

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

IN RE: NATIONAL FOOTBALL LEAGUE
PLAYERS' CONCUSSION INJURY
LITIGATION

:
: No. 2:12-md-02323
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: Appeal 2026-7
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: SPID 100007481
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THIS DOCUMENT RELATES TO:
APPEAL OF SETTLEMENT CLASS
MEMBER ██████████ REGARDING
DENIAL OF MONETARY AWARD

██████████, a Retired NFL Football Player and Class Member under the Amended Class Action Settlement Agreement, filed a Claim for benefits based on a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment. The Claims Administrator, denying Mr. ██████████ Claim, determined that he did not meet the Settlement's requirements for functional impairment.

Mr. ██████████ appeals that Denial, and Class Counsel has filed a supporting statement. Granting his Appeal, I find that Mr. ██████████ has shown, by clear and convincing evidence, that the Claims Administrator erred in its determination.

CLAIM HISTORY

This is Mr. ██████████ third Claim. He submitted his first on January 25, 2018. Doc. 154490. The Claims Administrator initially determined that he was entitled to a Monetary Award, but the Award was overturned on appeal after AAP reviewers advised that the Claim relied on invalid neuropsychological testing and did not provide sufficient documentation of functional impairment. Docs. 167148; 216487. Mr. ██████████ second Claim, submitted on December 19, 2023, was denied because it relied on the 2018 neuropsychological testing previously found to be invalid. Docs. 297474; 357397. I upheld that denial in a written opinion.¹

Mr. ██████████ current claim asserts a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment. Doc. 394722. As my opinion stated was was needed, it relies on new neurological and neuropsychological testing by Qualified MAF Physician Dr. ██████████ and Qualified BAP Provider Dr. ██████████. Doc. 394462.

After his April 30, 2025 neuropsychological evaluation, Dr. ██████████ assigned Mr. ██████████ an overall impairment rating of Level 1.5 based on neuropsychological testing scores of 2.0 in Complex

¹ See Special Master Ruling on Validity and Historical Testing (Feb. 20, 2025), https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=validity_historical_testing_sm.pdf.

Attention, 1.0 in Learning & Memory, and Level 1.5 in Visual-Perceptual Functioning. Doc. 394719.

Dr. [REDACTED] reached the same conclusion when she evaluated Mr. [REDACTED] on May 6, 2025. Doc. 394717. Dr. [REDACTED] administered a MOCA test, on which Mr. [REDACTED] scored 26/30. She also reviewed Dr. [REDACTED] neuropsychological evaluation and received information from Mr. [REDACTED] and his cousin, [REDACTED], who accompanied him to the appointment. Dr. [REDACTED] assigned Mr. [REDACTED] CDR scores of 1.0 in Community Affairs, 2.0 in Home & Hobbies, and 0 in Personal Care, rendering an overall CDR score of 1.0. *Id.*

The Claims Administrator sought clarification from Mr. [REDACTED] about his driving history and his status as a registered [REDACTED], as authorized by Section 8.6(b) of the Settlement Agreement. Doc. 396002. Mr. [REDACTED] explained:

I've held a [REDACTED] commission since co-owning a tax office years ago, but I do not actively practice. Becoming a [REDACTED] requires only a fee, no exam or special training. I use it once or twice per year, strictly for family or personal documents. This amounts to 0–1 hour total per month (often zero), with no compensation. This role is purely a formality I maintain; it does not reflect work, travel, or earnings. My medical records correctly note I have no active employment.

....

[P]er my parental agreement, I drive twice a week, each a 30-minute roundtrip, solely to pick up and drop off my 2-year-old son. Outside those agreed trips, I avoid driving and rely on Uber or family rides whenever possible. These bi-weekly drives are part of a personal parenting arrangement, not regular employment or extensive travel. All other driving is delegated due to my documented memory lapses, slowed thinking, and fatigue. I keep my solo driving to the absolute minimum needed for our agreed-upon schedule. Even when picking up and dropping off my son, I strictly avoid highways, use my GPS every trip, and experience confusion and delayed reaction times when behind the wheel. So long as I can remember to follow this directive, I do not have problems with navigation while driving to get my little boy.

Id. at 1, 2 (the “8.6(b) Evidence”).

After seeking input from an Appeals Advisory Panel (AAP) Member, the Claims Administrator denied Mr. [REDACTED] Claim on July 18, 2025:

Dr. [REDACTED] reported (Doc ID 394717) that the Player had a score of 1 for Community Affairs due to not currently working, being able to shop online but forgetting items, no longer driving, having declined ability to manage finances, but still doing this independently, social withdrawal, no longer volunteering or participating in public speaking, but being able to attend one to two NFL events per month; a score of 2 for Home/Hobbies due to difficulty completing complicated household chores, needing assistance with more complicated household chores and lawn work, but

being able to cook simple meals and perform basic chores; and a score of 0 for Personal Care due to no difficulty with dressing, grooming, eating, or sphincter control. The CDR Assessment Form (Doc ID 394461) reported the same information and scores for the three relevant CDR categories, with an overall CDR score of 1.

The Employment History Forms (Doc IDs 391360 and 391361) reported the Player did not work, continued to have limited driving with problems, did not use other machines, attended NFL parties/meetups once every month or two, continued to run and play board games but less frequently, did not engage in public speaking, no longer volunteered, and was able to shop and order online. The CDR Worksheet (Doc ID 391356) reported the Player was no longer working, no longer drove due to memory/thinking problems, sometimes was able to shop and carry out activities outside the home independently, a casual observer would not think he was ill, was able to cook simple meals and do basic chores, functioned in some activities independently for household chores, and scores of 0 were circled for dressing, washing/grooming, eating, and sphincter control.

Documentary evidence (Doc ID 390637) including examination notes by Dr. [REDACTED] and a prior neurological examination by Dr. [REDACTED] from 2023, corroborated that the Player was retired, his wife managed the household finances, he rarely drove and had problems driving, rarely went on social outings, was able to use Uber, did not perform household chores, was not able to do household repairs, was able to shop via Instacart, had issues choosing appropriate clothing, had hobbies of watching YouTube videos, needed reminders to bathe/shower, and had incontinence. Dr. [REDACTED] reported scores of 1 for Community Affairs, 2 for Home/Hobbies, and 1 for Personal Care, with an overall CDR score of 1. A third-party affidavit by [REDACTED] dated 12/4/2023 (Doc ID 297388) corroborated that the Player was less social, his family members did the household chores, he no longer tended to the lawn or fixed things around the house, did not cook as much, was able to get fast food, no longer volunteered, was less social, continued to drive but with difficulties, no longer did grocery shopping, no longer attended church, had a decline in appearance, needed assistance picking out clothing for formal events, and needed reminders to bathe, brush teeth, and put on deodorant.

Audit information (Doc ID 395339 and 395341) indicated the Player was a [REDACTED], effective 1/7/2025 to 1/7/2029, and continued to drive. The Player clarified (Doc ID 396002) that he was a [REDACTED], used this designation once or twice per year for family/personal documents (about 0-1 hours per month), and often had no compensation. He reiterated that he was not employed and continued to drive twice a week for 30 minutes round trip, avoided highways, and used GPS, but still had problems.

The continued ability to drive and function as a [REDACTED], as well as shop with Instacart and attend NFL events would support a score of 0.5 for Community Affairs, since there is continued ability to function independently outside the home; there is report of difficulty completing complicated household chores but being able to cook simple meals and perform basic chores, as well as continued participation in hobbies of running, playing board games, and watching YouTube videos, which would support a score of 0.5 for Home/Hobbies; and, while the third- party affidavit and documentary evidence indicated the need for reminders for Personal Care activities, this was not reported by the Diagnosing Physician's more recent evaluation, which reported the Player had no difficulty with dressing, grooming, eating, or sphincter control, and a score of 0 for Personal Care. Consequently, an overall CDR score of 0.5 is supported. Therefore criterion (iii) is not fulfilled.

Doc. 399763 at 2.

Mr. [REDACTED] appealed on August 1, 2025. Doc. 401622. Class Counsel filed a response in support of his appeal on October 21, 2025. Doc. 410636.

The NFL Parties filed responses to both appellate briefs. Docs. 405577; 412963. The NFL Parties also filed a Supplemental Statement noting a social media post that tagged Mr. [REDACTED] in a friend's photo in Tokyo (the "External Evidence"). Docs. 417034; 422156. The NFL Parties contend that Mr. [REDACTED] international travel is inconsistent with his asserted impairment; the friend who accompanied Mr. [REDACTED] abroad, [REDACTED], filed an affidavit describing Mr. [REDACTED] non-participation in the planning process and impairment during the trip. Doc. 422162.

RESOLVING THIS APPEAL

A Diagnosis of Level 1.5 Neurocognitive Impairment through the BAP requires that Mr. [REDACTED] exhibit functional impairment generally consistent with CDR scores of 1.0 in Community Affairs, Home & Hobbies, and Personal Care.² Mr. [REDACTED] diagnosing neurologist, Dr. [REDACTED] assigned him CDR scores of 1.0 in Community Affairs, 2.0 in Home & Hobbies, and 0 in Personal Care, with an overall rating of 1.0. Doc. 394717. On appeal, Mr. [REDACTED] must meet the high burden of showing by clear and convincing evidence that the Claims Administrator erred in rejecting Dr. [REDACTED] judgment.

It is well established that the Settlement is "built around layered deference to expertise."³ A diagnosing neurologist's judgment is entitled to deference when that physician has "carefully considered the relevant evidence of functional impairment" and "provided an articulated and holistic justification."⁴ In her report, Dr. [REDACTED] explained that she based Mr. [REDACTED] CDR scores

² Settlement Agreement Exhibit A-1(1)(a)(iii).

³ Special Master Ruling on Pre-Diagnosis Evidence, at 6 (July 2, 2020), https://www.nflconcussionsettlement.com/Docs/pre_diagnosis_evidence_sm.pdf.

⁴ Special Master Ruling on Validity and Deference, at 8-9 (Sept. 15, 2025), https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=validity_deference_sm.pdf.

on her own observations, CDR worksheets completed by Mr. [REDACTED] and his cousin, [REDACTED] through structured interviews, and Employment History & Social and Community Activity Forms completed by Mr. [REDACTED] and Mr. [REDACTED] as well as on Dr. [REDACTED] neuropsychological testing report. She documented her reasoning thoroughly in the CDR Assessment Form. Her comprehensive and articulated judgment is, at first glance, entitled to deference. Certainly, neither the AAP nor the Claims Administrator suggested that her explanation was cursory or otherwise lacking.

Deference accorded to a diagnosing physician's judgment can be appropriately overcome if that judgment is clearly erroneous. The evidence here presents a mixed record of Mr. [REDACTED] functional impairment further muddled by the 8.6(b) and External Evidence. But that mixed record is not sufficient to materially undermine Dr. [REDACTED] clinical judgment.

Dr. [REDACTED] assigned Mr. [REDACTED] a CDR score of 1.0 in Community Affairs, which means that Mr. [REDACTED] is "[u]nable to function independently" in activities including working, shopping, volunteering, and participating in social groups, although he "appears normal to casual inspection." Doc. 405578. Describing Mr. [REDACTED] functioning on the CDR Assessment Form, Dr. [REDACTED] wrote,

He attended the [REDACTED] for four years before being drafted into the NFL. After retirement from the NFL, he opened an [REDACTED] store from 2020-2021 and then worked as real estate partner and lead strategist. He retired in 2022 due to cognitive symptoms. He is currently not working. He shops online due to forgetting items in the past. He is not driving and relies on his cousin for transportation due to difficulty with getting lost. His ability to manage finances has declined, often resulting in late bill payments but he still manages them without assistance. He has also withdrawn from social activities and community involvement, including sports camps where he previously volunteered as a coach due to missing dates. He has stopped public speaking as well. He attends NFL events one to two times per month.

Doc. 394461 at 2.

The 8.6(b) Evidence clarifies that Mr. [REDACTED] is a [REDACTED], but that he does not actively use his license, and that he typically does not drive, but will occasionally drive to a custody exchange using his GPS. Doc. 396002.

The AAP and the Claims Administrator, in the Notice of Denial, reached a different conclusion from Dr. [REDACTED] relying almost exclusively on the 8.6(b) Evidence: "The continued ability to drive and function as a [REDACTED], as well as shop with Instacart and attend NFL events would support a score of 0.5 for Community Affairs, since there is continued ability to function independently outside the home." Doc. 399763 at 2. The External Evidence introduced by the NFL Parties also bears on Mr. [REDACTED] functional impairment in Community Affairs.

But, I have repeatedly emphasized, later-arriving evidence should only disturb a diagnosing physician's judgment in a "rare case" when "it generates a substantial and material update to the [physician's] contemporaneously generated prior belief."⁵ To make that showing, the later-arriving evidence must typically illustrate a *pattern* of behavior that is discrepant with the Player's functional impairment as described to the diagnosing physician.⁶ "A few pieces of seemingly inconsistent later-arriving evidence," on the other hand, cannot displace "fully-articulated diagnoses about . . . functional loss."⁷ The later-arriving evidence here—that Mr. █████ paid a fee for a █████ that he uses once or twice a year, drives a set route using GPS on specific occasions, and has gone on a single trip abroad—is piecemeal, not a pattern. It neither suggests that Mr. █████ was less than frank with Dr. █████ nor that Dr. █████ made an elementary error of judgment. The later-arriving evidence is not sufficient to supplant Dr. █████ articulated judgment, and the Claims Administrator erroneously relied on it for that purpose.

Dr. █████ also assigned Mr. █████ a CDR score of 2.0 in Home & Hobbies, which requires that Mr. █████ is able to complete "only simple chores" and has "very restricted interests." Doc. 405578. Per Dr. █████ report,

[Mr. █████ has difficulty completing complicated household chores, frequently getting distracted or forgetting to finish tasks, such as leaving his clothes in the washer for days. His cousin assists him with picking up dry cleaning and taking care of more complicated household chores and lawn work. He can cook simple meals and perform basic chores. He has reduced his physical activity, but may run once a month.

Doc. 394461 at 2 (cleaned up).

The Denial Notice rejects this finding, and concludes that only a score of 0.5 in Home & Hobbies is supportable, based on "report of difficulty completing complicated household chores but being able to cook simple meals and perform basic chores, as well as continued participation in hobbies of running, playing board games, and watching YouTube videos." Doc. 399763 at 2. The AAP and Claims Administrator considered, alongside the sources Dr. █████ used, a 2023

⁵ Special Master Ruling on Validity Testing, External Evidence, and Functional Impairment, at 25 (Mar. 27, 2023) https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=validity_evidence_impairment_sm.pdf.

⁶ See, e.g., Special Master Ruling on Functional Impairment and External Evidence (Dec. 17, 2025), https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=functional_impairment_external_evidence_sm.pdf (later-arriving evidence of multiple podcast appearances, speaking engagements, golfing, hiking, and international travel was sufficient to undermine the judgment of a physician entitled to less deference due to deviation from the Settlement's best practices); Special Master Ruling on Late-Arriving Evidence and Deference (Sep. 25, 2025), https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=late_evidence_deference_sm_2.pdf (later-arriving evidence of coaching, volunteering, and public speaking could be determinative when resolving disagreement between diagnosing physicians); Special Master Ruling on Validity Testing, External Evidence, and Functional Impairment (Mar. 27, 2023) https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=validity_evidence_impairment_sm.pdf (later-arriving evidence that a Player had hosted over 70 podcast episodes and golfed regularly was inconsistent with a Diagnosis of Level 2 Neurocognitive Impairment).

⁷ Special Master Ruling on Late Arriving Evidence and Deference, at 14 (Apr. 8, 2025), https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=late_evidence_deference_sm.pdf.

neurological report by Dr. [REDACTED] and a 2023 third-party affidavit by [REDACTED]. Docs. 390637; 297388. The former report noted that Mr. [REDACTED] does not perform household chores but relies on family, cannot do household repairs, struggles to choose appropriate clothes, and has a main hobby of watching YouTube videos. Doc. 390637 at 24-25. Mr. [REDACTED] affidavit states that Mr. [REDACTED] family members “handle all the household chores,” and Mr. [REDACTED] often forgets to take the garbage out, let his lawn become overgrown, and could no longer fix things around the house. Doc. 297388 at 3. Mr. [REDACTED] further explained that Mr. [REDACTED] used to be a good cook, but now frequently burns food and relies on family to cook for him or orders fast food.

Reasonable professionals can and have differed as to Mr. [REDACTED] level of impairment in this category. Dr. [REDACTED] scores track with Dr. [REDACTED] 2023 neurological evaluation, in which Mr. [REDACTED] was also assigned a score of 2.0 in Home & Hobbies based on a similar description of his functioning. And an AAP Consultant reviewed Mr. [REDACTED] 2023 testing as well and agreed with, or at least did not disagree with, Dr. [REDACTED] conclusions about his functional impairment. Doc. 303977.

The Reviewer on whose judgment the Claims Administrator relied when denying Mr. [REDACTED] present Claim obviously disagreed with Dr. [REDACTED] about the extent of Mr. [REDACTED] function. But Dr. [REDACTED] judgment was fully articulated and appears to be reasonable; the current AAP Member’s disagreement alone should not have led to a different conclusion than Mr. [REDACTED] examining physician.⁸

The Claims Administrator should have deferred to Dr. [REDACTED] articulated judgment about Mr. [REDACTED] functional impairment in the absence of evidence suggesting it was clearly erroneous. As I have previously held, “fail[ure] to apply the appropriate degree of deference given an articulated justification” is clear and convincing evidence of error on appeal.⁹

CONCLUSION

Mr. [REDACTED] has shown by clear and convincing evidence that the Claims Administrator erred in not giving appropriate deference to the judgment of his diagnosing physician. I therefore grant his Appeal.

Date: March 25, 2026



David A. Hoffman, Special Master

⁸ The NFL Parties correctly assert that AAP Members owe no deference to the conclusions of prior AAP reviewers. But the conclusions of prior AAP Members, like the conclusions of prior evaluating neurologists, provide data points on which to base medical judgments about a Player’s functional impairment. A diagnosing neurologist’s judgment is less likely to be clearly erroneous when it echoes the prior conclusions of other physicians or experts.

⁹ Special Master Ruling on Validity and Deference, at 9 (Sept. 15, 2025), https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=validity_deference_sm.pdf.