

U.S. ASR HIP SETTLEMENT

MDL 2197

Alert No. 2017-1

U.S. ASR Hip Settlement Alert – 4/28/17

Calculating Payment Amounts for Matrix Level VII Lost Earnings Claims in the 2013 Settlement Agreement

- 1. Introduction.** The Settlement Agreement and the PART B Award Schedule provide that QUSCs 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 methodology approved by the SOC to calculate the amount of payments to claimants with eligible Matrix Level VII Lost Earnings claims. Capitalized terms not defined in this alert shall have the same meanings given to such terms in the 2013 Settlement Agreement, the 2013 PART B Award Schedule, or the Claims Processor’s Alert No. 2016-6, “*Calculating Loss Amounts for Matrix Level VII Lost Earnings Claims.*”
- 2. Authority to Set Payment Methodology.** The 2013 Settlement Agreement directs the SOC to set the criteria the Claims Processor will use to evaluate and pay Lost Earnings Claims. Section 8.4.15.1.1 states, “the categories of losses under this Section 8.4.15 can include actual extraordinary unreimbursed out-of-pocket loss of earnings, subject to criteria (including thresholds, maximum awards, and other limitations, which may, in part, be based on the percentage of annual out-of-pocket income lost) that will be within the sole discretion of the SOC, after consulting with the Team.”
- 3. Calculation of Loss Amounts for Matrix Level VII Lost Earnings Claims.** The Claims Processor issued Alert No. 2016-6, entitled “*Calculating Loss Amounts for Matrix Level VII Lost Earnings Claims.*” That document outlined the procedure by which the Claims Processor would evaluate financial records to determine each claimant’s eligibility to receive a Lost Earnings award. Additionally, the procedure described the calculation of each claimant’s Realized Lost Earnings and Anticipated Lost Earnings. The Claims Processor has issued notifications to eligible claimants communicating the Realized and Anticipated Lost Earning amounts.
- 4. Methodology for Calculating Payments to Eligible Claimants.** Pursuant to the authority of Section 8.4.15.1.1, the SOC has evaluated data on Lost Earnings Claims submitted under Matrix Level VII and developed the following methodology to calculate payments to eligible claimants.

 - (a) Maximum Payment Amount.** The PART B Award Schedule instituted a maximum payment amount for eligible Lost Earnings Claims, stating, “under no circumstances will

the benefit exceed \$150,000.” The SOC has established threshold amounts that, if reached by a claimant, will result in a maximum payment. Claimants who have proven either (1) Realized Lost Earnings exceeding \$300,000, or (2) combined Realized and Anticipated Lost Earnings exceeding \$400,000, shall receive the maximum award of \$150,000.

(b) Loss Range Payment Percentage. Lost Earnings Claims that do not qualify for a maximum payment of \$150,000 shall be subject to reduction. Eligible claimants shall receive a payment that represents a percentage of their total proven Realized and Anticipated Lost Earnings. The Claims Processor will calculate the final payment amount for each claimant by applying a different payment percentage to that claimant’s proven losses in different ranges. For example, a claimant who has established proven Realized Losses of \$50,000 shall receive an award of \$30,000 (75% of the losses up to \$20,000 and 50% of the losses between \$20,000 and \$50,000). The following payment percentages shall apply to eligible Lost Earnings Claims.

| | Range of Proven Losses | Payment % for Realized Losses in Range | Payment % for Anticipated Losses in Range |
|----|-------------------------------|---|--|
| 1. | \$0-\$20,000 | 75% | 50% |
| 2. | \$20,000-\$50,000 | 50% | 40% |
| 3. | \$50,000-\$100,000 | 30% | 30% |
| 4. | \$100,000-\$250,000 | 15% | 20% |
| 5. | \$250,000-\$400,000 | 10% | 10% |

(c) Adjustments for Age. Lost Earnings Claims that do not qualify for a maximum payment of \$150,000 may receive an upward adjustment depending on the age of the claimant at the time of the ASR Revision Surgery. Claimants who were 40 years old or younger at the time of the ASR Revision Surgery will receive a 20% increase, while claimants who were between ages 41 and 50 at the time of the ASR Revision Surgery will receive a 10% increase.

5. Calculation Examples. The Claims Processor prepared three sample calculations, attached as Exhibit A to this Alert. These examples illustrate the manner in which the Claims Processor will apply these calculations to eligible Lost Earnings Claims and derive the Lost Earnings Award Amount payable to each eligible claimant.

6. Notification of Lost Earnings Award Amounts. The Claims Processor has issued Preliminary and Final Determinations to eligible Lost Earnings Claimants explaining the calculations of Realized and Anticipated Lost Earnings. The Claims Processor will not issue revised Preliminary or Final Determinations that apply the calculations described in this alert. Instead, the Claims Processor will create a report, accessible to all Primary Counsel, which will allow each attorney to know the Lost Earnings Award Amount for each eligible claimant that he or she represents. The Claims Processor will be responsible for communicating directly with Unrepresented Claimants about their Lost Earnings Award Amounts.

- 7. No Right of Appeal.** Claimants who submitted Lost Earnings Claims were afforded the opportunity to contest the loss calculation and, if necessary, appeal the claim to the Special Master. No claimant may contest or appeal the application of the calculations described in this alert as these are administered under the sole discretion of the SOC.
- 8. Timing and Amount of Payments.** The Claims Processor shall initiate the payment process for eligible Lost Earnings Claims by placing these claims on the 5/1/17 Funding Report. Lost Earnings Award Amounts shall be subject to the Unrepresented Claimant Reduction, the Deceased Product User Reduction, and the Common Benefit Fee Withholdings applicable to all EIF Claims.
- 9. 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.

Exhibit A. Example 1: Lost Earnings Calculation with Maximum Award Amount

Section I: Claimant Information

| | | |
|----|--|------------------|
| 1. | Claimant Name | Sample, Claimant |
| 2. | Realized Lost Earnings | \$275,000.00 |
| 3. | Anticipated Lost Earnings | \$150,000.00 |
| 4. | Claimant's Age at the Time of the ASR Revision Surgery | 41-50 |

Section II: Lost Earnings Award Information

| | | | | |
|---|---|------------------------|---------------------|--------------------------|
| 1. | Total Lost Earnings Amount (Sum of Realized and Anticipated Lost Earnings) | \$425,000.00 | | |
| 2. | Is the Claimant eligible for the maximum award based on Realized Lost Earnings or Total Lost Earnings? | Yes | | |
| | (a) Are the Claimant's Realized Lost Earnings Greater Than or Equal to \$300,000? | No | | |
| | (b) Are the Claimant's Total Lost Earnings Greater Than or Equal to \$400,000? | Yes | | |
| 3. | Realized Lost Earnings Amount and Loss Percentage | | | |
| | Loss Amount Tier | Loss Percentage | Total Losses | Calculated Losses |
| | \$0-\$20,000 | 75% | N/A | N/A |
| | \$20,000-\$50,000 | 50% | N/A | N/A |
| | \$50,000-\$100,000 | 30% | N/A | N/A |
| | \$100,000-\$250,000 | 15% | N/A | N/A |
| | \$250,000-\$300,000 | 10% | N/A | N/A |
| Realized Lost Earnings Award Amount | | | N/A | |
| 4. | Anticipated Lost Earnings Amount and Loss Percentage | | | |
| | Loss Amount Tier | Loss Percentage | Total Losses | Calculated Losses |
| | \$0-\$20,000 | 50% | N/A | N/A |
| | \$20,000-\$50,000 | 40% | N/A | N/A |
| | \$50,000-\$100,000 | 30% | N/A | N/A |
| | \$100,000-\$250,000 | 20% | N/A | N/A |
| | \$250,000-\$400,000 | 10% | N/A | N/A |
| Anticipated Lost Earnings Award Amount | | | N/A | |
| 5. | Pre-Adjustment Total Lost Earnings Award Amount | \$150,000.00 | | |
| 6. | Is the Claimant eligible for the Age Adjustment? | No | | |
| | (a) Age Adjustment Percentage | N/A | | |
| | (b) Age Adjustment Amount | N/A | | |
| 7. | Lost Earnings Award Amount | \$150,000.00 | | |

Exhibit A. Example 2: Standard Lost Earnings Calculation without Age Adjustment

Section I: Claimant Information

| | | |
|----|--|------------------|
| 1. | Claimant Name | Sample, Claimant |
| 2. | Realized Lost Earnings | \$150,000.00 |
| 3. | Anticipated Lost Earnings | \$100,000.00 |
| 4. | Claimant's Age at the Time of the ASR Revision Surgery | Older Than 50 |

Section II: Lost Earnings Award Information

| | | | | | |
|----|---|---|------------------------|---------------------|--------------------------|
| 1. | Total Lost Earnings Amount (Sum of Realized and Anticipated Lost Earnings) | | | \$250,000.00 | |
| 2. | Is the Claimant eligible for the maximum award based on Realized Lost Earnings or Total Lost Earnings? | | | No | |
| | (a) Are the Claimant's Realized Lost Earnings Greater Than or Equal to \$300,000? | | | No | |
| | (b) Are the Claimant's Total Lost Earnings Greater Than or Equal to \$400,000? | | | No | |
| 3. | Realized Lost Earnings Amount and Loss Percentage | | | | |
| | | Loss Amount Tier | Loss Percentage | Total Losses | Calculated Losses |
| | | \$0-\$20,000 | 75% | \$20,000.00 | \$15,000.00 |
| | | \$20,000-\$50,000 | 50% | \$30,000.00 | \$15,000.00 |
| | | \$50,000-\$100,000 | 30% | \$50,000.00 | \$15,000.00 |
| | | \$100,000-\$250,000 | 15% | \$50,000.00 | \$7,500.00 |
| | | \$250,000-\$300,000 | 10% | \$0.00 | \$0.00 |
| | | Realized Lost Earnings Award Amount | | | \$52,500.00 |
| 4. | Anticipated Lost Earnings Amount and Loss Percentage | | | | |
| | | Loss Amount Tier | Loss Percentage | Total Losses | Calculated Losses |
| | | \$0-\$20,000 | 50% | \$20,000.00 | \$10,000.00 |
| | | \$20,000-\$50,000 | 40% | \$30,000.00 | \$12,000.00 |
| | | \$50,000-\$100,000 | 30% | \$50,000.00 | \$15,000.00 |
| | | \$100,000-\$250,000 | 20% | \$0.00 | \$0.00 |
| | | \$250,000-\$400,000 | 10% | \$0.00 | \$0.00 |
| | | Anticipated Lost Earnings Award Amount | | | \$37,000.00 |
| 5. | Pre-Adjustment Total Lost Earnings Award Amount | | | \$89,500.00 | |
| 6. | Is the Claimant eligible for the Age Adjustment? | | | No | |
| | (a) Age Adjustment Percentage | | | N/A | |
| | (b) Age Adjustment Amount | | | N/A | |
| 7. | Lost Earnings Award Amount | | | \$89,500.00 | |

Exhibit A. Example 3: Standard Lost Earnings Calculation with Age Adjustment

Section I: Claimant Information

| | | |
|----|--|------------------|
| 1. | Claimant Name | Sample, Claimant |
| 2. | Realized Lost Earnings | \$75,000.00 |
| 3. | Anticipated Lost Earnings | \$25,000.00 |
| 4. | Claimant's Age at the Time of the ASR Revision Surgery | 40 or Younger |

Section II: Lost Earnings Award Information

| | | | | | |
|----|---|-------------------------|------------------------|---------------------|--------------------------|
| 1. | Total Lost Earnings Amount (Sum of Realized and Anticipated Lost Earnings) | | | \$100,000.00 | |
| 2. | Is the Claimant eligible for the maximum award based on Realized Lost Earnings or Total Lost Earnings? | | | No | |
| | (a) Are the Claimant's Realized Lost Earnings Greater Than or Equal to \$300,000? | | | No | |
| | (b) Are the Claimant's Total Lost Earnings Greater Than or Equal to \$400,000? | | | No | |
| 3. | Realized Lost Earnings Amount and Loss Percentage | | | | |
| | | Loss Amount Tier | Loss Percentage | Total Losses | Calculated Losses |
| | | \$0-\$20,000 | 75% | \$20,000.00 | \$15,000.00 |
| | | \$20,000-\$50,000 | 50% | \$30,000.00 | \$15,000.00 |
| | | \$50,000-\$100,000 | 30% | \$25,000.00 | \$7,500.00 |
| | | \$100,000-\$250,000 | 15% | \$0.00 | \$0.00 |
| | | \$250,000-\$300,000 | 10% | \$0.00 | \$0.00 |
| | Realized Lost Earnings Award Amount | | | \$37,500.00 | |
| 4. | Anticipated Lost Earnings Amount and Loss Percentage | | | | |
| | | Loss Amount Tier | Loss Percentage | Total Losses | Calculated Losses |
| | | \$0-\$20,000 | 50% | \$20,000.00 | \$10,000.00 |
| | | \$20,000-\$50,000 | 40% | \$5,000.00 | \$2,000.00 |
| | | \$50,000-\$100,000 | 30% | \$0.00 | \$0.00 |
| | | \$100,000-\$250,000 | 20% | \$0.00 | \$0.00 |
| | | \$250,000-\$400,000 | 10% | \$0.00 | \$0.00 |
| | Anticipated Lost Earnings Award Amount | | | \$12,000.00 | |
| 5. | Pre-Adjustment Total Lost Earnings Award Amount | | | \$49,500.00 | |
| 6. | Is the Claimant eligible for the Age Adjustment? | | | Yes | |
| | (a) Age Adjustment Percentage | | | 20% | |
| | (b) Age Adjustment Amount | | | \$9,900.00 | |
| 7. | Lost Earnings Award Amount | | | \$59,400.00 | |