

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

MDL No. 2323

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

needs a break and pull him aside to discuss and explain things that are said in a conversation.

Doc. 282788 at 3.

Dr. [REDACTED] examining Mr. [REDACTED] on January 31, 2024, initially assigned Mr. [REDACTED] CDR scores of 1.0 in Community Affairs and Home & Hobbies and a score of 0 in Personal Care, for an overall CDR score of 1.0. Doc. 356347. In his accompanying report, Dr. [REDACTED] noted that he had reviewed Dr. [REDACTED] neuropsychological testing and summarized Mr. [REDACTED] functioning:

Following the NFL he began doing media events such as game analysis and continues to do this. This is his major activity and is said by him to be “full time” and up to 8-10 hours per day. [REDACTED] mentioned to me that these activities take only a few hours one day per week. He also does a kids football camp once a year in his home town. He belongs to church and occasionally attends. He works with [REDACTED] for shopping. He avoids meeting people as it gives him anxiety...

Community activities include playing golf with his friends and just hanging out and talking. At home he watches TV, does online searches. He plays golf. He occasionally hikes.... [REDACTED] does usual household tasks, uses a financial manager, and on computer does searches, social media, streaming with YouTube. His driving is limited. Personal Care: appearance, dressing, washing, eating, utensils bowel, bladder. He may need help putting his shoes on due to low back pain.

Doc. 301635 at 2.

After prompting from the Claims Administrator, Dr. [REDACTED] reviewed the third-party affidavits that accompanied Mr. [REDACTED] Claim. Docs. 370595, 372874, 377535. Those affidavits were completed by Mr. [REDACTED] friend, [REDACTED], and executive assistant, [REDACTED]. Doc. 333817. Dr. [REDACTED] subsequently revised Mr. [REDACTED] CDR scores, assigning him a score of 1.0 in Personal Care while maintaining Mr. [REDACTED] scores in the other two categories. Doc. 377535. Mr. [REDACTED] overall CDR score remained a 1.0. *Id.*

Both BAP examiners signed Mr. [REDACTED] Diagnosing Physician Certification Form, asserting a Qualifying Diagnosis of Level 1.5 Neurocognitive Impairment and a date of Diagnosis of January 31, 2024. Doc. 381079.

Reviewing Mr. [REDACTED] Claim, the Claims Administrator flagged business records and social media posts that raised questions about Mr. [REDACTED] functional impairment (the “External Evidence”.) Doc. 386138. In the memorandum notifying Mr. [REDACTED] of his opportunity to respond to that Evidence, the Claims Administrator summarized its content:

We observed publicly available social media posts and other websites that discuss your employment and your connection to several businesses, your participation in various social and community events that include playing golf, meeting with political figures, giving speeches to crowds, and attending different types of sporting events. We also observed your participation in several podcasts that are not in connection to the podcast you produce. These findings are before and after 1/31/24, the date of your diagnosis by Qualified BAP Providers Dr. [REDACTED] and Dr. [REDACTED]. We have uploaded a document that outlines 61 items to your portal (Doc ID 386137) but also acknowledge that there are other available posts that portray similar ongoing activities that we did not include because of the overwhelming number of items.

Id. Mr. [REDACTED] responded on May 14, 2025, writing,

The posts and content you reference were carefully chosen and selectively shared, either by me or with my approval. These curated moments do not tell the full story — they fail to show the preparation, support, or recovery required to make such appearances possible. They do not capture the behind-the-scenes accommodations, the cognitive scaffolding, the coaching or assistance, the missed meetings, forgotten names, anxiety spirals, or the painful recoveries that follow a few hours of ‘functioning’ in public.

Doc. 391962.

After seeking input from an Appeals Advisory Panel (AAP) Member, the Claims Administrator denied Mr. [REDACTED] Claim on July 28, 2025:

Dr. [REDACTED] reported (Doc ID 301635) that the Player continued to work either for a few hours one day per week or up to 8-10 hours per day, ran a football camp once per year, attended Church occasionally, was accompanied when shopping, was less social, played golf, occasionally went hiking, spent time with friends, did usual household tasks, had a financial manager, had limited driving, and needed help putting on shoes due to low back pain.

There are two CDR Assessment Forms. The first CDR Assessment Form (Doc ID 356347) reported a score of 1 for Community Affairs due to needing assistance to manage his schedule, doing part time work, having limited driving, and continuing to interact with friends; a score of 1 for Home/Hobbies due to living alone and doing many household chores; and a score of 0 for Personal Care due to having good self-care; with an overall CDR score of 1.

The second CDR Assessment Form (Doc ID 377535) reported a score of 1 for Community Affairs due to lack of motivation to participate in community events and sports camps, needing reminders about appointments, continuing to do part

time sports commentary, having limited driving, and decreased social interactions; a score of 1 for Home/Hobbies due to being able to live alone and do limited household chores, but needing reminders and no longer playing music or doing photography, as well as being less passionate about hobbies; and a score of 1 for Personal Care due to needing reminders about dressing; with an overall CDR score of 1.

The second CDR Assessment Form reported the use of information from third-party statements which was not reported in the first CDR Assessment Form, indicating that the differences between the scores reported on the forms were attributable to information from the third-party statements. However, while third-party statements are used to corroborate the functional impairments, they should not be used as the basis for the CDR score determinations. Consequently, the information in the first CDR Assessment Form will be relied on instead of the information in the second CDR Assessment Form.

Third-party affidavits (Doc ID 362115) corroborated that the Player had less interest in community events, diminished participation in social and work-related events, expressed a lack of enthusiasm for running a sports camp, needed reminders for tasks such as paperwork, grooming, and hobbies, and had less interest in hobbies such as playing piano and photography. The Player continued to manage household responsibilities, needed assistance with scheduling, had difficulty maintaining relationships, needed assistance to pick out clothing and shop, forgot to eat meals, and was less social.

Additional audit information (Doc IDs 386134 – 386138) clarified that publicly available social media posts and websites indicated the Player was employed, connected to several businesses, participated in various social and community events, participated in podcasts, played golf, met with political figures, gave speeches, and attended sports events. The Player responded (Doc IDs 388872, 388873, and 391962) that the posts and social media content failed to show the preparation, support, behind-the-scenes accommodations, and recovery required to make the appearances possible.

Overall, the information supports a score of 0.5 for Community Affairs, since while impairments are reported, the Player is still able to work, drive, and participate in podcasts, as well as various social and community events, which would indicate continued ability to function independently in the community, despite the problems/difficulties; a score of 0.5 for Home/Hobbies, since the Player is able to live alone and perform household chores, despite problems/difficulties and continued hobbies such as playing golf and hiking; and a score of 0 for Personal Care, since the impairment with putting on shoes was attributed to low back pain rather than due to cognitive decline.

Consequently, an overall CDR score of 0.5 is supported. Therefore criterion (iii) is not fulfilled for Level 1.5 Neurocognitive Impairment.

Doc. 400946 at 2 (breaks added).

Mr. [REDACTED] appealed on August 27, 2025. Doc. 404713.¹

RESOLVING THIS APPEAL

To prevail, Mr. [REDACTED] must demonstrate—by clear and convincing evidence—that the Claims Administrator erred in denying that he met the functional-impairment criteria for a Level 1.5 diagnosis: CDR scores of 1.0 in Community Affairs, Home & Hobbies, and Personal Care.²

The record presents a mixed picture of Mr. [REDACTED] functional impairment. Dr. [REDACTED] and Dr. [REDACTED] reports, as well as the third-party affidavits, include evidence of both impaired and retained functioning that do not map neatly onto the CDR scoring categories.

A score of 1.0 in Community Affairs requires 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. 409083. When Mr. [REDACTED] was evaluated, he was working either full-time, based on his own report, or intermittently, according to Mr. [REDACTED] his executive assistant. Doc. 301635. Per Dr. [REDACTED] Mr. [REDACTED] also drove independently, ran a youth camp, played golf regularly, went hiking, attended church, and socialized with friends. *Id.* On the other hand, Mr. [REDACTED] reported that he needed help from Mr. [REDACTED] to complete his shopping and told Dr. [REDACTED] that he typically brought a support person when attending social events. *Id.* Dr. [REDACTED] assigned a score of 1.0 in Community Affairs. The AAP disagreed, concluding that [REDACTED] continued ability to work, drive, and participate in social and community events supported a 0.5 rather than a 1.0. Doc. 400946 at 2.

A score of 1.0 in Home & Hobbies requires “mild but definite impairment of function at home,” including “more difficult chores abandoned” and “more complicated hobbies and interests abandoned.” Doc. 409083. Mr. [REDACTED] lives alone and Dr. [REDACTED] reported that he does all usual household tasks. Doc. 301635. Some of his hobbies, golf and hiking, have likewise continued. *Id.* Dr. [REDACTED] however, noted that he has a housekeeper to assist him. Doc. 282788. And Mr. [REDACTED] wrote that Mr. [REDACTED] has lost interest in some of his hobbies, including piano and photography. Doc. 362115. [REDACTED] likewise assigned a score of 1.0 in Home & Hobbies. The AAP again assessed the impairment as milder, reasoning that [REDACTED] independent living, household functioning, and continued hobbies such as golf and hiking aligned with a 0.5. Doc. 400946 at 2.

¹ Mr. [REDACTED] brief, filed in August 2025, “was prepared by my counsel,” who, he said, would “soon enter an appearance on my behalf.” Four months later, no counsel has noticed an appearance.

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

Finally, a score of 1.0 in Personal Care requires that Mr. ██████ “needs prompting” for dressing, hygiene, and keeping his personal effects in order. Doc. 409083. Neither Dr. ██████ nor Dr. ██████ noted any impairment in Mr. ██████ self-care. Mr. ██████ and Mr. ██████ friend Ms. ██████ however, did: Ms. ██████ wrote that she “provides emotional and mental support... pushing him to... tend to the maintenance needs of his home and self,” and Mr. ██████ explains that Mr. ██████ struggles to coordinate his own outfits and sometimes forgets to eat. Doc. 362115 at 3, 8. Relying on the affidavits, Dr. ██████ raised the Personal Care score from 0 to 1.0. The AAP disagreed with that change, noting that the only physician-documented issue—difficulty putting on shoes—was attributable to back pain, not cognitive decline, and therefore supported a 0.

The Claims Administrator followed the AAP Member’s judgment, rather than Dr. ██████ and denied Mr. ██████ Claim. The articulated judgment of a Player’s diagnosing physician is typically entitled to deference under the Settlement. But (the Claims Administrator concluded) Dr. ██████ judgment here was entitled to less deference because of his departure from the Settlement’s best practices for CDR scoring, as well as the information presented in the External Evidence.

The Claims Administrator engaged in an appropriate and regular process. I have previously held that third-party affidavits can be used to corroborate, but not to supplant, a physician’s CDR analysis.³ Dr. ██████ use of the affidavits sits somewhere between corroboration and substitution. In one CDR category, he changed Mr. ██████ score solely because of what they said. The AAP concluded his scoring departed from Settlement guidance because it relied directly on affidavit statements rather than using them only to corroborate physician-observed impairment. Such departures “affect the degree of deference [a physician’s CDR] scoring merits,” although they do not undermine the physician’s judgment entirely.⁴

The External Evidence showed that Mr. ██████ was more active in the community than his clinical reports suggested—appearing on multiple podcasts, speaking at public events, meeting political figures, golfing regularly, hiking, and attending sporting events. Doc. 386138.

Ultimately, Mr. ██████ bears the burden of showing by clear and convincing evidence that the Claims Administrator’s analysis was incorrect. Clear and convincing evidence means it is “highly probable or reasonably certain” that there has been an error.⁵ Here, the evidence of functional impairment was mixed, and the AAP, after explaining why Dr. ██████ practices did not merit the ordinary degree of deference, concluded as a matter of fact that the holistic picture tilted against an award. Reasonable minds could read the record differently. But the

³ Special Master Ruling on Functional Impairment, at 5 (Mar. 11, 2022), https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=functional_impairment_sm_6.pdf.

⁴ Special Master Ruling on Functional Impairment, at 3 (Oct. 21, 2023), https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=functional_impairment_sm_7.pdf.

⁵ Settlement Agreement, Exhibit A-2 (2)(3); Special Master Ruling on Slick Criteria and Validity Testing, at 10 (Oct. 21, 2020), https://www.nflconcussionsettlement.com/Docs/slick_validity_testing_sm.pdf (quoting *In re Fosamax Alendronate Sodium Prods. Liab. Litig.*, 852 F.3d 268, 285–86 (3d Cir. 2017)).

question is not whether another decision was possible—it is whether it was highly probable or reasonably certain. On this mixed record, it is not.

CONCLUSION

Because Mr. [REDACTED] has not offered clear and convincing evidence that the Claims Administrator erred, I deny his Appeal.

Date: December 17, 2025



David A. Hoffman, Special Master