

**FINDINGS AND REMEDIES OF THE SPECIAL MASTERS
PURSUANT TO SECTION 10.3(i) REGARDING 84 MONETARY AWARD CLAIMS**

I. INTRODUCTION.

Pursuant to Section 10.3 of the Settlement Agreement and Rule 7(b) of the Rules Governing Audit of Claims (the “Audit Rules”), the Claims Administrator audited 84 Monetary Award claims supported by Qualifying Diagnoses made by Dr. Robert Martinez and his son, Dr. Robert C. Martinez (the “Martinez Doctors”). The Claims Administrator’s investigation included reviews of relevant records, interviews, and consultation with a member of the Appeals Advisory Panel (“AAP”). The Claims Administrator concluded that these neurologists misrepresented information submitted to the Program in connection with the 84 Monetary Award claims.

Accordingly, on 5/1/18, the Claims Administrator referred these 84 Monetary Award claims to the Special Masters for review and findings pursuant to Section 10.3(i) of the Settlement Agreement and notified the affected Settlement Class Members. Seven Settlement Class Members withdrew their claims following the Claims Administrator’s referral to the Special Masters under Section 10.3 of the Settlement Agreement, leaving 77 claims remaining. The Special Masters reviewed the Record of the Audit Proceeding and issue these findings and remedies to apply to the remaining claims.

II. REVIEW OF FACTS.

The Claims Administrator began auditing claims based on a Qualifying Diagnosis by the Martinez Doctors after receiving anonymous tips stating the Martinez Doctors had: (1) performed evaluations at the offices of a law firm in Florida, which is a non-clinical setting; (2) rendered Qualifying Diagnoses to every player they had seen; and (3) used questionable techniques in making their diagnoses. The Claims Administrator investigated these statements and did not find evidence that the Martinez Doctors had evaluated players at a law office or had issued a Qualifying Diagnosis to every player they evaluated.

The Claims Administrator did find evidence to support the third allegation regarding questionable techniques and determined that the Martinez Doctors made misrepresentations that were material to the Qualifying Diagnoses asserted in 84 Monetary Award claims submitted to the Program.

These are the Qualifying Diagnoses the Martinez Doctors rendered:

Table 1		Martinez Claims Qualifying Diagnoses			
	Doctor	Level 1.5	Level 2	Alzheimer’s	Total
1.	Robert Martinez	27	30	2	59
2.	Robert C. Martinez	12	12	1	25
3.	Total	39	42	3	84

To evaluate whether the Qualifying Diagnoses made by the Martinez Doctors relied on any misrepresentations, omissions, or concealment of facts and to assess whether their diagnoses were made in a manner generally consistent with the Settlement Criteria, the Claims Administrator asked a member of the Appeals Advisory Panel (“AAP”) to review a sample of these 24 claims with Qualifying Diagnoses by the Martinez Doctors:

Table 2		Martinez Claims in AAP Sample		
Doctor		Level 1.5	Level 2	Total
1.	Robert Martinez	6	8	14
2.	Robert C. Martinez	4	6	10
3.	Total	10	14	24

The AAP member who reviewed all 24 claims found that “CDR ratings are not consistent with and do not reflect either the history information in his own note, history information in the neuropsychology note and/or the information contained in the third-party affidavit checklist.” The AAP member found such problems with 9/14 (64%) of the Level 2 diagnoses in the sample and 7/10 (70%) of the Level 1.5 diagnoses in the sample.

The Claims Administrator found discrepancies between players’ Level 2 Neurocognitive Impairment Qualifying Diagnoses by the Martinez Doctors and the functional activities and/or employment reported to the Martinez Doctors by the players. According to the AAP, a score of 2.0 on the CDR for community affairs indicates “no pretense of independent function outside the house.” A player’s continued ability to function independently outside the home is indicative that functional impairment is not corroborated by documentary evidence. In 18 of the 42 claims where the Martinez Doctors diagnosed the player with Level 2 Neurocognitive Impairment, the Martinez Doctors did not include evaluation of the players’ own statements to the doctor that he was working.

The Claims Administrator found that the Martinez Doctors provided the exact same score across all three relevant areas of the CDR for 79 of the 84 claims resting on their diagnoses (the remaining five claims did not have specific CDR scores). For example, when diagnosing Level 2 Neurocognitive Impairment, the Martinez Doctors always assigned CDR scores of 2 in Community Affairs, Home and Hobbies, and Personal Care. These “across-the-board” scores appear highly unlikely; it does not appear credible that every player with a claim on which the Martinez Doctors provided CDR scores had the identical scores in all three areas.

The Claims Administrator identified a player with a Qualifying Diagnosis from a Martinez Doctor who was previously evaluated by a neurologist who did not render a Qualifying Diagnosis to the player. On 3/31/14, a board-certified neurologist examined the player, assigned the player CDR scores of zero in all three areas, and did not render a Qualifying Diagnosis. Dr. Robert Martinez evaluated the player on 4/20/16 and assigned the player CDR scores of 2 in all three areas and diagnosed the player with Level 2 Neurocognitive Impairment. Members of the AAP and AAPC stated the diagnosis in this specific case is not supported by the information in Dr. Martinez’s notes or third-party affidavits.

III. CONCLUSION AND REMEDIES.

Under Section 10.3(i) of the Settlement Agreement, the Special Masters' review and findings may include the following relief, without limitation: (a) denial of the claim in the event of fraud; (b) additional audits of claims from the same law firm or physician (if applicable), including those already paid; (c) referral of the attorney or physician (if applicable) to the appropriate disciplinary boards; (d) referral to federal authorities; (e) disqualification of the attorney, physician and/or Settlement Class Member from further participation in the Class Action Settlement; and/or (f) if a law firm is found by the Claims Administrator to have submitted more than one fraudulent submission on behalf of Settlement Class Members, claim submissions by that law firm will no longer be accepted, and attorneys' fees paid to the firm by the Settlement Class Member will be forfeited and paid to the Settlement Trust for transfer by the Trustee into the Monetary Award Fund.

Upon review of the Record of the Audit Proceeding, the Special Masters find that claims relying on the Martinez Doctors' diagnoses may involve a misrepresentation, omission, or concealment of a material fact and adopt the findings of the Claims Administrator. Accordingly, and pursuant to Section 10.3 of the Settlement Agreement and Audit Rule 31(i), the Special Masters order these remedies for the remaining 77 of the 84 claims based on a diagnosis by the Martinez Doctors (and any future claim resting on diagnosis by either of the doctors):

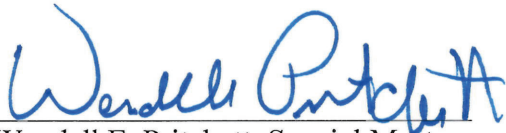
- 1. Rescission of Prior Determinations¹:** Any Award or Denial Notice issued for a Monetary Award claim based on a Qualifying Diagnosis by one of the Martinez Doctors is hereby rescinded.
- 2. Individualized Assessment by the AAP:** The Monetary Award claims based on a Qualifying Diagnosis by one of the Martinez Doctors shall be directed to a single member of the AAP, with consultation from a single AAPC member, for individualized assessment of whether each individual claim qualifies for an Award under the medical criteria in the Settlement Agreement.
- 3. Final Determination:** After this AAP review, the Claims Administrator will issue an Award or Denial Notice on each claim, which will be subject to appeal under Section 9.5 of the Settlement Agreement.

Some of these 77 Monetary Award claims are subject to another Audit investigation or an Audit Proceeding before us. These claims will not proceed under the remedy above unless and until the other Audit issues are resolved without denial of the claim.

As we noted earlier, seven of the 84 players with a Qualifying Diagnosis by one of the Martinez Doctors have withdrawn their claims. Under Audit Rule 13, a Retired NFL Football Player with a claim in Audit may at any time withdraw that claim. As is always the case, that player may be examined by a Qualified BAP Provider (if eligible for the BAP) or by a Qualified

¹ The Claims Administrator has issued three Denial Notices and one Payable Notice to players for Monetary Award claims based on a Qualifying Diagnosis by one of the Martinez Doctors. These four Notices will be rescinded.

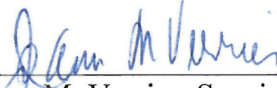
MAF Physician and, if found to have a Qualifying Diagnosis, substitute a new Diagnosing Physician Certification, including a medically indicated date of diagnosis (that may precede the date of the new exam), to the Claims Administrator for review in the claims process.



Wendell E. Pritchett, Special Master

Date:

10/25/18



Jo-Ann M. Verrier, Special Master

Date:

Oct. 25, 2018