UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	No. 2:12-md-02323-AB MDL No. 2323
THIS DOCUMENT RELATES TO: APPEAL OF SETTLEMENT CLASS MEMBER [redacted] REGARDING DATE OF DIAGNOSIS	**Hon. Anita B. Brody**

[redacted], a Retired NFL Football Player and Class Member under the Amended Class Action Settlement, received a Monetary Award based on a Qualifying Diagnosis of Alzheimer's Disease on March 25, 2024. Appealing, he argues that the Claims Administrator's decision was wrong because it should have moved the date of his Diagnosis from September 27, 2023, the date reflected on his Diagnosing Physician Certification Form, to August or September, 2018, when he previously underwent neurological testing.

Because determinations about the applicable date of Diagnosis rest on diagnosing physicians' judgments, the Claims Administrator's decision about the date of Mr. [redacted]'s Diagnosis was correct: changing that date through the appeals process is impermissible. I deny his Appeal.

CLAIM HISTORY

Mr. [redacted] was evaluated through the Baseline Assessment Program in 2018. His treating neuropsychologist, Dr. [redacted], concluded after his July 26, 2018 evaluation that Mr. [redacted] did not meet the BAP criteria for Neurocognitive Impairment. Doc. 299528. Dr. [redacted]'s conclusions remained the same when he revised his report on July 9, 2020. *Id.* Dr. [redacted] completed Mr. [redacted]'s BAP neurological testing on August 23, 2018; Dr. [redacted] evaluated Mr. [redacted] again on September 17, 2018, and diagnosed him with Alzheimer's Disease. Doc. 323210.

Because Dr. [redacted] and Dr. [redacted] did not agree, the BAP Administrator referred Mr. [redacted]'s BAP reports to the AAP to resolve the physicians' conflicting diagnoses. Doc. 323209. The AAP concluded on June 26, 2021, that Mr. [redacted] did not meet the criteria for a Diagnosis of Neurocognitive Impairment. *Id.* The AAP noted that a Diagnosis of Alzheimer's Disease could

not be rendered through the BAP and recommended that Mr. [redacted] "follow up with a neurologist regarding Dr. [redacted] diagnosis of Alzheimer's disease." *Id*. at 2.

In support of his instant Claim, Mr. [redacted] sought evaluation by MAF neurologist Dr. [redacted], who rendered a Qualifying Diagnosis of Alzheimer's Disease. Doc. 291445. In her Diagnosing Physician Certification Form, Dr. [redacted] placed Mr. [redacted]'s date of Diagnosis at September 27, 2023, the day she completed his evaluation. Doc. 291446.

The Claims Administrator referred Mr. [redacted]'s Claim to the AAP for review. Doc. 296371. The AAP Consultant considered whether Mr. [redacted]'s Alzheimer's Diagnosis was consistent with the neuropsychological report from Dr. [redacted] and a second report from Dr. [redacted], a neuropsychologist not affiliated with the Settlement Program. Doc. 300955. The Consultant concluded that it was:

> Dr. [redacted] did not document a thorough consideration of the Slick criteria for possible malingered neurocognitive impairment. However, this is not seen as a major problem in this apparently straightforward gentleman. His cognitive test scores appear to be valid and reflect his optimal functioning while taking two Alzheimer's medications.
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> The absence of numeric ratings on the three relevant domains of the Dementia Rating Scale is problematic. However, neurologist [redacted], MD apparently assigned ratings of 1 to Community Affairs and 2 to Home & Hobbies and Personal Care on September 27, 2023 (Doc. ID 291445). These are clearly indicative of much greater functional impairment than Dr. [redacted]'s 2020 description. Assuming they are accurate, I see no neuropsychological reason to question the diagnosis of Alzheimer's disease.

Id.

On March 25, 2024, the Claims Administrator, approving Mr. [redacted]'s Monetary Award based on a Qualifying Diagnosis of Alzheimer's Disease, adopted Dr. [redacted]'s date of Diagnosis: September 27, 2023. Doc. 317943.

Mr. [redacted] filed a timely appeal on April 24, 2024, disputing his date of Diagnosis. Doc. 323232.

RESOLVING THIS APPEAL

Mr. [redacted] argues that his date of Diagnosis should be revised to reflect impairment documented in prior medical records. Doc. 323232. Those records include his treatment by Dr. [redacted] for Alzheimer's Disease, from September 17, 2018, through October 22, 2019, and his even earlier treatment by a non-Settlement affiliated doctor, [redacted], for dementia. *Id*.

Dr. [redacted] indeed refers repeatedly to an Alzheimer's Diagnosis. Doc. 323210. And it is certainly possible that Mr. [redacted]'s impairment predates his evaluation by Dr. [redacted]. Nevertheless, neither the Claims Administrator (in claims review) nor the Special Masters (on appeal) can unilaterally determine that an amended date of Diagnosis would be appropriate.

The Settlement is clear that a Player's date of Diagnosis is determined by that Player's Diagnosing Physician.[1] The Settlement permits Diagnoses to pre-date evaluation by the Diagnosing Physician in certain circumstances. Most relevant to Mr. [redacted]'s situation, the Settlement permits an earlier date of Diagnosis based on the "[s]ound clinical medical judgment" of the physician making the Diagnosis.[2] To reach that determination, the physician must be able to review sufficient information to "form a sound medical judgment that the Player's Qualifying Diagnosis conditions existed at a date earlier than the date of a personal examination of the Player by the physician making the diagnosis and signing the Diagnosing Physician Certification Form."[3]

All of those circumstances require that the *physician*, rather than the Claims Administrator or the Special Master, determine the appropriate date. The appeals process permits review of the bases and outcomes of the physician's judgment, but not the assignment of a new, earlier, Diagnosis date. There is therefore no clear and convincing evidence of error in the Claims Administrator's adoption of the Diagnosing Physician's preferred date.

CONCLUSION

I deny Mr. [redacted]'s appeal.

November 20, 2024

David A. Hoffman, Special Master

[1] The Diagnosing Physician must certify the date of Diagnosis through the Diagnosing Physician Certification Form, as Dr. [redacted] has done here. Settlement Agreement, Section 2.1(gg). *See also* FAQ #100 (How is the date of a Qualifying Diagnosis determined?), NFL CONCUSSION SETTLEMENT, https://www.nflconcussionsettlement.com ("The physician making a Qualifying Diagnosis of a Retired NFL Football Player must determine and verify the date on which that Qualifying Diagnosis was made.").

[2] FAQ #100, *supra* note 1.

[3] *Id.*