

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

---

Brittany R. Tovar,

Plaintiff,

vs.

Essentia Health,  
Innovis Health, LLC  
dba Essentia Health West, and  
HealthPartners, Inc.,

Defendants.

---

Case No.: 0:16-cv-00100- (RHK/LIB)

**MEMORANDUM OF LAW IN  
SUPPORT OF DEFENDANTS  
ESSENTIA HEALTH AND  
INNOVIS HEALTH, LLC DBA  
ESSENTIA HEALTH WEST'S  
MOTION TO DISMISS**

**INTRODUCTION**

This case involves a claim of employment discrimination by Plaintiff Brittany R. Tovar (“Tovar”) against her employer, Defendants Essentia Health and Innovis Health, LLC dba Essentia Health West (hereinafter collectively referred to as “Essentia”).<sup>1</sup> Tovar has asserted that Essentia committed discrimination in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”) and the Minnesota Human Rights Act (“MHRA”) by excluding coverage for gender reassignment services or surgery in its employer-sponsored employee medical plan.

Tovar does not allege, however, that she sought services for excluded services or was otherwise denied care by Essentia. Rather, Tovar’s complaint alleges that her minor child, not a party to this lawsuit, was denied services and otherwise discriminated against

---

<sup>1</sup> Count 3 of Tovar’s complaint asserts a claim against co-defendant HealthPartners, Inc. for violation of the Affordable Care Act, 42 U.S.C. § 18116, based on the policy exclusion, as well. Essentia is not named in this count.

based on the exclusion and his transgender status. Neither Title VII nor the MHRA confer standing upon Tovar for employment discrimination under these circumstances because Tovar does not allege that she herself was discriminated against on the basis of her own sex or gender identity in employment. Accordingly, Tovar's complaint fails to state a claim against Essentia upon which relief can be granted, and her claims should be dismissed.

### **FACTUAL BACKGROUND**

Tovar has been employed by Essentia since 2010. (Compl. at 5.) She began as a registered nurse and is currently a family nurse practitioner. (Id.) At Essentia, Tovar receives health insurance benefits through the Essentia Health Employee Medical Plan ("the Plan"). (Id.) Tovar alleges that the Plan corresponds to an insurance policy offered to employees by Defendant HealthPartners, Inc., who also serves as the third-party administrator for the Plan. (Id.) Tovar also alleges that the Plan contains a categorical exclusion barring any insurance coverage related to "[s]ervices and/or surgery for gender reassignment."<sup>2</sup> (Id.)

Tovar has a teenage son, who has been a beneficiary of the Plan since October 1, 2014. (Id.) In November 2014, Tovar's son was diagnosed with gender dysphoria, which arises when an individual's gender identity differs from the gender assigned at birth. (Id.) Such an individual may be referred to as "transgender," while individuals

---

<sup>2</sup> This exclusion was eliminated from the Plan as of January 1, 2016.

whose gender identity is aligned with the gender they were assigned at birth may be referred to as “cisgender.” (Id.)

Tovar’s son was prescribed a drug known as Lupron, which treats symptoms associated with dysmenorrhea, or painful menstruation, and also temporarily suspends menstruation. (Id. at 7.) He was prescribed the drug because his menses contributed to his gender dysphoria and mental distress. (Id.) Essentia allegedly refused to cover Lupron because of the Plan’s categorical exclusion. (Id.)

Providers also prescribed Androderm, a form of testosterone, to treat Tovar’s son for gender dysphoria. (Id. at 8.) According to the complaint, the prescription for Androderm was also rejected due to the categorical exclusion in the Plan. (Id.) However, Essentia agreed to provide Tovar with coverage for the Androderm as an exception to the Plan. (Id.)

Tovar, on her own behalf, filed an action against both Essentia and HealthPartners, Inc. on January 15, 2016. In her complaint, Tovar alleges that Essentia violated Title VII and the MHRA’s bar on sex discrimination in employment, and specifically the bar on discrimination based on gender identity, by categorically excluding any coverage for “[s]ervices and/or surgery for gender reassignment” from the Plan. (Id. at 9-10.) Tovar alleges that Essentia’s violations caused her economic harm and emotional distress, and she seeks declaratory and injunctive relief, as well as damages. (Id. at 9-10, 12.) In response, Essentia has moved to dismiss Tovar’s claims for failure to state a claim upon which relief can be granted. Because Tovar has no statutory standing under either Title

VII or the MHRA based on the allegations in the complaint, her claims against Essentia should be dismissed.

## **LAW AND ARGUMENT**

### **I. Motion to Dismiss Standard**

For a complaint to state a claim against a defendant upon which relief can be granted, it must contain facts sufficient to state a claim that is plausible on its face. Ash v. Anderson Merchandisers, LLC, 799 F.3d 957, 960 (8th Cir. 2015) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). “A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’” Id. (quoting Twombly, 550 U.S. at 555.)

In cases asserting statutory rights, a threshold issue is whether the plaintiff has standing under the particular statute to sue the defendant. In other words, the inquiry is “whether Congress or the State has accorded *this* injured plaintiff the right to sue the defendant to redress [her] injury.” Miller v. Redwood Toxicology Laboratory, Inc., 688 F.3d 928, 934 (8th Cir. 2012). If the plaintiff lacks statutory standing, the complaint essentially fails to state a claim upon which relief can be granted. Leyse v. Bank of Am. Nat’l Ass’n, 804 F.3d 316, 320 (3d Cir. 2015); see Miller, 688 F.3d at 936, n.6.

In this case, Tovar’s complaint fails to state a claim against Essentia upon which relief can be granted. As discussed in depth below, Tovar lacks statutory standing under

either Title VII or the MHRA to assert that Essentia, as her employer, has engaged in discrimination based on sex or gender identity in violation of the statutes due to a categorical exclusion in her employer's health insurance plan because she herself never sought services excluded by the Plan on an allegedly discriminatory basis. Rather, Tovar alleges only that her minor child, a beneficiary of the Plan, but never an employee of Essentia, sought services excluded from coverage. Because Tovar has not suffered any discrimination against her as an employee, Tovar lacks standing and her complaint must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6).

**II. Tovar is not an aggrieved party who has suffered an injury conferring standing under either Title VII or the MHRA.**

Under both Title VII and the MHRA, an employer is prohibited from discriminating against any individual with respect to her compensation, terms, conditions, or privileges of employment because of such individual's sex. 42 U.S.C. § 2000e-2(a); Minn. Stat. § 363A.08, subd. 2. To have standing to bring an action under either of these Acts, the plaintiff must be an "aggrieved" party. 42 U.S.C. § 2000e-5; Minn. Stat. § 363A.28, subd. 1; Patee v. Pacific Nw. Bell Telephone Co., 803 F.2d 476, 477 (9th Cir. 1986). Under Title VII, a party is "aggrieved" if she falls within the zones of interests protected by Title VII, which "is to protect employees from their employer's unlawful actions" against them. Thompson v. N. Am. Stainless, LP, 562 U.S. 170, 178 (2011). Similarly, a party is "aggrieved" under the MHRA if "she has suffered the denial or infringement of a legal right." Krueger v. Zeman Const. Co., 781 N.W.2d 858, 862 (Minn. 2010).

By contrast, these Acts do not “contemplate third-party standing” of non-employees to assert an employer has engaged in discrimination. Niemeier v. Tri-State Fire Protection Dist., 2000 WL 1222207, at \*4 (N.D. Ill. Aug. 24, 2000); see Nicol v. Imagematrix, Inc., 773 F. Supp. 802, 806 (E.D. Va. 1991) (“[T]hird party standing is not adequate for a prima facie Title VII claim.”); see also Feng v. Sandrik, 636 F. Supp. 77, 82 (N.D. Ill. 1986) (finding a spouse had no Title VII employment discrimination claim because he “cannot be said to fall within the class of persons Title VII was intended to protect”). Indeed, in passing Title VII, Congress sought specifically to protect *employees* from discrimination in the workplace. Niemeier, 2000 WL 1222207, at \*4; see also Gen. Tel. Co. of the Nw., Inc. v. EEOC, 446 U.S. 318, 323 (1980) (stating “Title VII protects all *employees* . . . against discrimination”); Schwieger v. Farm Bureau Inc. Co. of Neb., 207 F.3d 480, 483 (8th Cir. 2000) (providing Title VII “protects only *employees*”).

Based on the construction and intent of Title VII and the MHRA, Tovar has not been “aggrieved” in order for her to have standing to assert that the Plan’s exclusion of gender reassignment services and surgery is discrimination in employment based on sex. This exclusion on its face in no manner pertains to the sex or gender identity of Tovar, as an employee. Rather, it solely pertains to coverage sought for services to her minor child, based on the nature of the services to the child. Patee, 803 F.2d at 479 (holding male employees were not aggrieved persons to assert a Title VII action because they did not belong to the class allegedly discriminated against). Consequently, Tovar simply does not have standing to assert Essentia has engaged in employment discrimination in violation of Title VII or the MHRA because the categorical exclusion at issue has not

discriminated against Tovar based on *her* sex or gender identity, as required to state a claim under the employment provisions of Title VII or the MHRA. Pedroza v. Cintas Corp. No. 2, 397 F.3d 1063, 1068 (8th Cir. 2005) (“Title VII prohibits an employer from discriminating against an employee *based on the employee’s sex.*”).

Notably, in similar cases brought by parents alleging denial of benefits to minor children, courts have required the parents, as plaintiffs, show a specific, separate, and direct injury to themselves caused by the defendant’s actions. Glass v. Hillsboro Sch. Dist. 1J, 142 F. Supp. 2d 1286, 1288 (D. Or. 2001). If the denial of benefits is strictly to the child, not the parents, the parents lack the essential injury to have standing to proceed with the claim. Id. at 1292; see EEOC v. Group Health Plan, 212 F. Supp. 2d 1094, 1100 (E.D. Mo. 2002) (holding there is no separate and distinct injury for a husband if the alleged discrimination was solely against his wife). Equally so, Tovar, in this action, lacks any injury because the denial of coverage was solely to her child and not herself. Because Tovar has not alleged any injury to herself based on the denial of benefits, Tovar lacks the necessary standing. Without this requisite statutory standing, Tovar’s claims against Essentia must be dismissed.

**III. Title VII cases involving the denial of benefits to spouses do not apply in this action to confer statutory standing on Tovar because the exclusion at issue does not discriminate based on the sex or gender identity of Tovar, as Essentia’s employee.**

The issue presented in this case, pertaining to whether an employee has a claim of Title VII employment discrimination for denial of benefits to her minor child, appears to be one of first impression. Essentia anticipates Tovar will contend prior case law

regarding coverage for pregnancy services support her position that discrimination affecting a *dependent* can be employment discrimination based on sex. Those cases are entirely distinguishable, however, and, in fact, highlight the reasons for Tovar's lack of standing under Title VII or the MHRA.

In Newport News Shipbuilding & Dry Dock Co. v. EEOC, 462 U.S. 669, 672 (1983), male employees brought suit under Title VII against their employer, alleging the employer's health benefit plan provided the same hospitalization coverage for male and female employees for all medical conditions, except that it provided less hospitalization coverage for pregnancy to the spouse of a male employee than it provided to a female employee. The male employees alleged the plan was discriminatory based on sex. Though the employer argued the employees failed to state a claim upon which relief could be granted because the prohibitions of Title VII did not extend to discrimination against the pregnant spouses and only applied to discrimination in employment, the United States Supreme Court disagreed and held the plan actually discriminated against the male employees because of sex and fell within the scope of Title VII's protections. Newport News, 462 U.S. at 684. According to the Court, the plan unlawfully gave married male employees a benefit package for their dependents that was less inclusive than the dependency coverage provided to married female employees. Id. (stating "the husbands of female employees receive a specified level of hospitalization coverage for all conditions; the wives of male employees receive such coverage except for pregnancy-related conditions"). Thus, the plan was discriminatory against male employees in that

the level of dependent coverage and availability of benefits differed based on the sex of the *employee* in violation of Title VII. Id.

This case is entirely distinguishable from Newport News because the exclusion in question is facially neutral and does not depend in any manner on Tovar's sex or gender identity. Regardless of whether Tovar were male or female, heterosexual or homosexual, transgender or cisgender, the same exclusion would apply to Tovar's eligible dependents as applied to Tovar's child in this case. Because there is no denial based on the sex or gender identity of Tovar, as an employee of Essentia, she is unable to bring an employment claim under Title VII or the MHRA. Id. at 684 (allowing employees' Title VII claims for denial of benefits to proceed because there was discrimination against the employees themselves based on their sex).

The court in Nicol v. Imagematrix, Inc., 773 F. Supp. 802 (E.D. Va. 1991) noted this particular distinction when analyzing whether an employee had standing to sue for discrimination on the basis of sex for allegedly being discharged because of his wife's pregnancy. While the court in Nicol ultimately held the employee potentially had an employment discrimination claim under Title VII because his status as a husband was distinctly gender-based, the court also noted that the analysis would not apply in other types of cases:

For example, a discharged employee who is also a parent could not state a prima facie Title VII claim . . . based on his or her daughter's pregnancy, because the status of a parent is not gender-based. Parents are both male and female. Thus, discharge because of a daughter's pregnancy would not be discrimination against the *employee* based on his or her sex. The result would be the same for a sibling or a neighbor.

Nicol, 773 F. Supp. at 806 (emphasis added).

The court's analysis in Nicol directly applies to the present action. While Tovar's complaint contends there is employment discrimination under Title VII and the MHRA based on sex for the denial of insurance coverage to her minor child, no denial in any manner relates to the sex or gender identity of Tovar herself. The fact that coverage would have been available to Tovar's minor child for the same procedures based on other diagnoses does not change the outcome: the exclusion simply did not relate in any way to the sex or gender identity of the employee or disadvantage any employee because of the same. As such, Tovar's employment claims simply are not covered by Title VII or the MHRA's protections pertaining to discrimination against *employees* in the workplace. See Schwieger, 207 F.3d at 483 (providing Title VII "protects only *employees*")

Tovar's cursory recitation of the elements of an employment discrimination claim in her complaint is insufficient to state a claim upon which relief can be granted. Ash, 799 F.3d at 960. Tovar has failed to state any facts showing she has statutory standing to assert an employment discrimination claim against Essentia, given the alleged discrimination applies solely to the status of her minor child and does not relate to Tovar's membership in any protected class. Because Tovar lacks the requisite statutory standing, her complaint fails to state a claim upon which relief can be granted, and her claims against Essentia should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6).

**CONCLUSION**

For the foregoing reasons, Defendants Essentia Health and Innovis Health, LLC dba Essentia Health West respectfully request this Court grant their motion to dismiss Plaintiff Brittany R. Tovar's claims against Essentia for failure to state a claim upon which relief can be granted.

Dated this 3rd day of March, 2016.

**VOGEL LAW FIRM**

*/s/ Lisa Edison-Smith*

BY: Lisa Edison-Smith (#266127)  
218 NP Avenue  
PO Box 1389  
Fargo, ND 58107-1389  
Telephone: 701.237.6983

Email: ledison-smith@vogellaw.com

ATTORNEYS FOR DEFENDANTS  
ESSENTIA HEALTH AND INNOVIS  
HEALTH, LLC DBA ESSENTIA HEALTH  
WEST

2486373.2

---

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Brittany R. Tovar,

Plaintiff(s)

**LR 7.1(f) & LR 72.2(d)  
CERTIFICATE OF COMPLIANCE**

v.

Case Number: 0:16-cv-00100-RHK/LIB

Essentia Health, Innovis Health, LLC dba  
Essentia Health West, and  
HealthPartners, Inc.

Defendant(s)

---

I, Lisa Edison-Smith

*[name of filer]*, certify that the



Memorandum titled: Memorandum of Law in Support of Defendants Essentia Health and Innovis Health, LLC dba Essentia Health West's Motion to Dismiss  
complies with Local Rule 7.1(f).

or



Objection or Response to the Magistrate Judge's Ruling complies with Local Rule 72.2(d).

I further certify that, in preparation of the above document, I:



Used the following word processing program and version: Microsoft Office Word 2007  
and that this word processing program has been applied specifically to include all text,  
including headings, footnotes, and quotations in the following word count.

or



Counted the words in the document.

I further certify that the above document contains the following number of words: 2,792

Date: March 3, 2016

s/ Lisa Edison-Smith

Name Lisa Edison-Smith

Address 1 218 NP Avenue, P. O. Box 1389

Address 2 Fargo, ND 58107-1389

Phone 701.237.6983

Email ledison-smith@vogellaw.com

Bar ID 266127