

Policy Instruction

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Title: **Section 111 Protection: Exemption of
Work Activity as a Basis for a
Medical CDR**

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DI 13001.005I, DI
13005.010, [http://policynet.ba.ssa](http://policynet.ba.ssa.gov/poms.nsf/links/0413005010)
.gov/poms.nsf/links/0413005010
DI 13005.020, DI 13005.055, DI
13010.165, DI 13010.170-175, DI
28003.005, DI
28005.015[http://policynet.ba.ssa](http://policynet.ba.ssa.gov/poms.nsf/links/0413005010)
.gov/poms.nsf/links/0413005010,
DI 40505.115, DI 40505.120, DI
40510.035, SM 01305.915B

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Section 111 Protection: Exemption of Work Activity as a Basis for a Medical CDR

A. Background

Section 111 of P.L. 160-170, The Ticket to Work and Work Incentives Improvement Act of 1999 created a new work incentive that encourages long-term disability beneficiaries to return to work by ensuring that work activity would not trigger a medical Continuing Disability Review (CDR). Effective January 1, 2002, a title II or concurrently entitled title II and title XVI disability beneficiary, who has been entitled to benefits for at least 24 months, will not have a medical CDR triggered solely as result of work activity. This new work incentive will be called "Section 111 protection."

Even if a beneficiary is protected under section 111, the beneficiary will be subject to regularly scheduled medical CDRs unless the individual is using a ticket as part of the Ticket to Work program. Work activity will still be investigated, with Trial Work Period (TWP) months being documented and Substantial Gainful Activity (SGA) determinations still being performed at the conclusion of the TWP.

B. Responsibilities

1. Field Offices (FO's) and Processing Centers (PC's)

Screen cases for potential entitlement to section 111 protection using eligibility requirements in "C" below. If the beneficiary is eligible for section 111 protection, defer the medical CDR as appropriate.

2. Disability Determination Services (DDS's)

Follow current CDR processing procedures using the Medical Improvement Review Standard (MIRS). Section 111 protection does not change any policies associated with MIRS or the CDR evaluation process. Please note at steps 7 and 8 of MIRS, do not count work during the current period of disability (or current period of extended Medicare) as work experience. See DI 28005.015.

C. Policy—Eligibility Requirements

1. Individual must be a title II or a concurrently entitled (title II and title XVI) disability beneficiary; and

For example, disabled worker, disabled adult child, disabled widow/widower, Medicare Qualified Government Employee (MQGE), railroad beneficiary based on disability, or a title XVI recipient in 1619 a or 1619 b status who is concurrently entitled.

2. Must have completed a 24-month qualifying period under title II entitlement

See "D" below for instructions on how to calculate the 24-month qualifying period.

D. Policy—24-month qualifying period

1. Introduction

In order to qualify for section 111 protection, the individual must complete a 24-month qualifying period under title II disability.

- The beneficiary only needs to have been entitled to the title II disability, not necessarily to have received 24 months of benefits.
- Months of eligibility for title XVI only cannot be counted towards the 24-month qualifying period.

- If the beneficiary does not meet the 24-month requirements to be deferred for the first work activity triggered medical CDR, he or she may meet the requirements for future CDRs.
- Once a beneficiary has qualified for section 111 protection, the protection continues until the end of that period of disability entitlement.
- In dual entitlement cases, (i.e. DIB/CDB or DIB/DWB) count back to the earliest month of entitlement.

2. Procedure—Calculating the 24-month qualifying period

When calculating the 24-month qualifying period, don't assume that the individual meets the qualifying period requirement because he/she has been entitled to disability benefits for 24 months. This is a very important issue when the beneficiary does not report his/her work activity timely. The beneficiary must have been entitled for 24 months at the time of the event that would have normally triggered a medical review.

The following information describes how to calculate the 24-month qualifying period based on the status of the beneficiary's entitlement.

a. Currently entitled based on Expedited Reinstatement (EXR)

- If the individual's current title II entitlement is based on EXR, the individual qualifies for section 111 protection. EXR reinstates the original period of disability that must have been terminated for SGA. To terminate for SGA, the individual must have completed a TWP and EPE. This recognizes that the individual had already been entitled for 24 months in this period of disability.
- For example: Beneficiary requests EXR on May 1, 2001. The request is approved with the month of his request. Section 111 protection is met on May 1, 2001.

b. Completed Less than 8 months of the TWP

- Use the current operating month and count back to the month of entitlement to determine if the individual has been entitled for 24 months.
- For example: Beneficiary was approved for title II disability with a month of entitlement of January 1998. The individual reports January 10, 2002 the completion of 3 months of the TWP (October, November, and December of 2001). Count from January 2002

(current operating month) back to January 1998. 24-month qualifying period is met.

c. Completed TWP , SGA not performed

- Use the first month of the EPE and count back to the month of entitlement to determine if the individual has been entitled for 24-months.
- For example: Beneficiary was approved for title II disability with a month of entitlement of February 2000. The individual has completed the TWP by working in March, April, May, June, July, August, September, October, and November of 2001 but is not working above SGA. The CR becomes aware of the work activity in January of 2002 and does the TWP determination that month. Since the TWP has been completed, count back from the first month of the EPE, which is December 2001 (first month after the 9th month of the TWP) to the month of entitlement, February 2000. The beneficiary does not meet the 24-month qualifying period. If a medical file reviewed required a medical CDR, the file would be sent to the DDS.

d. Completed TWP, SGA performed

In a retroactive work cessation case, determine if a medical CDR or MFR was completed at the conclusion of the TWP.

1. Section 111 protection applied at conclusion of TWP

- Section 111 protection will apply at the month of cessation due to SGA. Once the beneficiary has qualified for Section 111 protection, he or she will have the protection for that period of disability.

2. Medical CDR or a Medical File Review (MFR) was NOT completed at the conclusion of TWP

- In the event a retroactive work decision is made, use the first month of the EPE and count back to the month of entitlement to determine if the individual has been entitled for 24 months. See example in "C" above.

3. MFR completed and no medical issue existed, or a Medical CDR was completed at the conclusion of TWP

- If the beneficiary did not meet the 24-month qualifying period at the conclusion of the TWP, or was not under section 111 protection, and a medical CDR or MFR was done, use the month of cessation and count back to the month of entitlement.
- For example: Month of entitlement is March 1998. Beneficiary

completed TWP in January 2000. EPE began February 2000. Beneficiary did not have section 111 protection in January 2000 because the law had not been implemented, so the file was sent to DDS for a medical CDR at the conclusion of the TWP. CDR was approved and benefits continued. Beneficiary did not work above SGA until December 2001. When the individual reports the work activity, the CR counts from the month of cessation back to the month of entitlement to determine if the 24-month qualifying period is met. In this example, the 24-month qualifying period is met.

E. When Section 111 protection will apply

1. Background

When a beneficiary is initially approved for disability or in subsequent medical reviews, a medical improvement diary is established. The three types of diaries are Medical Improvement Expected (MIE), Medical Improvement Possible (MIP) and Medical Improvement Not Expected (MINE). See DI 13005.010 for a definition of each diary. Depending on the type of medical improvement diary, work activity can prompt a medical review before the regularly scheduled diary date.

2. Process

Determine what type of medical diary has been established for the beneficiary and using one of the following charts below, apply section 111 protection when appropriate. For a concurrently entitled beneficiary, if the medical CDR is deferred on the title II portion, the deferral also applies for title XVI, including 1619 initial eligibility and 1619 status change CDR's.

a. Beneficiary has a MIE diary

See DI 13005.055B for determining whether a MIE diary is scheduled. To identify MBR codes see SM 01305.915B. If the beneficiary does not meet the eligibility requirements for Section 111 protection, apply current operating policy.

Work Activity	Current Operating Policy *If beneficiary is a "ticket user" exception may apply. Instructions will follow.	Beneficiary is eligible for Section 111 protection
Beneficiary reports SGA or Non-SGA level	1) Document work activity based on	Defer the medical CDR

work	instructions in DI 13010. 2) Follow instructions in DI 13005 for initiating the medical CDR	
Beneficiary selected for a medical review or has a matured medical diary	1) Follow instructions in DI 13005.020 or DI 28003.005 for screening out cases. 2) If CDR is needed follow instructions in DI 13005 for initiating the CDR	Follow current operating policy
Beneficiary completes TWP	1) Perform medical file review process (DI 28003.005). 2) If medical CDR is needed follow instructions in DI 13005 for initiating the CDR.	Defer medical CDR
Beneficiary or a third party reports medical improvement	Follow instructions in DI 13005.005 C and D to initiate the medical CDR	Follow current operating policy
Additional evidence received which raises a medical CDR issue. (See DI 13001.005I)	Follow instructions in DI 13005 for initiating the CDR	Follow current operating policy if information only pertains to medical evidence

b. Beneficiary has a MIP diary

If the beneficiary does not meet the eligibility requirement for Section 111 protection, apply current operating policy. Identify MIP diaries by Reason code 3 in item 17 on the SSA-831-U5, or item 23c of the SSA-832-U5/SSA-833-U5. To identify MBR codes see SM 01305.915B.

Work Activity	Current Operating Policy * If beneficiary is a "ticket user" exception may apply. Instructions will follow.	Beneficiary is eligible for Section 111 protection
Beneficiary reports	1) Document work activity	Follow current

SGA or Non-SGA level work TWP not completed	based on instructions in DI 13010. 2) Establish diary for TWP	operating policy
Beneficiary selected for a medical review or has a matured medical diary	1) Follow instructions in DI 13005.020 or DI 28003.005 for screening out cases. 2) If CDR is needed follow instructions in DI 13005 for initiating the CDR	Follow current operating policy
Beneficiary completes TWP	1) Perform medical file review process (DI 40510.040). 2) If medical CDR is needed follow instructions in DI 13005 for initiating the CDR.	Defer medical CDR
Beneficiary or a third party reports medical improvement	Follow instructions in DI 13005.005 C and D to initiate the medical CDR.	Follow current operating policy
Additional evidence received which raises a medical CDR issue. (See DI 13001.005I)	Follow instructions in DI 13005 for initiating the CDR.	Follow current operating policy if information only pertains to medical evidence

c. Beneficiary has a MINE diary

If the beneficiary does not meet the eligibility requirements for section 111 protection, apply current operating policy. Identify MINE diaries by Reason code 7 in item 17 on the SSA-831-U5, or item 23c of the SSA-832-U5/SSA-833-U5. To identify MBR codes see SM 01305.915B.

Work Activity	Current Operating Policy * If beneficiary is a "ticket user" exception may apply. Instructions will follow.	Beneficiary is eligible for Section 111 protection
Beneficiary reports SGA or Non-SGA level work	1) Document work activity based on instructions in DI 13010.	Follow current operating policy

TWP not completed	2) Establish diary for TWP.	
Beneficiary selected for a medical review or has a matured medical diary	1) Follow instructions in DI 13005.020 or DI 28003.005 for screening out cases. 2) If CDR is needed follow instructions in DI 13005 for initiating the CDR.	Follow current operating policy
Beneficiary completes TWP	1) Perform medical file review process (DI 40510.040). 2) If medical CDR is needed follow instructions in DI 13005 for initiating the CDR.	Defer medical CDR
Beneficiary or a third party reports medical improvement	Follow instructions in DI 13005.005 C and D to initiate the medical CDR	Follow current operating policy
Additional evidence received which raises a medical CDR issue. (See DI 13001.005)	Follow instructions in DI 13005 for initiating the CDR.	Follow current operating policy if information only pertains to medical evidence

F. Procedure—Deferring the medical CDR in section 111 cases

1. Defer the medical CDR until either:

- The Commissioner determines that a medical review is appropriate; or
- The individual or a third party reports medical improvement (see DI 13005.055, DI 40505.115 or DI 40505.120).

2. Annotate the remarks section of the SSA-833, SSA-899 or SSA-882

- "Medical review not required, section 111 protection applied".
- Instruction on how to complete the SSA-833 are in DI 13010.170-175, and for the SSA-899 in DI 40510.035 and an explanation of the form SSA-882 is in DI 13010.165).

3. Use the special message field on the MBR

- Record "Section 111 protection applied".

4. Title II file in FO

· Folder can be sent to the appropriate Processing Center until the regularly scheduled medical diary matures or the individual alleges medical improvement.

G. Policy—Case needs a DDS determination

Even though the beneficiary qualifies for section 111 protection, a case needing a determination related to Impairment Related Work Expenses (IRWE) or Blind Work Expenses (BWE) or Stat blind decision for comparable work or adjusted blind onset, should be forwarded to DDS for a determination. If medical improvement is found, the case can be medically ceased.

Notes:

· Work CDR's currently under development that require a full medical CDR will not have section 111 protection if the medical CDR is initiated by the FO or PC before January 1, 2002. The medical CDR will be initiated if the FO or PC has mailed a letter informing the beneficiary the case is being reviewed.

· The PCCDR program has been reprogrammed to assist in screening cases for Section 111 protection during the medical file review process. Until the PCCDR program is revised, you need to manually write on the decision forms the remark, "section 111 protection applied."

All program related and technical questions should be directed to your Regional Office (RO) support staff or PC OA staff. RO support staff or PC OA staff may refer questions or problems to their Central Office contacts.