

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

SPID 100015609

Functioning, and Visual-Perceptual and Level 2 impairment in Learning and Memory and Language. *Id.* Dr. [REDACTED] described Mr. [REDACTED]'s day-to-day function as follows:

Mr. [REDACTED] reported experiencing an insidious onset of progressively worsening memory and concentration beginning around six years ago. The symptoms initially presented as forgetting the names of people that he has known for years (e.g., a golfing buddy, people he knew from school, etc.). At work, he noticed that he started forgetting information so he started going into work three hours early (at 3:30 AM) to make sure he was “dotting the i’s and crossing the t’s.” When asked for examples, he shared that he forgot to prepare a new employee’s file before their day of orientation which led to several problems. Mr. [REDACTED] elaborated that he has recently become a “note-taking fool” and tries to “overkill” in preparation for work to minimize problems. He reported that his supervisor commented that he has been making mistakes with remembering his documentation which has negatively impacted his annual performance review (and associated bonus). After informing his PCP of his recent problems, the PCP referred him to [REDACTED] Neurological Institute where he was diagnosed as having dementia in 2018 (see Medical Records Reviewed section above). Mr. [REDACTED] stated that he disagreed with their findings and elected to bypass taking any medications. He also chose to continue working because he had to provide for his son.

Two years ago, however, he started noticing that he was having momentary lapses when driving which entailed forgetting his intended destination but not necessarily getting lost. He elaborated that he occasionally had to pull to the side of the road until he could recall where he was going. Since that time, Mr. [REDACTED] began utilizing his GPS each time he would drive in order to remember his intended destination. He also shared that he has had a few recent instances of getting outright lost when driving within about 3 miles of his house (e.g., en route to Big Lots).

Mr. [REDACTED] also shared that he has experienced some difficulty with managing his instrumental activities of daily living. He noted that he relies on autopay for all of his bills and only runs into issues when his credit card expires and he forgets to update the banking portal with the information. He reported that his live-in nanny, [REDACTED], is “pretty much family now” and they share responsibilities. He elaborated that he helps prepare meals and completes household chores with ease. He stated that [REDACTED] lives in his home to help take care of his son because he works about 65-70 hours a week. He reported being good at taking his multivitamins because he places his pillbox in a visible spot. Regarding shopping, he shared that [REDACTED] will pick up the items he occasionally forgets to buy at the store.

Id. at 12-13.

Four months later, on June 9, 2024, after reviewing Dr. [REDACTED]'s February 2024 neuropsychological testing, Dr. [REDACTED] finally recorded his views and made a Qualifying Diagnosis.

Id. at 1-2. Although Dr. [REDACTED] had asserted that Mr. [REDACTED] suffered from Level 2 Neurocognitive Impairment, Dr. [REDACTED] disagreed:

MY CDR RATINGS WERE AS FOLLOWS:

Memory 0.5

Orientation 0.5

Judgement and Problem Solving 1

Community Activities 1

Home and Hobbies 1

Personal Care 0

These ratings were based on qualifying information provided to me by both interview of Mr. [REDACTED] and information obtained from informants.

OVERALL CDR SCORE WAS DETERMINED BY EVALUATING THE FOLLOWING THREE DOMAINS:

Community Activities

- Reduced work performance due to poor memory and concentration
- Inability to navigate while driving
- Little interest in outside social events

Home and Hobbies

- Social withdrawal
- Limited household tasks/support
- Struggle with complex tasks, Capable of simple activities only

Personal Care

- No current limitations

IN CONSIDERATION OF THESE FUNCTIONAL IMPAIRMENTS. MR. [REDACTED]'S OVERALL CDR RATING IS: 1.0

SUMMARY: THE EVIDENCE OF SIGNIFICANT COGNITIVE DECLINE INCLUDES:

NEUROCOGNITIVE TESTING –

Complex Attention

Executive Functioning

Learning/Memory

Language

Visual/Spatial

FUNCTIONAL IMPAIRMENT – CDR SCORES

Community Activities

Home and Hobbies
Personal Care

THIS CDR rating is consistent with a LEVEL 1.5 NEUROCOGNITIVE IMPAIRMENT.

TAKEN IN TOTALITY, MR. [REDACTED]'S NEUROPSYCHOLOGICAL ASSESSMENT AND CDR MEET CRITERIA FOR QUALIFYING DIAGNOSIS: LEVEL 1.5 NEUROCOGNITIVE IMPAIRMENT

THIS QUALIFYING DIAGNOSIS IS BASED ON CONSIDERATION OF THE EVIDENCE ABOVE IN ACCORDANCE WITH THE MAF CONCUSSION SETTLEMENT MANUAL.

Id. at 2-4 (emphasis in original).²

[REDACTED] submitted this Claim on June 11, 2024, dated to September 26, 2023, the date that Dr. [REDACTED] saw him, but did not contemporaneously record his views. Doc. 342557.

On June 26, 2024, the Claims Administrator sought the review of the Appeals Advisory Panel Leadership Council (AAPLC). Doc. 345724. An AAPLC Member ultimately advised that Dr. [REDACTED] had not sufficiently justified the Level 1.5 Neurocognitive Impairment Diagnosis; therefore, on September 11, 2024, the Claims Administrator requested more information from Dr. [REDACTED] to support his Diagnosis. Doc. 357503. Building on a theme, Dr. [REDACTED] never responded to the request. Doc. 394147 at 1.

So, on January 29, 2025, the Claims Administrator tried to get more information from Dr. [REDACTED] Doc. 376032. On January 30, 2025, Dr. [REDACTED] citing to his original report, emphasized that Mr. [REDACTED] was working full-time however with difficulty and decreased success, driving but using GPS every time and getting lost on occasion, and doing his chores with the help of a live-in nanny. Doc. 376124 at 2-3.

On February 27, 2025, the Claims Administrator denied Mr. [REDACTED]'s Claim solely because it found Criterion (iii) had not been sufficiently satisfied. Doc. 380322. The Denial explained:

Regarding criterion (iii): Dr. [REDACTED] reported the Player was employed, continued to drive but got lost and was able to use GPS, was forgetful at work, had little interest in outside social events, had limited household task performance, struggled with complex tasks, was capable of simple activities only, and had no limitations in

² In this report, Dr. [REDACTED] explained that, “[t]hese ratings were based on qualifying information provided to me by both interview of Mr. [REDACTED] and information obtained from informants.” By “information obtained from informants” I assume Dr. [REDACTED] is referencing the updated third party sworn statement provided on October 10, 2023, between Dr. [REDACTED]'s original September, 2023 exam and this updated June, 2024 note.

Personal Care. Dr. [REDACTED] reported scores of 1 for Community Affairs and Home/Hobbies, and a score of 0 for Personal Care. The CDR Worksheet reported the Player was still working, sometimes had significant difficulty in his job because of problems with memory/thinking, continued to drive but with problems/risks due to poor thinking, most of the time was able to shop and carry out activities outside the home, a casual observer would not think he was ill, performed some tasks independently for household chores, and scores of 0 were circled for dressing, washing/grooming, eating, and sphincter control.

Dr. [REDACTED] reported on 2/14/2024 that the Player continued to work “65-70 hours a week” and drive but with problems, lived with his son and a nanny, with whom he shared responsibilities, used autopay for bills, helped prepare meals and completed household chores “with ease”, and was able to shop and his nanny would pick up items he occasionally forgets to buy at the store. The Employment History and Social and Community Activity form completed by the Player on 8/27/2023 reported the Player continued to work as a supervisor, continued to drive and was able to use GPS, did not operate other machines, was less social, had problems playing golf due to chronic neck and back issues, did not volunteer, did public speaking, raised his child, donated supplies to his son’s school, and was able to shop. The third-party affidavit by [REDACTED] dated 10/10/2023 corroborated the Player had memory problems, dark periods where he was isolated, had personality changes, and was able to drive and use GPS. Consequently, the third-party affidavit did not corroborate the functional impairments and so a new third-party affidavit was requested.

The new third-party affidavit by [REDACTED] dated 9/24/2024 corroborated that the Player continued to work but needed extra time to prepare, was able to travel to work and back using GPS, took care of his 10 year old son with the help of a nanny, had to write things down at meetings, continued to cook but with more difficulty, no longer worked out, no longer had hobbies, owned a bar, and was less social. Consequently, the new third-party affidavit also reported the Player had a higher level of functioning than would be consistent with a score of 1 in the areas of Community Affairs and Home and Hobbies, including continuing to work, drive, cook, and provide care for his son, even with problems/difficulties and taking longer to accomplish tasks. Therefore, the description of the Player’s current functional impairments is not generally consistent with a CDR score of 1 (Mild) in the areas of Community Affairs, Home and Hobbies, and Personal Care, so that criterion (iii) is not fulfilled.

Id. at 2.

Mr. [REDACTED] appealing this Denial on May 30, 2025, argued that the Claims Administrator improperly failed to defer to his Diagnosing Physician and Clinician. Doc. 394151 at 1. In a statement offered on appeal, apparently written by Mr. [REDACTED] himself, he explained that he no

longer exercised or had any hobbies, was not comfortable going out to a bar or social functions, was no longer able to cook elaborate meals, and was reliant on his live-in nanny to help care for his son and buy the groceries. Doc. 394147 at 78-80. A May 6, 2025 correspondence between Mr. [REDACTED]'s former employer and [REDACTED] confirmed that Mr. [REDACTED] had been laid off from his job the previous day. *Id.* at 37.

On September 22, 2025, I remanded this Claim to the Claims Administrator for re-review “to consider the import for this Claim of the decision I issued on September 15, 2025, regarding the Settlement’s approach to deference to diagnosing clinicians’ judgments about functional impairment.” Doc. 407373.³

On October 15, 2025, on re-review, the Claims Administrator sent Mr. [REDACTED] questions to better understand his participation in business activities, home responsibilities, personal care, and social events, some of which were chronicled on his Facebook. Doc. 409975. Mr. [REDACTED] answered those questions with the help of [REDACTED]. Doc. 411155.

On January 28, 2026, the Claims Administrator denied Mr. [REDACTED]'s Claim for a second time:

The Special Master’s 9/15/2025 decision indicated that a Diagnosing Physician’s reported CDR scores should be accepted when articulated and not clearly in error.

In this case, Dr. [REDACTED] did provide clear reasoning in his 5/27/2025 addendum for assigning a score of 1 for Community Affairs based on the Player continuing to be able to work, drive and shop, but with problems performing these activities (Doc ID 394148).

However, Dr. [REDACTED]'s reasoning was clearly in error since the anchor text for a score of 1 in the CDR category of Community Affairs indicates that the individual should be unable to function independently at these activities, even if still engaged in some. The use of GPS/navigation when driving would not indicate inability to drive independently, and so a score of 0.5 would be indicated for Community Affairs. Additionally, Dr. [REDACTED] did not provide clearly articulated medical reasoning for the overall CDR score determination, so deference to the overall CDR score of 1 is not indicated. Consequently, an overall CDR score of 0.5 is supported, since the majority of the information indicates a higher level of functioning, with scores for two of the three relevant CDR categories being less than 1 (score of 0.5 for Community Affairs and 0 for Personal Care).

Additionally, when viewed holistically, the reported information contains many features that support a higher level of functioning, including being able to work,

³ In re: Appeal of SPID #100003384, 2025-14, (Sep. 15, 2025), at https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=validity_deference_sm.pdf.

drive, shop, cook, and manage self-care activities, even if with some problems/difficulties. Therefore criterion (iii) is not fulfilled.

Doc. 422354 at 2 (breaks added).

Mr. [REDACTED] again appealed on February 27, 2026. Doc. 425685.

RESOLVING THIS APPEAL

To prevail on appeal, Mr. [REDACTED] must prove by clear and convincing evidence that the Administrator erred in denying his Claim. The focus on appeal is how best to characterize Dr. [REDACTED]'s June 9, 2024 report summarizing Mr. [REDACTED]'s functional impairment. Generally, “[t]his Settlement is built around layered deference to expertise.”⁴ And the views of examining physicians regarding functional impairment are due “some deference” so long as their views were clearly articulated.⁵ The second denial concluded that Dr. [REDACTED] “did provide clear reasoning” but that his views were “clearly in error.”

I requested review by a new AAP Member who had not previously evaluated the file, asking that member to focus with specificity on the quality of Dr. [REDACTED]'s report. The AAP Member was critical of Dr. [REDACTED] but also clear that the evidence was of mixed import. The AAP's report was long, reviewing all the evidence in the file, and concluded as follows:

Dr. [REDACTED] articulated his basis for assigning CDR scores in a note dated 6/9/24. This appears to meet the Program's requirements if full deference is warranted.

From the purely clinical perspective, the documented information is sparse and incomplete, failing to note important information about generally preserved independence in activities like going to the market and other activities outside the home as documented on the CDR worksheet.

Differentiating between clinical equivalents of CDR 0.5 (for Level 1 Neurocognitive Impairment) and CDR 1 (for Level 1.5 Neurocognitive Impairment) is notably challenging, and there is often no bright line between them. (see Morris JC. Arch Neurol. 2012 Jun;69(6):700-8. doi: 10.1001/archneurol.2011.3152. PMID: 22312163; PMCID: PMC3423496) for comments on this issue from one of the original developers of the CDR instrument)

In addition, the other supporting information required for meeting the criteria for Level 1.5 impairment were not available before 2/14/24. Therefore, the best supported date for a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment is 2/14/24.

⁴ In re: Appeal of SPID #100003384, 2025-14, at 8 (Sep. 15, 2025), at https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=validity_deference_sm.pdf (cleaned up).

⁵ *Id.* at 9.

In evaluating the many records contained over the years of review leading up to and including the processing of this Claim, it is clear that reasonable clinicians differ in their analysis of Mr. [REDACTED]'s functional impairment. It's unfortunate that Dr. [REDACTED]'s documentation was sparse and tardily-assembled, and that he failed to minimally respond to the Claims Administrator's well-intentioned requests for clarification. But that's no fault of Mr. [REDACTED]. Looking at the totality of the evidence, the AAP has advised me that Mr. [REDACTED] ought to have qualified for an award, as of the date that Dr. [REDACTED]'s exam first recorded the requisite degree of functional impairment.

I will adopt the AAP's guidance as a factual judgment.

CONCLUSION

Mr. [REDACTED] has shown by clear and convincing evidence that the Claims Administrator erred in denying his Claim for a Diagnosis of Level 1.5 Neurocognitive Impairment. Thus, I grant his Appeal, and direct the Claims Administrator to approve his Claim, dated to February 14, 2024.

Date: July 10, 2026



David A. Hoffman, Special Master