



<b>Policy Memo</b>	
<b>KDHE-DHCF POLICY NO: 2017-03-02</b>	<b>From: Jeanine Schieferecke</b>
<b>Date: March 20, 2017</b>	<b>KEESM Reference: 1413, 2662.3 – 2662.10</b>
<b>RE: Protected Filing Date</b>	<b>Program(s): Disability Based Medicaid and MediKan</b>

The purpose of this memo is to provide implementation instructions regarding new provisions regarding the Protected Filing Date for disability-related medical assistance applications. The new policy is effective March 1, 2017 and these instructions are applicable to all determinations made on or after this date. For existing applications currently pending a disability decision based solely on a protected Filing date, the processes outlined in Section 4 below will be followed.

## 1) BACKGROUND

In order to qualify for Medicaid on the basis of disability an individual must be determined disabled according to Social Security standards. There are currently three possible paths for this determination:

- A determination made by Social Security for the purpose of receiving Social Security disability or SSI
- A determination made by the Presumptive Medical Disability Team (PMDT) for medical assistance where a simultaneous SSA determination is also occurring
- A determination made by DDS for medical assistance purposes where SSA will not make a determination.

Because the SSA determination takes precedence over other determinations, the Protected Filing Date provision allowed an original medical assistance application date to be protected in the event an individual was seeking Medicaid before the SSA determination was completed. In these instances, the Medicaid application was left in pending status until a final SSA determination was issued. If SSA ultimately affirmed the disability, the Medicaid application was then determined using the original Medicaid filing date. This was true regardless of whether a PMDT determination was also completed and regardless of the type of benefit the individual may ultimately receive. In many cases, this resulted in application pending many months, or even years. Note that because DDS determinations are only made when Social

Security will not make a determination, this process only impacted determinations issued by PMDT. This policy limits the application of the Protected Filing Date. Additional details will also be provided in KDHE Training material.

## **2) POLICY**

These changes are made in accordance with a CMS directive and 42 CFR 435.912 and 42 CFR 435.541(c).

### **A. Protected Filing Date**

This policy eliminates the Protected Filing Date for applications where the PMDT has issued a disallowance, unless the individual is later approved for SSI.

Previously, the protected filing date was applicable to both SSI and SSD determinations. Effective with this change, the disability denial by PMDT is considered final and a Protected Filing Date is not considered for persons ultimately approved only for Social Security Disability benefits after the application period. If an individual is denied based on a disability determination made by the PMDT and the person is later approved for SSI, the Protected Filing date is applicable and eligibility is determined based on the original application date.

### **B. Application Time Period**

All applications for Medicaid that require a disability determination are subject to a 90 day processing time frame (see KEESM 1413). If an application is denied and new information is received during this time period, the application is reconsidered. This includes eligibility information as well as information pertaining to the disability decision, such as new Medical evidence. In addition, the applicant is always provided at least 15 days following the date of the denial to provide new information. In the event the denial is made too late in the processing period to allow 15 days (i.e. day 75 or later), the application time frame is extended to 15 days from the date of the denial.

If an application is denied based on disability by KDHE and the SSA issues a disability determination within the application period, the original application is reopened and the application date is protected.

### **C. Applications Currently in Pending Status**

All applications that are currently held in a pending status will be reviewed to determine the appropriate action.

#### **1. Required Action**

The results of the PMDT determination as well as the current status of the SSA application will be considered. Based on the results of the review, the following are applicable:

- a. If Social Security and/or SSI disability has been approved, the case shall be processed using the existing Protected Filing rules. This means the original application date is protected.
- b. If PMDT has issued a denial and the Social Security and/or SSI application has been denied (and all appeal time frames are exhausted) the application is denied under existing policies. This means the original Protected Filing Date is no longer in play.

- c. If PMDT has issued a denial and the Social Security and/or SSI application is still pending or if the current status is undeterminable, the application is denied. Staff shall follow the processes outlined in section (4) below. Note that the Application Time Period described in Section 2(B) above is applicable and the processes outlined in Section 5 below shall be followed if an individual reports new information following the denial. The Protected Filing Date rules apply to this population in that if an SSI approval is ultimately issued, the Medicaid application may be back dated. It is critical for staff to ensure the appropriate language is included in the notice.

## **2. Time Frame To Complete Review**

Review and action of existing pending applications will be completed as quickly as possible. Because some cases may require additional research, action may be delayed on a limited number of cases.

## **3. Contractor Action**

KDHE will issue a report of all individuals who meet the requirements of group 2(C) above and are targeted for denial. Because KDHE has developed the rules/criteria for the report and has screened the report for accuracy, Contractor staff are allowed to perform the administrative action of issuing the denial. This is only applicable to group 2(C) above. Any approvals or final denials must be made by State Staff.

## **D. SSI Approval Following Medicaid Denial**

Individuals originally denied by PMDT who are ultimately approved for SSI will receive a Protected Filing Date for the Medicaid application if the following occur:

1. The SSI application is consistent with the Medicaid application date. In other words, if the SSA application requirement for Medicaid purposes was satisfied with the SSI application used to affirm the disability, a Protected Filing Date applies. If the determination was issued based on a later application, the Protected Filing Date does not apply.

Example: KanCare Protected Filing Date is 9/12/2014; consumer reports approval of SSI with a start date of 6/1/2016. In this situation the dates do not match; consumer was approved for a subsequent application to SSA and not on the original application. If action was not taken to deny the original application based upon a final determination by SSA, then the ES will Journal that the dates do not match and register a new application based upon the date consumer is eligible for SSI.

2. The SSI determination results in an SSI cash payment. The protected Filing date applies even if the individual is not currently receiving SSI.

Example, a Medicaid denial was issued for a 06/2016 Medicaid application. In 04/2017 the person is awarded an SSI benefit retroactively for the months of 06/2016-11/2016. SSI terminated effective 12/2016 when the SSA disability became effective. A protected

filing date of 06/2016 applies and Medicaid can be provided continuously beginning in 06/2016.

3. The individual notifies the agency of the SSI award timely or the agency becomes aware of the award through an allowed SSA interface. The original denial shall include language that informs the consumer they must notify the agency within 15 days of the award.

#### **E. MediKan Impact**

For MediKan purposes, a Tier 2 approval is treated as a Tier 1 denial and recipients may still receive 12 months of MediKan coverage. But in most instances, Medicaid coverage back to the application date is only available if the individual is approved for SSI. If the SSD determination is made prior to the MediKan approval, or within 90 days of the original application, Medicaid may be available back to the application date. In addition, updates to the PMDT process have also been included.

#### **F. Fair Hearings/Appeals**

Individuals denied as result of this change are entitled to fair hearing rights. However, unless a change is reported by the consumer that may impact the action, the denial is based on the result of a policy change and a request for a dismissal is to be completed.

1. Accept any appeal request that is received (via phone, in person or document) that pertains specifically to the loss of the protected filing date.
2. If new information is not reported, complete a Motion to Dismiss and submit to Office of Administrative Hearings, along with the appeal request. A template will be provided to the Fair Hearing lead at the Clearinghouse.
3. If new information (such as the report of new medical evidence), develop the appeal using existing policies.

#### **G. Medical Reconsideration by PMDT**

If the PMDT issues a disability denial, the individual has the opportunity to present new medical evidence within 90 days from the date of application or 15 days from the date of denial, whichever is later.

#### **H. KEES Impact**

Minor changes related to KEES are being implemented to support the new policy.

##### **1. Case Flag**

Case Flags are being added to the KEES system to identify persons potentially eligible for a Protected Filing Date based on the policy. A Case Flag is also added to identify individuals referred to DDS.

##### **2. Program Blocks**

New instructions regarding reusing Program Blocks are issued with this memo. This will impact both MAGI and non-MAGI determinations. With the new PMDT policy, staff will continue to establish a Program Block in the PMDT Ghost Worker for ID. However, a second Program Block to monitor the SSA application will no longer be necessary. Only one program block is necessary. Note the program block for the original application must be identified in the notes on the case flag.

If an individual does reapply, the original Program Block will be reused if possible. This is true even if the individual's new application includes other household members.

Note that an LTC program block is not reused, as the program block will be needed if the consumer needs LTC again. Also, MAGI and non-MAGI determinations should never be done in the same program block; each budgeting method should have its own program block. Finally, we are clarifying that the SSI recipient may coexist on a Family Medical program block, unless the individual is receiving LTC.

### **3. PMDT Ghost Worker**

Cases sent to PMDT or DDS for a disability determination will have the program block assigned to the PMDT Ghost Worker ID for ease of identification and tracking.

## **3) PROCESSES FOR NEW APPLICATIONS**

### **A. Disability-Based Denials**

When PMDT determines the consumer is not disabled, the application will be denied. The Medicaid filing date will not be protected unless the consumer is later determined eligible for SSI by SSA.

1. End date the Declared Medical Condition for the consumer, listed on the Medical Condition page, with the last day of the month of application.
2. Run EDBC for any prior months and for the month of application to deny and send NOA. Review the NOA for the correct denial reason.
3. Append the NOA with the following fragment:

*Based on the current information available to the agency, we have determined you do not meet the necessary disability standards in order to qualify for Medicaid. Therefore, your application will no longer be held in pending status. Your application is denied. If you have new medical information it must be reported within 15 days of this letter. If you are determined eligible for Supplemental Security Income (SSI) in the future, we may be able to back date your medical coverage. You must report the approval within 15 days from the date you are notified.*

*This action is based on KEESM 2662.3-2662.10 and 42 CFR 435.912 and 42 CFR 435.541(c).*

4. Worker will generate a case flag on the case to identify it as a potential protected filing date (PPFD) case. [Refer to Case Flag Instructions]
5. Clearly log in the Journal that application was denied due to a finding of no disability by PMDT but that the case is 'potential protected filing date' case. Include the full name of the applicant whose filing date may be protected, what the application date is and the program block to which application was registered.

### **B. Approvals-Tier 1**

When PMDT determines an individual is disabled and issues a Tier 1 Approval, the application will be processed following current procedures. However, take care to:

1. Set a future task to monitor EATSS for a final determination by SSA.
2. If consumer requested prior medical and the Tier 1 decision does not cover all prior medical months, set a PPFD case flag on the case to track the original application date in case the consumer is later approved for SSI.

### **C. Approvals-Tier 2**

When a referral is made to PMDT and they determine the consumer does not meet SSA disability standards (Tier 1) but would qualify for MediKan (Tier 2), the application will be processed following current procedures. Additional processes for these cases will be:

1. A future task will be set to monitor EATSS for a final determination by SSA.
2. Another future task will be set to close MediKan after receiving 12 months of coverage.
3. A PPFD case flag will need to be set on the case to track the original application date in the event the consumer is later approved for SSI.

This change will be implemented on all new applications processed after the release of these instructions. For ongoing cases that have been denied by PMDT but are awaiting a determination by SSA, this change will be implemented through a KEES report.

## **4) PROCESS FOR CURRENT PENDING DISABILITY CASES**

As per section 2 (C) above, all cases currently pending based on the existing policy shall be reviewed and, unless an SSD or SSI approval has been issued by SSA, the application shall be denied. KDHE will issue a report of all cases potentially impacted. These included cases that have a program block in Pending status in the PMD Ghost Worker ID (KH0206Q103). The KDHE

report will identify cases that have been denied by PMDT and do not appear to be eligible. To ensure the denial is accurate, workers will review the case, including the Journal and Image Now to determine if potential eligibility exists under other programs.

The report will include cases that have not had a PMDT determination. These are most likely cases that have been referred to DDS for a disability determination. If so, it will remain pending until a decision is received but a “DDS case flag” will be added to the case.

If PMDT indicates a disability determination is still pending, no action is taken. Case will be processed following procedures in Section 3 once a determination is made.

For cases that have had a final determination, the following applies:

**A. If PMDT made a finding of no disability:**

1. Access EATSS; if final determination has been completed.
  - a. Case is processed following current procedures.
2. Access EATSS; SSA determination is not final (i.e. pending or under appeal).
  - a. Add a PPDD case flag identifying consumer, date of application and program block number.
  - b. End date Declared medical condition with last day of month of application.
  - c. Run EDBC to deny application and any prior medical months.
  - d. Send denial NOA. Include the following language in the notice:

*Based on the current information available to the agency, we have determined you do not meet the necessary disability standards in order to qualify for Medicaid. Therefore, your application will no longer be held in pending status. Your application is denied. If you have new medical information it must be reported within 15 days of this letter.*

*If you are determined eligible for Supplemental Security Income (SSI) in the future, we may be able to back date your medical coverage. You must report the approval within 15 days from the date you are notified.*

*This action is based on KEESM 2662.3-2662.10 and 42 CFR 435.912 and 42 CFR 435.541(c).*

3. If there are other “Pending” or “In Progress” E-apps associated with the case, each will need to be evaluated separately. If no changes in medical condition, requests for long term care or requests for other persons are noted, the E-app status should be changed to “Posted”. See the February 3, 2017 KEES Dispatch for instructions on how to update the status from “In Progress” to “Posted” and “Pending” to “Posted”. If there are other tasks associated to the case, these should be addressed at the same time other actions are being taken.

**B. If PMDT made a Tier 1 determination and there are no pending prior months**

(Example: Consumer applied 10/2/2016 with a request for prior medical for 7/16, 8/16 and 9/16. PMD approved Tier 1 with an onset of 7/1/2016 and full Medicaid approved for 7/16 forward.)

1. Access EATSS to determine if Disability has been determined by SSA.
  - a. If not, set a future task to monitor EATSS for a final determination by SSA.
  - b. If SSA has completed the final determination, process case following current procedures.
  - c. If there are other “Pending” or “In Progress” E-apps associated with the case, each will need to be evaluated separately. If no changes in medical condition, requests for long term care or requests for other persons are noted, the E-app status should be changed to “Posted”. See the February 3, 2017 KEES Dispatch for instructions on how to update the status from “In Progress” to “Posted” and “Pending” to “Posted”. If there are other tasks associated to the case, these should be addressed at the same time other actions are being taken.

**C. If PMDT made a Tier 1 determination and there are pending months:**

1. EATSS accessed and Disability has NOT been determined by SSA.
  - a. Set a future task to monitor EATSS for a final determination by SSA.
  - b. Set a PPF case flag on the case.
  - c. Run EDBC to deny pending months and append the denial NOA with the following snippet:

*Based on the current information available to the agency, we have determined you do not meet the necessary disability standards in order to qualify for Medicaid. Therefore, your application will no longer be held in pending status. Your application is denied. If you have new medical information it must be reported within 15 days of this letter. If you are determined eligible for Supplemental Security Income (SSI) in the future, we may be able to back date your medical coverage. You must report the approval within 15 days from the date you are notified.  
This action is based on KEESM 2662.3-2662.10 and 42 CFR 435.912 and 42 CFR 435.541(c).*

- d. If there are other “Pending” or “In Progress” E-apps associated with the case, each will need to be evaluated separately. If no changes in medical condition, requests for long term care or requests for other persons are noted, the E-app status should be changed to “Posted”. See the February 3, 2017 KEES Dispatch for instructions on how to update the status from “In Progress” to “Posted” and “Pending” to “Posted”. If there are other tasks associated to the case, these should be addressed at the same time other actions are being taken



SSA has completed the final disability determination; process case following current procedures

**D. If PMDT made a Tier 2 determination:**

1. EATSS accessed and SSA disability determination is pending or under appeal.
  - a. Create a PPFID case flag with consumer name, protected filing date and program block.
  - b. Access the Customer Options page, select the consumer's name from the Name dropdown field, select the Type of MediKan, and add a Begin Date and End Date of the month of application.
  - c. Run EDBC to deny application and any prior months in the pending program block.
  - d. Append the denial NOA with the following snippet.

*Your Medikan coverage will continue until you are notified of discontinuance.*

*This only impacts your pending request for Medicaid.*

*Based on the current information available to the agency, we have determined you do not meet the necessary disability standards in order to qualify for Medicaid. Therefore, your application will no longer be held in pending status. Your application is denied. If you have new medical information it must be reported within 15 days of this letter.*

*If you are determined eligible for Supplemental Security Income (SSI) in the future, we may be able to back date your medical coverage. You must report the approval within 15 days from the date you are notified by the Social Security Administration.*

*This action is based on KEESM 2662.3-2662.10 and 42 CFR 435.912 and 42 CFR 435.541(c).*

- e. If the Medikan case does not have a pending PMD Ghost Worker ID program block, then send a V008 denial using the template attached to this memo.
  - f. Document in the Journal that Potential Protected Filing Date will be tracked with a case flag, what the application date is, who the case flag is for, and that a general denial was sent because there was no pending program block to deny.

**Note:** If a consumer has received 12 months of Medikan coverage, that coverage will need to be discontinued as well.
  - g. If there are other "Pending" or "In Progress" E-apps associated with the case, each will need to be evaluated separately. If no changes in medical condition, requests for long term care or requests for other persons are noted, the E-app status should be changed to "Posted". See the February 3, 2017 KEES Dispatch for instructions on how to update the status from "In Progress" to "Posted" and "Pending" to "Posted". If there are other tasks associated to the case, these should be addressed at the same time other actions are being taken
2. EATSS accessed and SSA has completed their disability determination, then follow current processes to approve, deny or discontinue case.

## 5) PROCESSES FOR REAPPLYING APPLICANTS

If a consumer originally denied based on a PMDT disability determination later contacts the agency to report receipt of an SSA disability determination, the case must be evaluated to determine if back dated medical is appropriate. Requests within 90 days of the original application or within 15 days of the denial will be honored.

First, the staff person receiving the initial contact with the agency must note if there is a Potential Protected Filing Date case flag. If so, that staff person must ensure it is routed correctly.

- A.** If new information is received by the call center, a task of 'Review Eligibility' will be created. The new information will be listed in the Journal. If a new application/review form is received:
1. Registration will register the application following current registration procedures.
  2. Eligibility staff will research to determine
    - a. Is the application a request for the consumer with the potential protected filing date (PPFD)? If not, the ES will follow normal processing guidelines.
    - b. If the application is a request for the consumer with the potential protected filing date, the ES will need to do further research to determine how to proceed as outlined below.
  3. Eligibility staff will research the case to determine if the application should be processed using the 'potential protected filing date' or denied.
  4. ES will also check status EATSS to determine status of original SSA disability application
  5. If a consumer has been determined eligible for SSI, the new application will be denied on the Negative Action page with a reason of 'Application Opened in Error'. The PPFDD program block will then be rescinded and case processed using the original application date. (Note: When rescinding, set the view month on the Case Summary page to the month of the protected filing date. Helpdesk may need to be contacted to rescind if the original application was more than six months in the past.) The case flag will be end dated effective the last day of the month in which the case is processed.
  6. If the consumer has been determined eligible for SSDI:
    - a. If the request is within 90 days of original application date or within the 15 day IROD period; the current application will be denied on the Negative Action page with a reason of 'Application Opened in Error' and the PPFDD program block will be rescinded and the original application processed. If the PPFDD program block has been overwritten with subsequent applications, the worker will change the view month on the Case Summary page to the month of the Protected Filing Date listed on the case flag and rescind the original application. The application will then be processed. The case flag will be end dated effective the last day of the month in which the case is processed.

- b. If it has been more than 90 days from the date of the original application or past the 15 day IROD period; the new application will be processed following current procedures. The case flag will be end dated effective the last day of the month in which the case is processed.
7. If the original SSA disability determination is still pending;
  - a. The ES will review the information/application and images to determine if the consumer is reporting a change in their condition or a new medical condition. If so, the ES will determine if it is within 90 days of the original application or within 15 days of denial. If it was, a 'Reconsideration' Referral will be sent to PMDT. If information is received outside of these time frames, consumer will need to reapply and a new referral will be sent to PMDT. If an application is received after these time frames, it will be processed as a new application and a new referral sent to PMDT.
    - i. If PMDT determines consumer is now Tier 1, this application will be denied on the Negative Action page with a reason of 'Application Opened in Error' and eligibility determined on the PPF program block which will need to be rescinded. The case flag will be end dated effective the last day of the month in which the case is processed. The ES will change the Worker ID from the PMD Ghost Worker ID to the appropriate Worker ID.
    - ii. If PMDT determines consumer is now Tier 2, this application will be denied with a reason of 'Application Opened in Error' and Medikan eligibility will be determined. The case flag will remain in place to protect the integrity of the original PPF.
    - iii. If PMDT does not reverse their original decision, this application will be denied.
  - b. If the consumer does not report any new medical issues and it is past the 90 day disability application period but within a year of the PMDT denial, the application will be denied.
8. If the original SSA disability determination has been denied and the consumer does not meet general eligibility criteria for Family or Elderly and Disabled Medical programs; the application will be denied. The case flag will be end dated effective the last day of the month in which the case is processed
9. If current information is no longer available in EATSS, the ES will call the SSA to determine the disability status, then follow the processes outlined in Section 3.

**B. If the Disability Report comes through another channel**

1. When a consumer calls to report approval by the SSA. Ask if approval is for SSI or SSDI. If consumer doesn't know, then ask if they know the amount of the benefit. This is not conclusive, but can be helpful.
  - a. If the consumer has been approved for SSI or the amount is at or below the SSI limit (\$755 for those with both SSI and SSDI); tell the consumer that their case is being referred to Eligibility and they will be contacted if further information is needed. Set a Review Eligibility Task for the Eligibility queue.
  - b. If the consumer has been approved for SSDI or the amount is above the SSI limit; determine if it has been more than 90 days since the PPFD application date (located in case flag notes).
  - c. Final income verification will come through EATSS. If not available, tell consumer that their case is being referred to Eligibility and they will be contacted if further information is needed. Set a Review Eligibility Task for the Eligibility queue.

**6) CONCLUSION**

For questions or concerns related to this document, please contact one of the KDHE Medical Policy Staff listed below.

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