

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL	:	No. 2:12-md-02323-AB
LEAGUE PLAYERS' CONCUSSION	:	
INJURY LITIGATION	:	MDL No. 2323

	:	Hon. Anita B. Brody
THIS DOCUMENT RELATES TO:	:	
NFL PARTIES' REQUEST FOR	:	
COMPULSORY AAP/AAPC REVIEW	:	
OF MONETARY AWARD CLAIMS	:	

INTRODUCTION

This matter requires the Special Master to determine whether an Appeals Advisory Panel member ("AAP") or Appeals Advisory Panel Consultant ("AAPC") must review all claims that turn on the sufficiency of the medical evidence behind the claimant's Qualifying Diagnosis. For the reasons stated below, the Special Master holds that compulsory AAP/AAPC review is not required by the Settlement Agreement.

DISCUSSION

The NFL Parties have requested a stay of payment and re-review of all appeals that have not already been reviewed by the AAP/AAPC and "turn on technical, medical grounds," including diagnoses made by Qualified MAF Physicians (Letter from NFL Parties to the Special Master dated June 28, 2018 ("NFL Letter"), at 1-2.) While acknowledging that Qualified MAF Physicians are approved by the parties, the NFL Parties state that it was "always the intent of the Parties that AAPs and AAPCs would be used on appeals involving [diagnoses made by] Qualified MAF Physicians." (NFL Letter, at 2.)

The plain language of the Settlement Agreement does not evince such an intent. Section 9.8 of the Settlement Agreement states that, with respect to appeals taken by the parties, the court "may be assisted, *in its discretion*, by any member of the Appeals Advisory Panel and/or an Appeals Advisory Panel Consultant" (emphasis added). The Settlement Agreement thus makes clear that the Court – and by extension, the Special Master – has the sole discretion to decide whether to consult an AAP/AAPC before ruling on an appeal.


Certain categories of compulsory AAP/AAPC review are explicitly included in §6.4(a) of the Settlement Agreement. These include Qualifying Diagnoses made prior to the Effective Date by neurologists, neurosurgeons, and physicians who are *not* Qualified MAF Physicians. The fact that Qualifying Diagnoses made by Qualified MAF Physicians are not included in this list further clarifies that the parties did not intend for compulsory AAP/AAPC review of such diagnoses.

Requiring AAP/AAPC review of all claims turning on medical grounds would unduly limit the discretion given to the Court and the Special Master under the plain language of the Settlement Agreement. Such compulsory review would also burden Settlement Class Members with an additional requirement for approval of claims beyond the requirements set forth in the Agreement. For these reasons, the Special Master denies the NFL Parties' request to compel AAP/AAPC review of all claims that turn on the sufficiency of the medical evidence supporting the Qualifying Diagnosis.

CONCLUSION

The NFL Parties' request for a stay of payment of claims pending AAP/AAPC review is denied.

Date: September 28, 2018


Wendell E. Pritchett, Special Master