

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

Appeal 2026-13

THIS DOCUMENT RELATES TO:
APPEAL OF SETTLEMENT CLASS
MEMBER [REDACTED]
REGARDING CALCULATION OF
MONETARY AWARD

and taking significant time for rehabilitation. He reported that he still has difficulty reading, writing, and gets angry when he experience[s] word-finding problems.” *Id.* at 1. Dr. ██████ concluded:

██████ is a 66-year-old, Caucasian male who reported concerns about his memory, word-finding abilities, and anger management. Broader health history includes a right-hemisphere stroke at age 37 and concussions while playing professional football in the NFL. In the current assessment, his scores on performance validity measures indicate that his performance was questionable on several cognitive tests, but other behavioral observations were consistent with his medical history, test data, and informant reports from his wife. Premorbid estimates of general intellectual functioning fell in the average range (estimated FSIQ=108).

On objective testing, Mr. ██████ cognitive profile appears to reflect a decline in cognitive function. More specifically, he qualified for Level 2 Impairments in four different cognitive domains: 1) complex attention and processing speed, 2) learning and memory, 3) language, and 4) executive function. He also qualified for Level 1.5 Impairment in visual-perceptual processing. Overall CDR ratings of his functional status from his wife combine to a level of 1.0 (Mild), which is consistent with a Level 1.5 neurocognitive impairment.

Mr. ██████ did not provide independent medical records or employment records that corroborate his decline in functional status, nor did he provide a third-party sworn affidavit from a non-family member familiar with his condition. Nonetheless, based on his medical history, it would appear that he is experiencing cognitive deficits *resulting from his history of cerebrovascular disease*. The most appropriate DSM-5 (ICD-10) diagnoses would appear to be Major Neurocognitive Disorder, Probably Due to Vascular Disease, 290.40 (F01.50). Given the evidence available at the time of this report, he meets criteria for Level 1.5 Neurocognitive Impairment, according to BAP neuropsychology injury definitions. Should additional information become available from medical records or a third-party sworn affidavit from a non-family member, it may be appropriate to consider him for Level 2.0 Impairment.

Id. at 4-5 (emphasis added).

On January 30, 2018, Dr. ██████, a certified BAP neurologist, evaluated Mr. ██████ Doc. 302581. Dr. ██████ reported Mr. ██████ presenting complaints:

Mr. ██████ is a 66 year old right handed white man who comes in today as part of the NFL Baseline Assessment Program. His chief symptom is that he gets very angry over nothing. He even called it road rage. When I asked him to elaborate he could not give any details he said "I know what I am doing." He is here today with his wife who has known him for about 24 years and she can attest to his irritability.

Mr. [REDACTED] has a stroke in 1988 that resulted in severe left hemiparesis and impaired speech at the time. He has improved significantly but he still has difficulty with word finding and expressing more complex ideas. He says that he has been unable to read or write since the stroke and that he subsequently developed a fear of heights. He is still a little weaker on the left. He can drive but misses being able to ride a motor cycle. He does his ADLs but cannot pay bills. He likes to work out in the yard but does little in the home. His wife says he is a "slob".

Id. at 1.

Summarizing his findings, Dr. [REDACTED] explained that, "[t]his is a 66 yo man with irritability, decreased memory, language impairments in context of a history of concussive and subconcussive brain injury while playing football as well as a right hemisphere stroke of unclear etiology at a young age after retiring from football." *Id.* However, Dr. [REDACTED] original report made no reference to Dr. [REDACTED] neuropsychological testing or to the necessary and later arriving July 18, 2023 Third Party Sworn Statement, nor did it identify a specific level of Neurocognitive Impairment for use in the Settlement.¹ Doc. 366753.

No progress was made on Mr. [REDACTED] Claim from this 2018 appointment with Dr. [REDACTED] until April, 2022, when, because both of his BAP appointments were complete but his results were not finalized, Mr. [REDACTED] neuropsychological testing was set to be re-evaluated using the New Method. Doc. 245493. Based on Mr. [REDACTED] testing, Dr. [REDACTED] originally recommended Level 1.5 Neurocognitive Impairment. Doc. 303315 at 5. However, after re-examining his testing using the New Method on February 19, 2024, Mr. [REDACTED] results supported an Overall Cognitive Impairment of Level 2. Doc. 303314 at 3.

After the July 18, 2023 Third Party Sworn Statement was submitted and the neuropsychological testing was re-evaluated, the Claims Administrator contacted the BAP Providers multiple times requesting they certify Mr. [REDACTED] Diagnosis. Docs. 366753, 372860, 374886. On December 13, 2024, Dr. [REDACTED] explained in a Provider Report that, "[a]ll in all, [he] felt that the history obtained from the patient, spouse, sworn third party, neuropsychological evaluation and my own neurologic assessment were most consistent with a conclusion of Level 1.5 neurocognitive impairment." Doc. 370457. On December 12, 2024 and February 2, 2025, Dr. [REDACTED] and Dr. [REDACTED] respectively, certified Mr. [REDACTED] Diagnosis of Level 1.5 Neurocognitive Impairment, dated to July 18, 2023. Doc. 376993.

Mr. [REDACTED] then changed counsel, from [REDACTED] to [REDACTED]. Doc. 401896. On September 10, 2025, Mr. [REDACTED] submitted his Claim. Doc. 406042. In it, Mr. [REDACTED] averred that he had not had a Stroke prior to his Qualifying Diagnosis. *Id.* at 4. Since this did not match the

¹ Exhibit A-1 of the Settlement explains that in the absence of documentary evidence of functional impairment like medical or employment records, which is the case here, a Player's functional impairment "must be corroborated by a third-party sworn affidavit from a person familiar with the Retired NFL Football Player's condition," so this Third Party Sworn Statement was necessary for a Qualified Diagnosis. Therefore, it logically follows that the day this Statement was submitted was the date of Diagnosis agreed upon by both BAP Providers.

record, the Claims Administrator asked him to explain the statement. Doc. 411359. In response, on December 1, 2025, Mr. [REDACTED] long time primary care physician offered a one paragraph letter regarding his impairment:

To whom it May concern,

[REDACTED] date of birth [REDACTED] has been under my care for the last 20 years. His neurodegenerative disease is related to traumatic concussions he received while playing football. Although he had a stroke at a young age did not impair his cognitive function. His dementia is a result of traumatic brain injury.

Sincerely,
[REDACTED]

Doc. 416050 at 1.

On December 22, 2025, the Claims Administrator approved Mr. [REDACTED] Claim for benefits based on a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment. Doc. 418366 at 1. However, Mr. [REDACTED] Monetary Award was decreased first by 40%, for playing fewer than five Eligible Seasons, and was then again decreased by 75% because of Mr. [REDACTED] medically diagnosed Stroke prior to his Qualifying Diagnosis. *Id.* at 5-6. The Appeals Advisory Panel (AAP) offered an explanation of their use of the Stroke offset:

Under Sections 6.7(b) and (d) of the Settlement Agreement, all Monetary Awards are subject to a downward adjustment of 75% for a medically diagnosed Stroke occurring prior to a Qualifying Diagnosis, unless the Retired Player demonstrates by clear and convincing evidence that the Qualifying Diagnosis was not causally related to the Stroke.

The Settlement Agreement directs that the word Stroke is defined by the World Health Organization's International Classification of Diseases, 9th Edition (ICD-9) or the World Health Organization's International Classification of Diseases, 10th Edition (ICD-10). To apply the Stroke offset, the Claims Administrator must: (a) find evidence of the event in the medical records, and (b) determine that the Player suffered a Stroke under the Settlement's precise meaning of that term. If the Claims Administrator determines the medical records show the Player suffered a Stroke, the Player has the burden of showing by clear and convincing evidence that his Qualifying Diagnosis was not causally related to the Stroke.

Medical records show that the Player suffered a Stroke in 1988, prior to the Qualifying Diagnosis.

An AAP member reviewed the medical records and provided the following input:

Dr. [REDACTED] reported the Player had a Stroke at age 37. The Player reported an acquired reading deficit following the Stroke, and Dr. [REDACTED] concluded it appeared that the Player was experiencing cognitive deficits resulting from his history of cerebrovascular disease which would include Stroke. Dr. [REDACTED] made a clinical diagnosis of major neurocognitive disorder probably due to vascular disease (290.40/F01.50).

Dr. [REDACTED] reported that the Player had a Stroke in 1988 that resulted in severe left hemiparesis and impaired speech at that time, which had improved significantly but the Player still had difficulty with word finding and expressing more complex ideas. The Player reported being unable to read or write since the Stroke and was still a little weaker on the left side, which would indicate that the effects of the Stroke are ongoing and still contributing to the current cognitive deficits.

Dr. [REDACTED] concluded that the Player's Stroke did not impair the Player's cognitive function, and that the dementia was a result of traumatic brain injury. Dr. [REDACTED] did not provide any medical reasoning to support these conclusions.

Dr. [REDACTED] opinion that the Stroke did not impair the Player's cognitive function is not able to be relied on because multiple other providers indicated specific ways that the Stroke did impair the Player's cognitive function.

The available medical records indicate that the Stroke did contribute to the Player's cognitive impairments and decline. Therefore, there is not clear and convincing evidence in the claim file to indicate that the Qualifying Diagnosis was not causally related to the Stroke.

Doc. 418388 at 1-2.

Mr. [REDACTED] now appeals both the application of the Stroke offset and his date of Diagnosis. Doc. 419831.

RESOLVING THIS APPEAL

Mr. [REDACTED] must show by clear and convincing evidence that the Claims Administrator erred. He believes he has met this high standard on two points: the Administrator's decision to apply the Stroke offset, and its refusal to date the Diagnosis back to 2017.

I'll start with the Stroke offset. The Settlement itself sets out the relevant standard:

If the Retired NFL Football Player receives a Qualifying Diagnosis subsequent to a medically diagnosed Stroke or a medically diagnosed Traumatic Brain Injury, and if the Settlement Class Member demonstrates, *by clear and convincing evidence*, that

the Qualifying Diagnosis *was not causally related* to the Stroke or the Traumatic Brain Injury, then the 75% Offset will not apply.²

Thus, Mr. █████ bears the initial burden of establishing that the offset should not apply. This means that:

[T]he Claims Administrator’s task was to evaluate whether the available evidence produced a firm belief or conviction—in other words, that it is highly probable or reasonably certain—that [Mr. █████ Stroke] did not cause his Qualifying Diagnosis. To succeed on appeal, Mr. █████ must show that there is a high degree of probability that the Claims Administrator was wrong in determining he had not met that burden, and therefore in applying the 75% stroke offset.³

Mr. █████ argues that “[his] PCP [Dr. █████] who knows him and has treated him for over 20 years is in the best position to make a determination of causation.” Doc. 419831. It is true that the Settlement operates on the “fundamental presumption that the Claims Administrator—and by extension the AAP—should defer to the articulated medical judgments of examining clinicians and physicians.”⁴ But that deference applies to BAP Providers like Dr. █████ and Dr. █████ because their Settlement-specific expertise.⁵ By contrast, Dr. █████ though a board certified internist, is neither a Settlement-contracted doctor capable of making diagnoses for it, nor a specialist in neurology.⁶ Doc. 428273 at 4.

Overall, Mr. █████ has not met the very heavy burden of avoiding the Stroke offset. Dr. █████ argues that, “[Mr. █████ remarkable motor recovery from his stroke, evidenced by his ability to play tennis, stands in stark contrast to his progressive cognitive and behavioral decline.” Doc. 428273 at 3. But that reasoning conflicts with the reports of both BAP Providers who highlighted the lasting cognitive effects of the Stroke. Upon my request, the AAPC reviewed Mr. █████ Claim and explained that, “Dr. █████ reported that the Player acquired a reading deficit following the stroke and Dr. █████ reported that the Player still had word-finding difficulty, problems expressing more complex ideas, and inability to read or write since the stroke.” Doc. 429281 at 2.

Additionally, the most that Dr. █████ is willing to say is that “it is [his] medical opinion that this patient’s current neuropsychiatric symptoms are *as likely as not* caused by traumatic brain

² Settlement Agreement, Section 6.7(d) (emphasis added).

³ In re: Appeal of SPID #950013381, 2022-8, at 7 (Apr. 25, 2022), at https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=stroke_sm_2.pdf.

⁴ In re: Appeal of SPID #100012054, 2023-3, at 3 (Jan. 20, 2023), at https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=stroke_offset_sm.pdf (quoting In re: Appeal of SPID #950013381, 2022-8, at 7 (Apr. 25, 2022), at https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=stroke_sm_2.pdf).

⁵ *Id.*

⁶ Notably, Section 6.3(d) of the Settlement limits qualified providers for living Players to only, “board-certified neurologists, board-certified neurosurgeons, or other board-certified neuro-specialist physicians, or otherwise qualified neurologists, neurosurgeons, or other neuro-specialist physicians.”

injury from repetitive head impacts sustained during his NFL career.”⁷ Doc. 428273 at 4 (emphasis added). Even if taken as true, this is not the same as saying that it was “highly probable or reasonably certain” that the Stroke did not cause the Qualifying Diagnosis. Thus, Mr. █████ cannot meet his burden of providing clear and convincing evidence that his Qualifying Diagnosis was not causally related to his Stroke.

Mr. █████ BAP Providers certified a Diagnosis dated to July 18, 2023. Doc. 376993. Mr. █████ would prefer an earlier date. But there is no warrant in the Settlement Agreement or its associated guidance for that to happen. Diagnoses are dated to when “the diagnosing physician has enough information and materials, including test results, to be able to render a medically sound and reliable judgment that all criteria for the Qualifying Diagnosis have been met, the way a physician normally does in his or her clinical practice.”⁸ Here, during his October, 2017 appointment with Mr. █████ Dr. █████ explained that, “Mr. █████ did not provide independent medical records or employment records that corroborate his decline in functional status, nor did he provide a third-party sworn affidavit from a non-family member familiar with his condition.” Doc. 303315 at 5. Since Dr. █████ did not have this information, a “medically sound and reliable judgment” was not possible in October, 2017, which is presumably in part why Mr. █████ BAP physician and clinician did not offer that day as the date of Diagnosis. In any event, as I have previously explained, “determinations about the applicable date of Diagnosis rest on diagnosing physicians’ judgments, [so] the Claims Administrator’s decision about the date of [Mr. █████ Diagnosis was correct: changing that date through the appeals process is impermissible.”⁹

CONCLUSION

Because Mr. █████ did not show by clear and convincing evidence that the Claims Administrator was in error either in applying the Stroke Offset or in adopting July 18, 2023 as the date of Diagnosis, I deny both parts of his Appeal.

Date: May 19, 2026



David A. Hoffman, Special Master

⁷ Dr. █████ expanded reasoning is also absent from the information the Claims Administrator used to evaluate the Claim, and I again emphasize that, “no deference is due to clinician’s letters produced on Appeal.” In re: Appeal of SPID #100008624, 2023-5, at 9 n.1 (Mar. 17, 2023), https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=np_testing_and_validity_sm_2.pdf.

⁸ Frequently Asked Questions: FAQ #100 (How is the date of a Qualifying Diagnosis determined?), NFL CONCUSSION SETTLEMENT, <https://www.nflconcussionsettlement.com>.

⁹ In re: Appeal of SPID #100007575, 2024-10, at 1 (Nov. 20, 2024), at https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=diagnosis_date_sm_2.pdf.