allowed. Can we apply collateral estoppel to the subsequent filing?

**A:** Yes. As long as all of the other requirements for collateral estoppel are met. At this time, the only listings changes that preclude collateral estoppel are for cases involving mental disorders and HIV infection listings effective 1/17/2017.

4. **Q:** What if the claimant was allowed based on meeting or equaling a mental disorder listing or the HIV infection listing prior to the new listings effective 1/17/2017, but the new subsequent filing has a filing or protective filing date prior to 1/17/2017. Can we apply collateral estoppel to the subsequent filing?

**A:** Yes. Apply collateral estoppel as long as all of the other requirements for collateral estoppel are met. We expect there to be very few cases with subsequent filings with a filing date or protective filing date prior to 1/17/2017 where the previous allowance was based on meeting or equaling a mental disorder listing or the HIV infection listing in effect prior to 1/17/2017 and we are making a determination after the effective date of the AM-18029.

5. **Q:** What if the prior favorable determination was an age 18 redetermination or a CDR continuance?

**A:** If the subsequent filing has a filing date of 1/17/2017 or later and the previous age 18 redetermination or CDR continuance is based on meeting or equaling a mental disorder listing or the HIV infection listing in effect prior to 1/17/2017, collateral estoppel does not apply.

To determine the basis of the CDR continuance look at item 12 on the SSA-832 or SSA-833. A continuance code of 30 met a listing and a code of 32 equaled a listing for a title II CDR, a continuance code of 70 met a listing and a code of 72 equaled a listing for a title XVI CDR. For title XVI child CDRs, the continuance code of 71 is meeting a listing and a continuance code of 73 is equaling a listing. Part 2 of item 12 requires the adjudicator to enter the medical listing number that was met or equaled. If the continuance was based on meeting or equaling a mental disorder listing or the HIV infection listing in effect prior to 1/17/2017, and the subsequent claim filing date is on or after 1/17/2017, and we are making a determination on 7/7/2018 or later, collateral estoppel does not apply. If after a

reasonable effort to obtain the basis of the CDR continuance, there is insufficient evidence to do so, collateral estoppel does not apply.

## **H. Questions**

Direct all program-related and technical questions to your Regional Office (RO) support staff. RO support staff may refer questions, concerns or problems to their Central Office contacts.

### **References:**

[DI 11011.001](#) – Collateral Estoppel – General

[DI 27515.001](#) – Collateral Estoppel – General

[GN 04040.020](#) – Collateral Estoppel