

IN RE: NATIONAL FOOTBALL LEAGUE  
PLAYERS' CONCUSSION INJURY  
LITIGATION

MDL No. 2323

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

██████████, a Retired NFL Player and Class Member under the Amended Class Action Settlement Agreement, filed a Claim for benefits based on a Qualifying Diagnosis of Alzheimer's Disease. The Claims Administrator determined that Mr. ██████████ was entitled to a Monetary Award. Mr. ██████████ appealed, disputing the total number of Eligible Seasons and the date of Diagnosis that the Claims Administrator used in calculating his Award. Since Mr. ██████████ has not presented clear and convincing evidence that the Claims Administrator was incorrect on either ground, I deny his Appeal.

Mr. [REDACTED] first registered for the Settlement Program on March 16, 2017. Doc. 32762. During the registration process, he indicated that he played in, and therefore was eligible for benefits based on, four NFL seasons. *Id.*, at 1; Doc. 60437.

1



“Eligible Season” means a season in which a Retired NFL Football Player or deceased Retired NFL Football Player was: (i) on a Member Club’s Active List on the date of three (3) or more regular season or postseason games; or (ii) on a Member Club’s Active List on the date of one (1) or more regular or postseason games, and then spent at least two (2) regular or postseason games on a Member Club’s injured reserve list or inactive list due to a concussion or head injury.<sup>1</sup>

Here, because Mr. [REDACTED] was injured in a preseason game and subsequently placed on the [REDACTED] injured reserve list, he was not on an Active List on the date of any regular or postseason games.<sup>2</sup> Consequently, his 1990 season with the [REDACTED] does not qualify as an Eligible Season.<sup>3</sup>

In addition to submitting a Sworn Statement explaining the circumstances of Mr. [REDACTED] 1990 season, Mr. [REDACTED] counsel also attached a memorandum from the Bert Bell/Pete Rozelle NFL Player Retirement Plan (NFLPRP) stating that, under its standards, he had five credited seasons with the NFL. Doc. 240715. But the Settlement’s benefits are not defined by other NFL or NFLPA-related benefits programs, including the NFLPRP.<sup>4</sup>

Mr. [REDACTED] Claim also summarized his history with the Settlement Program and the BAP, including his attempts to complete BAP testing with neurologist Dr. [REDACTED] in 2018:

Originally, Mr. [REDACTED] had his BAP scheduled appointment with neurologist, Dr. [REDACTED] on February 21, 2018. Thereafter, Dr. [REDACTED] requested Mr. [REDACTED] complete an MRI and an additional appointment. On March 12, 2018, Mr. [REDACTED] and his wife met with Dr. [REDACTED] who stated that he would render a diagnosis within a week, after review of all his test results. However, and unfortunately, this diagnosis never occurred. A week passed, thereafter, a month, and then an entire year passed. . . Mr. [REDACTED] and his wife set another appointment with Dr. [REDACTED] on May 15, 2019. Dr. [REDACTED] expressed to Mr. [REDACTED] that he would submit his diagnosis to BAP by the following week. However, yet another year passed and Dr. [REDACTED] had yet to submit a diagnosis. This occurred just prior to COVID-19 ravaging the nation and scheduling across medical offices nationwide became almost obsolete. Because of this, Mr. [REDACTED] was finally able to get a diagnosis through his MAF Physician on April 6, 2021.

---

<sup>1</sup> Settlement Agreement, Section 2.1(kk).

<sup>2</sup> The NFL Parties’ brief clarifies Mr. [REDACTED] employment during the 1990 Season. They explain that he was released from the [REDACTED] on August 29, 1990, before the regular season began on September 9, 1990. Doc. 241586.

<sup>3</sup> Mr. [REDACTED] counsel requested on appeal that I also consider awarding Mr. [REDACTED] four and a half Eligible Seasons “as a compromise.” Doc. 240715. However, Mr. [REDACTED] preseason with the [REDACTED] does not qualify as half of an Eligible Season. The Settlement’s definition of half of an Eligible Season applies only when a Player was either on a Club’s practice, developmental, or taxi squad roster or on a World League of American Football, NFL Europe League, or NFL Europa League team’s active roster. Settlement Agreement, Section 2.1(kk). Neither category applies to Mr. [REDACTED]

<sup>4</sup> *Frequently Asked Questions: FAQ #25* (Are the Settlement benefits connected to any NFL or NFLPA-related benefits programs?), NFL CONCUSSION SETTLEMENT, <https://www.nflconcussionsettlement.com>.

Doc. 236211 (cleaned up). Based on these scheduling delays, Mr. [REDACTED] counsel asked that his date of Diagnosis be set at his initial BAP examination, on February 21, 2018, when he was 55 years old, rather than at the date of his Qualifying Diagnosis through MAF Physician Dr. [REDACTED] on April 6, 2021, when he was 58 years old. Doc. 236211.

The date of Diagnosis is ordinarily set by the diagnosing physician, at the point when he or she “has enough information and materials, including test results, to be able to render a medically sound and reliable judgment about the Player’s condition, the way a physician normally does in his or her clinical practice.”<sup>5</sup> Dr. [REDACTED] examined Mr. [REDACTED] on April 6, 2021, and dated his Qualifying Diagnosis to the day of that examination. The Claim rests on the Qualifying Diagnosis that was asserted, and not on any other date that, while part of the Retired Player’s history with the Program, may have been medically significant.

The Settlement rarely empowers the Claims Administrator to overrule these timing judgments.<sup>6</sup> Finding a date of Diagnosis before the relevant examination must turn on the “sound clinical judgment and best medical practices” of that physician, and not on the views of the Claims Administrator.<sup>7</sup>

It is unfortunate that Mr. [REDACTED] experienced significant delays when he tried to access the BAP. But he did not receive a Qualifying Diagnosis through Dr. [REDACTED] or any other BAP provider, and there is no earlier date of Diagnosis to consider. The Claims Administrator therefore did not err in basing Mr. [REDACTED] Monetary Award on the date of Diagnosis asserted by Dr. [REDACTED] in his MAF Diagnosing Physician Certification Form. Doc. 235733.

### CONCLUSION

On appeal, Mr. [REDACTED] was required to provide clear and convincing evidence that the Claims Administrator’s calculation of his Monetary Award—based on his number of Eligible Seasons and date of Qualifying Diagnosis—was wrong. Mr. [REDACTED] has not met that burden, and I therefore deny his Appeal.

Date: March 21, 2022



David A. Hoffman, Special Master

---

<sup>5</sup> *Frequently Asked Questions: FAQ #101* (How is the date of a Qualifying Diagnosis determined?), NFL CONCUSSION SETTLEMENT, <https://www.nflconcussionsettlement.com>.

<sup>6</sup> *Id.*

<sup>7</sup> Other exceptions to the general expectation that the date of Diagnosis corresponds to the time of the diagnosing physician’s personal examination of the Player pertain to situations in which (i) the diagnosing physician is deceased or legally incompetent, (ii) the Player received a Diagnosis through an 88 Plan physician, or (iii) the Player died prior to the Effective Date of the Settlement and the Player’s medical records are unavailable. *Id.* These exceptions are not relevant here.