

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

certify a Level 1.5 diagnosis for Mr. [REDACTED]. The Claims Administrator next referred Mr. [REDACTED] Claim to the Appeals Advisory Panel (AAP) to resolve the conflicting Diagnoses. Doc. 373387.

The AAP initially concluded that a Diagnosis of Level 1.5 Neurocognitive Impairment was appropriate. Doc. 377362. Evaluating Mr. [REDACTED] functional impairment, the AAP Member wrote,

Dr. [REDACTED] reported (Doc ID# 287498) the Player misplaced items, continued to drive with his wife's supervision and had problems with getting lost, was unable to manage finances, continued to garden, did not have trouble with dressing or bathing, did not have trouble doing errands alone, occasionally exercised, and reported an overall CDR score of 1.0.

Dr. [REDACTED] reported (Doc ID# 281583) that the Player was not working, continued to drive with limitations and problems, had limited activities outside the home, his wife managed the household finances, forgot to pay bills, rarely cooked, and his wife organized his medications and reminded him to take them. A CDR Score Sheet (Doc ID# 287499) reported the Player had scores of 2.0 for Community Affairs, 1.0 for Home/Hobbies, and 1.0 for Personal Care, with an overall CDR score of 1.0.

The third-party affidavit by [REDACTED] 11/22/2024 (Doc ID# 369412) corroborated that the Player had depression, anxiety, post-concussive syndrome, evidence of Lewy Body dementia, impaired focus and concentration, virtually non-existent ability to socialize, no longer coached, had mood swings, suicidal ideation, and emotional lability, continued to be comfortable in his garden, was able to complete personal hygiene regimens, had fair judgement, and no drug or alcohol abuse.

The level of functioning for Community Affairs would be 1.0 because, while the Player is reported to be able to run errands alone, his driving is reported to be with supervision and he is also reported to not be able to work, was less social or non-social, had limited activities outside the home, and no longer able to coach, indicating a mixed level of impairment for this category with some of the information supporting a score of 0.5 and some supporting a score of 1.0, and the CDR rules indicate that the higher of two scores should be selected when the information could be consistent with two adjacent scores for a category.

The information would support a score of 1.0 for Home/Hobbies since the Player was unable to manage finances and only rarely cooked but continued to garden, and a score of 0 for Personal Care since the Player was reported to not have trouble with dressing or bathing but did need reminders for medications and misplaced items. Consequently, an overall CDR score of 1.0 would be supported. Therefore criterion (iii) is fulfilled for level 1.5 neurocognitive impairment.

Id. at 3 (breaks added). The AAP Member completed Mr. [REDACTED] final Diagnosing Physician Certification Form on January 18, 2025, confirming a Diagnosis of Level 1.5 Neurocognitive Impairment with a date of Diagnosis of August 11, 2023. Doc. 377364.

The Claims Administrator then audited Mr. [REDACTED] Claim under Section 10.3 of the Settlement Agreement. Doc. 379787. During the audit, the Claims Administrator asked Mr. [REDACTED] a series of questions regarding his coaching activities. Doc. 380467. Mr. [REDACTED] explained that in 2022, he was employed by [REDACTED], where he “helped with the High School football program.” Doc. 384000. Mr. [REDACTED] “help[ed] the head coach mentor the students” and worked two hours a day, three times a week, from August through December of 2022. *Id.* Mr. [REDACTED] was also, at the time of the audit, listed as the President of the [REDACTED], a nonprofit youth football program. He explained that he “volunteered with the organization for approximately 12 hours a week from August through December, including practice meetings and events.” Doc. 381236. Mr. [REDACTED] described his involvement as “honorary mainly in nature,” and clarified that his role was “attending meetings and being a face for the organization,” including “representing and promoting the organization for publicity and community engagement,” “supervis[ing] and mentor[ing] the coaches who ultimately led the teams,” and speaking at team events. *Id.* Social media posts from the program document Mr. [REDACTED] involvement through September 2023; Mr. [REDACTED] clarified in his audit responses that by 2025, he was no longer associated with the organization. *Id.*

The Claims Administrator, concluding the audit on March 24, 2025, made no explicit finding that there had been a misrepresentation, omission, or concealment of material fact in Mr. [REDACTED] Claim. Doc. 384335. But it denied Mr. [REDACTED] Claim on June 11, 2025 based on the information gathered through the audit (hereinafter “Audit Evidence”), which changed the AAP Member’s analysis of his functional impairment. After summarizing Drs. [REDACTED] and [REDACTED] reports, and the information from Mr. [REDACTED] affidavit, it concluded:

Initially, the level of functioning for Community Affairs was thought to be 1 because, while the Player was reported to be able to run errands alone, his driving was reported to be with supervision and he was also reported to not be able to work and no longer able to coach, indicating a mixed level of impairment for this category with some of the information supporting a score of 0.5 and some supporting a score of 1. However, information obtained by the Claims Administrator during an Audit of the claim (Doc IDs 381236, pp. 9-11, and 384000) indicated that the Player helped with a public school football program in 2022 for pay, where his duties included helping the head coach mentor students for two hours per day, three times per week in August through December, he was engaged with a 501(c)3 organization with an honorary position, attended meetings and served as a face for the organization, which involved representing and promoting the organization for publicity and community engagement, he volunteered with the organization for approximately 12 hours per week from August through December, continued to participate in fund raising events, supervised and mentored coaches for the organization, and delivered a motivational speech at a football camp in 2023.

Consequently, now the overall information would support a score of 0.5 for Community Affairs since the Player was able to work, coach, mentor students, and be involved in a non-profit organization, which would clearly indicate continued ability to function independently outside the home. The information would support a score of 1 for Home/Hobbies, since the Player was unable to manage finances and only rarely cooked but continued to garden as a hobby, and a score of 0 for Personal Care, since the Player was reported to not have trouble with dressing or bathing, but did need reminders for medications and misplaced items. Consequently, the available information is generally consistent with an overall CDR score of 0.5 (Questionable), but not 1 (Mild). Therefore criterion (iii) is not fulfilled for Level 1.5 Neurocognitive Impairment.

Overall, because criterion (iii) is not fulfilled, the diagnosis of Level 1.5 Neurocognitive Impairment is not supported.

Doc. 395520.

Mr. [REDACTED] appealed on July 7, 2025. Doc. 398226.

RESOLVING THIS APPEAL

A Diagnosis of Level 1.5 Neurocognitive Impairment through the BAP requires that Mr. [REDACTED] exhibit CDR scores of 1.0 in Community Affairs, Home & Hobbies, and Personal Care.¹ Mr. [REDACTED] examining neurologist and neuropsychologist did not agree with each other that this standard had been met.² His Claim was consequently referred to the AAP—as the Settlement requires.³

The AAP Member, initially breaking the tie in Mr. [REDACTED] favor, determined that his CDR scores—1.0 in Community Affairs, 1.0 in Home and Hobbies, and 0 in Personal Care—together demonstrated the requisite impairment. Doc. 377362. Then, after considering the Audit Evidence, the AAP Member revised the Community Affairs score to 0.5: his gestalt judgment consequently fell to a non-qualifying range. Doc. 394420.

On appeal, Mr. [REDACTED] must demonstrate by clear and convincing evidence that the Claims Administrator erred in adopting the AAP's revised determination about his functional impairment.

Later-arriving evidence, like the Audit Evidence here, “has less probative value than contemporaneous evidence.”⁴ Overreliance on information post-dating the diagnosis threatens the

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

² Mr. [REDACTED] argues that the diagnoses weren't conflicting, but appears to simply misunderstand the relevant procedural record, which I have confirmed with the Claims Administrator.

³ Settlement Agreement, Section 5.13.

⁴ Special Master Ruling on Late Arriving Evidence and Deference, at 11 (Apr. 8, 2025), https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=late_evidence_deference_sm.pdf.

“layered deference to expertise” on which this Settlement is built: only in a “rare case” will it disturb a Diagnosing Physician’s clinical judgment.⁵

The Claims Administrator’s review in Mr. █████ case appropriately applied this mandate. The Audit Evidence notably does not disturb the conjoint judgment of Mr. █████ BAP clinicians, as they disagreed about his functional impairment. It instead unsettles the prior judgment of the AAP Member that resolved their disagreement. And (crucially for the purposes of a deference analysis) it suggests that the medical records presented with the Claim were incomplete: they missed important information about Mr. █████ functional abilities. The history of this Claim thus offers a paradigmatic example of when later-arriving evidence can and should play a determinative role.

The first AAP report noted “a mixed level of impairment for [Community Affairs] with some of the information supporting a score of 0.5 and some supporting a score of 1.0.” Doc. 377362 at 3. The AAP Member assigned Mr. █████ a score of 1.0 in Community Affairs under the CDR rules, which “indicate that the higher of two scores should be selected when the information could be consistent with two adjacent scores for a category.” *Id.* The information gathered through the audit, while it may not have compelled the conclusion that Mr. █████ had culpably misrepresented, concealed, or omitted information during his evaluations, did reveal facts about his work history that were not documented by either of his BAP clinicians. Their reports were consequently incomplete, and the AAP member undertook a searching review. Ultimately the Audit Evidence tipped the scales against a payable award.

The incorporation of such evidence into the AAP Member’s own judgment is not clear and convincing evidence of error. And the Claims Administrator’s decision to adopt that judgment, particularly in the absence of consensus between Mr. █████ BAP clinicians, was the correct one.⁶

CONCLUSION

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

Date: September 25, 2025



David A. Hoffman, Special Master

⁵ Special Master Ruling on Validity Testing, External Evidence, and Functional Impairment, at 11 (Mar. 27, 2023), https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=validity_evidence_impairment_sm.pdf.

⁶ Mr. █████ addends additional affidavits and a report from his primary care physician that he deems probative of his functional impairment. These do not indicate that the Claims Administrator erred on the record before it. Special Master Decision on Neuropsychological Testing: *Slick* Criteria and Validity Testing, at 11 (Oct. 21, 2020), https://www.nflconcussionsettlement.com/ViewDoc.aspx?dp=slick_validity_testing_sm.pdf (“[A] letter offered in support of an Appeal is no substitute for a medical judgment created contemporaneously with an exam”). In all events, I read the brief as largely disagreeing with the AAP about how to interpret ambiguous facts. I defer to the expert judgment of the independent advisory physician, and adopt as a matter of fact the AAP’s conclusions about Mr. █████ demonstrated functional impairment.