

*In considering whether a Medicare Set-Aside is required in a claim being settled, there are two “classes” of claimants. Any claimant who is at least 65 years of age, and is already on Medicare or is eligible for Medicare at the time of settlement, is considered a class I claimant.*

*A class II claimant is one who is over 62.5 years of age, whose settlement amount exceeds certain thresholds, and who is likely to become Medicare eligible in 24 months. The following keys can help identify claimant files requiring a MSA for these class I and II claimants.*

**Date of Birth:** Check Date of Birth for: (1) Claimants over 65 years of age, and (2) Claimants over 62.5 years of age. The claimant over 65 years will immediately be identified as a Class I claimant (already on Medicare or eligible). When you see claimants over 62.5 years of age, begin a 2-prong test to look at reserves for Class II situations. Keep in mind that CMS also looks at DOB at the time of settlement, which may require you to consider how long it may take you to settle a case. If it going to take six months or longer to settle a case, you may want to look at 64.5 years of age and 62 years of age as your audit points.

**Disability Status:** Claimants classified as permanently and totally disabled (PTD) are either Medicare beneficiaries already or Medicare beneficiaries waiting to happen. If you have a PTD status in your claims system, an MSA Assessment is necessary to learn of the claimant's Medicare eligibility status before proceeding with settlement. Regardless of age, individuals on SSDI for 2 years or longer are entitled to Medicare, therefore you may have a Class I claimant.

**Lost Time:** Look for claimants that have not returned to work in over a year. If you see lost time exceeding 12 months on a claim, obtain an MSA Assessment to learn of the claimant's Medicare eligibility status before proceeding with settlement.

**SSDI Entitlement Date:** Some claims systems track this information and some don't. If yours does, this information is useful and commonly known in reverse offset states. Please note that if the SSDI date is over 24 months, you have a Medicare beneficiary. An SSDI date less than 24 months equals “reasonable expectation” and part 1 of a two-prong test has been met.

**Reserves:** Watch for cases with reserves over \$250,000. A case with over \$250,000, in reserves, and that also meets the 62.5 years of age, disability status criteria, lost time criteria, or SSDI dates less than 24 months will be most likely to have Class II claimant exposure.

Please note that the information provided is to be used as a reference guide for cases where CMS approval is indicated. An MSA should always be considered to adequately protect Medicare's interests.

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