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POMS Section: GN 00204.008

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TN 61 (03-05)

## GN 00204.008 Misinformation - Applications

### A. Background

Sections 202(j) and 1631(e) of the Social Security Act provide relief to claimants who lost benefits because they failed to file an application timely due to misinformation given by an SSA employee. This provision provides for establishing a “deemed” filing date when an individual satisfactorily demonstrates that information provided by SSA deterred him or her from filing a timely application and resulted in a loss of monthly title II or title XVI benefits.

The law is effective for monthly title II benefits payable after 12/82 based on misinformation furnished after 12/31/82. For title XVI, the law is effective for benefits payable after 12/89 based on misinformation given on or after 12/19/89. The title II application filing policies and procedures contained in this subchapter apply to the title XVI program unless specified otherwise.

The law does not apply to title XVIII (Medicare) of the Social Security Act. See the procedures in [HI 00805.170](#) and [HI 00805.205](#) for instructions for determining whether equitable relief applies.

### B. Introduction

The misinformation provision allows SSA to rectify situations where misinformation deterred a claimant or proper applicant from filing for benefits. Policies have been developed which:

- Define misinformation;
- Provide that the issue of misinformation may be raised at any time;
- Include related aspects of entitlement within the scope of the provisions, such as the amount of benefits; and
- Resolve the issue in favor of the claimant, unless there is reasonable doubt or contradictory evidence exists.

### C. Definitions

#### 1. Misinformation

Misinformation is information that was not correct, complete or accurate or was misleading which:

- Is provided by an SSA official or employee who gives incorrect, misleading or incomplete information in view of the facts provided or of which he or she was aware or should have been

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aware;

- Is provided orally, in writing, or in the form of printed material (see [GN 00204.008F.](#)) that is specific to the case;
- Relates to aspects of entitlement to, or eligibility for, benefits or payments such as the benefit amount or whether payment can be made based on earnings;
- Is provided in connection with either filing a claim or an inquiry about or interest in a possible claim or potential benefits, where information was actively sought; and
- Deters an individual from applying for monthly title II or title XVI benefits.

## 2. Preferred Evidence

Preferred evidence of misinformation is printed or written evidence such as a notice from SSA. (See [GN 00204.008F.1.](#))

## 3. Secondary Evidence

Secondary evidence of misinformation is any other evidence, including other corroborative evidence that can be used in the absence of primary evidence. (See [GN 00204.008F.2.](#))

## D. Policy - General

### 1. Claimant Is Alive

If the individual is alive and has not filed a claim for benefits, a formal application is required.

### 2. Death Cases

In death cases, survivors can allege misinformation to establish a “deemed” filing date on behalf of the deceased. (A formal application is required if none has been filed.)

### 3. Filing Date

We will “deem” an earlier filing date if misinformation is established. (See [GN 00204.008E.](#))

### 4. Burden of Proof

When misinformation is alleged, the claimant/proper applicant (see [GN 00204.003](#)) must prove that he or she failed to apply for benefits because misinformation was given.

### 5. State Department/American Embassies/Consulates Employees (Foreign Claims)

Any reference to SSA employees also includes State Department employees since they stand in the place of SSA employees.

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## 6. Appeal Rights

A claimant or proper applicant may allege misinformation at any time (i.e., before, during or after he or she has filed an application). The determination of the filing date based upon misinformation is an initial determination for which there are appeal rights. Reconsideration procedures are stated in [GN 03102.100](#) through [GN 03102.500](#). Claimants are notified of the misinformation determination using the appropriate notices as displayed in [NL 00725.005](#).

## 7. Res Judicata

Similar to other initial determinations, the doctrine of administrative res judicata applies and limits the number of times SSA will develop an allegation of misinformation. (See [GN 03101.160](#).)

## 8. Consider Other Policies

Develop allegations of misinformation when other established policies cannot remedy the situation (e.g. reopening, open applications, administrative finality, protective filing or recent legislative or regulatory changes, etc.).

## E. Policy - "DEEMED" Filing Date

Where it is determined that the misinformation provision applies, the "deemed" filing date is the later of:

- The date the misinformation was given; or
- Any date after all requirements of eligibility are met.

## F. Policy - Acceptable Evidence

### 1. Acceptable Preferred Evidence

Acceptable preferred evidence includes, but is not limited to, the following:

- A document, printed material, notice or letter issued by SSA to the claimant after information was specifically requested, which contains misinformation;
- An SSA record of a telephone call, letter or an in-person contact; or
- Other written material from SSA reflecting misinformation.

### 2. Acceptable Secondary Evidence

There may be little concrete or documentary evidence beyond the claimant's statement because:

- Interview and inquiry discussions are not always documented;
- Certain documentation in claims folders may have been purged; or
- Personnel turnover affects our ability to reconstruct the facts and events relevant to a case.

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### **3. Examples of Secondary Evidence**

Acceptable secondary evidence includes, but is not limited to:

#### **a. Statements**

Statements regarding the misinformation should include:

- Dates of the alleged contact,
- How the contact was made,
- Who gave the misinformation,
- The event or situation that created the need for the contact (i.e., why was the inquiry made), and
- The information that was given and the questions asked by the claimant as well as the information given and the questions asked by the SSA employee at the time of the contact.

#### **b. Corroborative information**

Corroborative information is information given by other people who were present at the time misinformation was given (e.g. a neighbor who came to the FO with the claimant) or relevant information/statements taken from identified SSA employees.

#### **c. Management's assessment**

Management's assessment of the likelihood that misinformation was given.

#### **d. Other Information**

Any other information regarding the claimant's alleged contact.

## **G. Kinds of Information that are Misinformation - Title II**

Examples of situations where misinformation was given include, but are not limited to, the following:

### **1. Failure to Develop for Additional Earnings**

A claimant inquires about potential benefits. An SSA report of earnings (e.g., a summary earnings query) indicates a lack of insured status. However, SSA failed to develop for missing quarters and consequently earnings are not found which would yield insured status. Failure of the employee to develop in accordance with our policies and procedures and/or failure to inform the individual that missing earnings information could be documented by pay slips, wage stubs, etc., deters the claimant from filing.

### **2. Failure to List Auxiliaries**

When filing for benefits for himself, a wife and two children, a NH mentions another child living in another household. He was not advised that the child might qualify for benefits. As a result, the information is not