

Alert No. 2016-6

U.S. ASR Hip Settlement Alert – 8/26/16

Calculating Loss Amounts for Matrix Level VII Lost Earnings Claims

- 1. Introduction.** Section 8.4.15.1.1 of the Settlement Agreement and the PART B Award Schedule provide that a QUSC may be eligible for extraordinary unreimbursed out-of-pocket loss of earnings at the discretion of the SOC and the Team. This Alert describes the process by which the Claims Processor will calculate losses for Matrix Level VII Lost Earnings claims.
- 2. Catastrophic Loss of Earnings under Matrix Level VII.** Section 8.4.15.1.1 and the PART B Award Schedule provide that a QUSC may be eligible for extraordinary unreimbursed out-of-pocket loss of earnings at the discretion of the SOC and the Team. The PART B Award Schedule establishes the threshold for eligibility as 20% of the QUSC’s aggregate annual income for the two years preceding the ASR Index Surgery, not to exceed \$150,000. For the purposes of this Alert, Lost Earnings are “catastrophic” and eligible for an award if the QUSC demonstrates that the Total Proven Losses exceed the Threshold Amount.
- 3. Financial Documentation Requirements.** QUSCs must submit year-end tax documentation, such as Form W-2s and/or Form 1040s, for the Baseline Period and any years that the QUSC is claiming a loss and earned some wages or income. The Claims Processor will not calculate losses for any year lacking supporting documentation, unless the claimant can prove that he or she was totally disabled and unable to work in any vocation. The Claims Processor will use all earnings documents the QUSC submits in the loss calculation, and the QUSC will not have the option to withdraw or request submitted earnings documentation not be used in the loss calculation.
- 4. Calculating Level VII Loss Amounts for Lost Earnings.** In calculating Lost Earnings, the Claims Processor shall apply the following procedure:

 - (a) Determine if the Lost Earnings were proximately caused by an ASR Index Surgery, an ASR Revision Surgery, or a Covered Re-Revision Surgery.
 - (b) Determine the Baseline Period. The Baseline Period is either:

 - (1) Two consecutive calendar years before the calendar year of the QUSC's ASR Index Surgery; or
 - (2) The calendar year immediately preceding the year of the ASR Index Surgery and the calendar year of the ASR Index Surgery, if the ASR Index Surgery occurred on or after November 1st and on or before December 31st.

- (c) Calculate the Total Baseline Earnings. This is the sum of the annual wages, tips, commissions, revenue, or other income that the QUSC earned during the selected Baseline Period and proven by Year-end Tax Documentation.
- (d) Calculate the Threshold Amount. This is the Total Baseline Earnings multiplied by 20% and represents the amount the QUSC must prove in losses to be eligible.
- (e) Calculate the Average Baseline Earnings. This is the annual average of the wages, tips, commissions, revenue, or other income that the QUSC earned during the selected Baseline Period and proven by Year-end Tax Documentation.
- (f) Calculate the Baseline Monthly Earnings. This is the Baseline Earnings divided by twelve.
- (g) Determine the Realized Loss Period. This period is the number of consecutive months in which the QUSC submitted financial documentation that support a QUSC's earnings in years in which he or she was partially disabled. The Realized Loss Period can start the month after the month of the ASR Index Surgery and can extend through December 2013. For example, if the ASR Index Surgery occurred on January 15, 2007, the Realized Loss Period could be a maximum of 83 months, or the number of months from February 2007 through and including December 2013.
- (h) Calculate the Actual Earnings for the Realized Loss Period. This is the sum of all wages, tips, commissions, revenue, or other income that the QUSC earned during the Realized Loss Period and proven by the financial documentation.
- (i) Calculate Actual Monthly Earnings. This is the Actual Earnings divided by the Realized Loss Period.
- (j) Calculate Monthly Lost Earnings. This is the difference between the Baseline Monthly Earnings and the Actual Monthly Earnings.
- (k) Calculate the Total Proven Losses. This is the total number of months in the Realized Loss Period multiplied by the Monthly Lost Earnings.
- (l) Determine Eligibility and the Realized Lost Earnings. If the Total Proven Losses are greater than the Threshold Amount, the QUSC is eligible for Realized Lost Earnings, the amount of which will be equal to the Total Proven Losses. If the Total Proven Losses are not greater than the Threshold Amount, the QUSC is not eligible for an award and the Realized Lost Earnings are zero.
- (m) Determine the Social Security Retirement Age for the QUSC. If the QUSC is eligible for Realized Lost Earnings, the Claims Processor will determine the Social Security Retirement Age for the QUSC based on the QUSC's year of birth, as defined by the Social Security Administration:

Year of Birth	Full Retirement Age
1937 or Earlier	65
1938	65 and 2 months
1939	65 and 4 months
1940	65 and 6 months
1941	65 and 8 months
1942	65 and 10 months
1943-1954	66
1955	66 and 2 months
1956	66 and 4 months
1957	66 and 6 months
1958	66 and 8 months
1959	66 and 10 months
1960 and later	67

(n) Determine Anticipated Loss Period. If the QUSC is eligible for Realized Lost Earnings and the QUSC submitted all of the requisite documents to prove earnings, the Claims Processor will select an Anticipated Loss Period based on the QUSC's Social Security Retirement Age. This is the greater of:

- (1) The number of months starting with January 2014 through and including the month that the QUSC reaches Social Security Retirement Age; or
- (2) The 36-month period starting with January 2014 through and including December 2016.

(o) Calculate the Anticipated Lost Earnings. This is the Monthly Lost Earnings multiplied by the Anticipated Loss Period.

5. **Effect of Missing Documents.** If a QUSC does not provide sufficient Lost Earnings Documents for the Claims Processor to calculate Baseline Monthly Earnings or Actual Monthly Earnings for the Loss Period, the QUSC will not be eligible for a Lost Earnings Award.
6. **Questions.** If you have any questions about this Alert, call or email your assigned Claims Processor contact, email us at claimsprocessor@usarhipsettlement.com, or call 1 (877) 391-3169.