

Emergency Message

Effective Dates: 10/29/2021 - Present

Identification Number: EM-21064 REV
Intended Audience: All RCs/ARCs/ADs/FOs/TSCs
Originating Office: ORDP OISP
Title: Goldberg Kelly Payment Continuation Period
Type: EM - Emergency Messages
Program: Title XVI (SSI)
Link To Reference: See **References** at the end of this EM.

Retention Date: 12/21/2023

Summary of Changes

Section A.

Updated section A. to include language that explains the purpose of the EM is also to provide instructions for processing SSI post-eligibility non-medical reconsideration requests received between March 17, 2020, and April 7, 2022, for which there is no indication of a filing date.

Section D.

- Added section D – Reconsideration – no indication of a filing date
- Added language that details the criteria and instructions for processing reconsideration requests for which there is no indication of a filing date

A. Purpose

This EM provides field office (FO) technicians with revised procedures for processing Goldberg Kelly (GK) payment continuation for recipients who file a request for reconsideration more than 15 days after the date on the GK notice (i.e., after 10 days of presumed receipt) but within 65 days of the date on the GK notice (i.e., within 60 days of presumed receipt). We presume that the individual receives the notice five days after the date of the notice unless the individual can show us that it was not received within the five days. See SI 04005.012.

In addition, the EM provides instructions for processing SSI post-eligibility (P.E.) non-medical reconsideration requests that were received between March 17, 2020, and April 7, 2022, for which there is no indication of a filing date.

B. Background

Based on the Supreme Court decision in *Goldberg v. Kelly* and principles of due process under the Constitution, we provide SSI recipients advance notice of an adverse action before we take the action. We provide SSI recipients a Notice of Planned Action, also known as the GK notice. The GK notice explains the planned adverse action, the right to appeal the adverse action, and the right to GK payment continuation at the protected payment level (PPL) if the recipient appeals the adverse action within 10 days of receipt of the GK notice. Under our rules, we presume that the recipient receives the GK notice within five days after the date on the GK notice, which means within 15 days of the date on the GK notice.

The revised procedures recognize the challenges that the COVID-19 national public health emergency has presented for the vulnerable SSI population. The ability of SSI recipients to file a request for reconsideration has been significantly affected by the closure of our field offices to the public and delays in mail delivery. These and other workload-related challenges have also affected our ability to efficiently and timely process a request for reconsideration and ensure that we protect a recipient's constitutional due process right to GK payment continuation. We expect that these challenges will continue to affect our ability to timely process requests for GK payment continuation even after the end of the COVID-19 national public health emergency. To ensure that recipients have an adequate opportunity to exercise their constitutional right to receive GK payment continuation, despite these issues, recipients who file a request for reconsideration more than 15 days after the date on the GK notice, but within 65 days after the date on the GK notice shall also receive GK payment continuation, unless the recipient waives GK payment continuation, as explained below.

C. GK Payment Continuation Procedures

The following instructions apply to request for reconsiderations filed on or after the effective date of these instructions.

1. Request for reconsideration filed within 15 days of the date of the GK notice (i.e., within 10 days of presumed receipt)

When a recipient files a request for reconsideration within 15 days of the date on the GK notice, take the following actions.

- a. Record the reconsideration per SI 02301.310C.8; and
- b. Pay the PPL per SI 02301.320, **unless the recipient waives GK payment continuation in writing per SI 02301.415**. Do not suggest that a recipient waive GK payment continuation per SI 02301.310B.2.

2. Request for reconsideration filed more than 15 days after the date of the GK notice, but within 65 days of the date of the GK notice (i.e., more than 10 days after presumed receipt, but within 60 days of presumed receipt)

When a recipient files a request for reconsideration more than 15 days after the date on the GK notice, but within the 65-day appeal period (60 days plus 5 days for mailing), the recipient shall receive GK payment continuation, **unless the recipient waives it in writing**. Do not suggest that a recipient waive GK payment continuation per SI 02301.310B.2. Take the following actions to process the reconsideration and GK payment continuation as appropriate.

- a. Record the request for reconsideration per SI 02301.310C.8.
- b. Enter yes (Y) for the claimant's statement explaining late filing and evaluation of late filing request and enter 1 for established disposition of good cause for late filing continuation request on the appropriate MSSICS appeal screens. See MS 04420.015.
- c. For a recipient who does not waive GK payment continuation in writing, make a finding that good cause is found.
 1. Use the following statement to record the claimant's good cause statement for GK payment continuation. **"The request for reconsideration was filed timely for receipt of GK payment continuation."** See MS 04420.016
 2. Use the following statement to document the evaluation of the good cause finding. **"Recipient's Name has good cause for late filing of the reconsideration for receipt of GK payment continuation in accordance with EM-21064."** See MS 04420.017
- d. Pay the PPL per SI 02301.320.

3. Request for reconsideration filed after the 60-day appeal period

When a recipient files a request for reconsideration after the 60-day appeal period (i.e., more than 65 days after the date on the GK notice), develop for good cause for late filing of the request for reconsideration and GK payment continuation. Take the action(s) in a. or b. below as appropriate.

- a. If good cause for the late filing is found, provide GK payment continuation per the instruction in C.2 above unless the recipient waives it in writing. See the following instructions: [SI 04020.020C](#) (reconsideration development), [GN 03101.020](#) and [SI 04005.015B](#) (developing good cause and documenting the good cause determination).
- b. If good cause is not found, dismiss the request for reconsideration and consider reopening under administrative finality per [SI 04005.015B.1](#).

D. SSI Post-Eligibility (P.E.) Non-Medical Reconsideration Requests – Procedures When There is No Indication of a Filing Date

SSI P.E. non-medical reconsideration requests that meet the following criteria are considered timely filed and are eligible to receive GK payment continuation.

- The reconsideration was received between March 17, 2020, and April 7, 2022,
- There is no indication of a filing date for the reconsideration, and
- The reconsideration request has not been entered into MSSICS

Process SSI P.E. non-medical reconsideration requests that meet the above criteria per the instructions in C.1 of this EM. For an SSI P.E. non-medical reconsideration request that does not have a receipt date stamp and for which the mailing envelope is available, see [SI 04020.020B.1](#) to determine filing date and then process the reconsideration request per the instructions in section C of this EM.

EXAMPLE - SSI Reconsideration request – no receipt date stamp and no accompanying mailing envelope:

You are preparing to add a reconsideration request to MSSICS, and it does not have a receipt date stamp or an accompanying mailing envelope that can help determine its filing date. However, you know the reconsideration request was submitted between March 17, 2020, and April 7, 2022. Because the reconsideration request was submitted between March 17, 2020, and April 7, 2022, you consider it timely filed for the purpose of receiving GK payment continuation. To determine the filing date for the reconsideration request, you find the date on the associated GK notice and enter a filing date that is within 15 days of the date on the GK notice. The date on the GK notice is December 1, 2021. You can enter a filing date that is between December 1 – 16, 2021. By entering a date that is within 15 days of the GK notice, the SSI recipient will receive GK payment continuation unless the SSI recipient has waived GK payment continuation in writing.

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

- [GN 03101.020](#) Good Cause for Extending the Time Limit to File an Appeal
- [SI 02301.310](#) Appeal and the Right to Goldberg Kelly (GK) Payment Continuation
- [SI 02301.320](#) How to Pay the PPL
- [SI 02301.415](#) Form SSA-263-U2, Waiver of Supplemental Security Income Payment Continuation
- [SI 04005.012](#) Time Limit For Filing Appeal
- [SI 04005.015](#) Good Cause for Extending the Time Limit

