

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

CODY FLACK, *et al.*,

Plaintiffs,

v.

WISCONSIN DEPARTMENT OF  
HEALTH SERVICES, *et al.*,

Defendants.

Case No. 3:18-cv-00309-wmc  
Judge William Conley

**PLAINTIFFS' STATUS REPORT AND REQUEST FOR STATUS CONFERENCE**

Plaintiffs Cody Flack, Sara Ann Makenzie, Courtney Sherwin, and Marie Kelly (“Plaintiffs”) respectfully submit this status report regarding Plaintiffs’ pending unopposed motion for class certification [ECF No. 89] and motion to expand this Court’s preliminary injunction, entered on July 25, 2018 on behalf of Plaintiffs Flack and Makenzie, to fully enjoin Defendants’ enforcement of Wisconsin Medicaid’s categorical exclusion on coverage for gender-confirming health care for the remainder of this litigation [ECF No. 89] (“Motion to Expand the Preliminary Injunction”). Plaintiffs wish to call the Court’s attention to several developments since briefing on the Motion to Expand the Preliminary Injunction was completed on December 10, 2018. Plaintiffs request a status conference to discuss the status of the litigation and request the Court’s guidance on whether supplementing and updating the record with respect to the Motion to Expand the Preliminary Injunction would be helpful to the Court.

First, the parties have engaged in significant expert and fact discovery on liability issues, including completing expert discovery on liability, and have substantially narrowed the factual issues in dispute. On January 14, 2019, Plaintiffs disclosed final expert reports from each of the four experts who previously submitted declarations to the Court in connection with Plaintiffs’

briefing on their preliminary injunction motions: Stephanie L. Budge, PhD, MPH; Daniel Shumer, MD, MPH; Loren S. Schechter, MD; and Jaclyn White Hughto, PhD, MPH. On February 15, 2019, Defendants disclosed two expert witnesses: Michelle Ostrander, PhD, and David V. Williams. On March 15, 2019, Plaintiffs submitted a rebuttal expert report from Joan C. Barrett, FSA, MAAA, and Elaine T. Corrough, FSA, FCA, MAAA. Further, the parties have engaged in good faith efforts to narrow the scope of disputed factual issues and have successfully done so. In anticipation of the upcoming dispositive motion deadline of April 22, 2019, the parties have stipulated to 35 additional findings of fact regarding treatments for gender dysphoria and Defendants' enforcement of the Challenged Exclusion. In addition, Defendants' responses to Plaintiffs' requests for admission and interrogatories have resolved or clarified a number of factual questions—including whether the Challenged Exclusion applies to hormone treatments—that were disputed or unresolved at the time of briefing. Plaintiffs have also obtained third-party discovery from the managed care organizations that offer Wisconsin Medicaid plans about their interpretation and enforcement of the Challenged Exclusion.

Second, pursuant to the Challenged Exclusion, Defendants and their participating managed care organizations are continuing to deny coverage for gender-confirming surgeries and related care to transgender Medicaid beneficiaries whose providers have deemed such care medically necessary. For example, one of the named plaintiffs, Courtney Sherwin, remains subject to the Challenged Exclusion and, in recent months, has been denied prior authorization for several surgical procedures deemed medically necessary by her physicians and mental health providers by her Wisconsin Medicaid managed care organization, Quartz. On January 25, 2019, Ms. Sherwin submitted a supplemental declaration [ECF No. 132], explaining that her doctor's prior authorization request for genital and breast reconstruction surgeries had been denied

pursuant to the Challenged Exclusion. Since then, Quartz has denied prior authorization requests for additional gender-confirming surgical procedures that Ms. Sherwin needs as part of her gender transition. Ms. Sherwin continues to suffer significant gender dysphoria and related anxiety and distress. Similarly, Plaintiffs also have information from individual members of the proposed class, medical providers who treat transgender Medicaid beneficiaries, third-party Medicaid managed care organizations, and Defendants that numerous other beneficiaries have been denied coverage for gender-confirming surgeries since the Court's entry of the existing preliminary injunction last year.

Accordingly, Plaintiffs request a status conference with the Court to discuss the above and the appropriate manner, if any, of supplementing the record for the Motion to Expand the Preliminary Injunction to provide this information to the Court.

Dated: April 5, 2019

Respectfully submitted,

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