

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

CODY FLACK and
SARA ANN MAKENZIE,

Plaintiffs,

v.

WISCONSIN DEPARTMENT OF
HEALTH SERVICES and
LINDA SEEMEYER, in her official capacity
as Secretary of the Wisconsin Department of
Health Services,

Defendants.

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

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs Cody Flack and Sara Ann Makenzie (“Plaintiffs”) respectfully move this Court to enter a preliminary injunction against Defendants Wisconsin Department of Health Services (“DHS”) and Linda Seemeyer, in her official capacity as Secretary of DHS (“Defendants”). Plaintiffs ask the Court to preliminarily enjoin Defendants from enforcing Wis. Adm. Code § DHS 107.03(23)-(24) (the “Challenged Exclusion”)—the DHS regulation that categorically prohibits transgender individuals from receiving Medicaid coverage for medically necessary services to treat gender dysphoria—and from applying the Challenged Exclusion to them, during the pendency of this litigation.

As alleged in Plaintiffs’ Complaint [Doc. No. 1], the Challenged Exclusion, both on its face and as applied to Plaintiffs, violates: (1) the prohibitions on sex discrimination under Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116 (“Section 1557”); (2) the comparability and availability requirements of the federal Medicaid Act, 42

U.S.C. §§ 1396a(a)(10)(A)-(B); and (3) the Equal Protection Clause of the Fourteenth Amendment by depriving Plaintiffs of the equal protection of the laws based on sex and being transgender.

Through this motion, Plaintiffs request that this Court enjoin Defendants and their employees, agents, and representatives, as soon as reasonably practicable, and thereafter during the pendency of this litigation, from: (1) enforcing and/or relying upon the Challenged Exclusion to deny medical assistance to any Medicaid beneficiary for medically necessary treatment for gender dysphoria; (2) denying Cody Flack Medicaid coverage for the medically necessary surgical treatments he is currently seeking, and such other medically necessary gender-confirming care he may need during the pendency of this litigation; and (3) denying Sara Ann Makenzie Medicaid coverage for the medically necessary surgical treatments she is currently seeking, and such other medically necessary gender-confirming care she may need during the pendency of this litigation.

In support of this motion, Plaintiffs concurrently submit a memorandum of law, a statement of proposed facts, and the following declarations and exhibits, which are incorporated by reference into this Motion.

- Attorney Declaration of Orly May (attaching factual exhibits cited in brief)
- Declaration of Cody Flack
- Declaration of Sara Ann Makenzie
- Expert Witness Declaration of Stephanie L. Budge, PhD, LP
- Expert Witness Declaration of Daniel Shumer, MD, MPH
- Expert Witness Declaration of Jaclyn White Hughto, PhD, MPH
- Expert Witness Declaration of Loren S. Schechter, MD
- Declaration of Daniel P. Bergman, MS, LPC, NCC
- Declaration of Amy DeGueme, MD, ECNU
- Declaration of Daniel P. Bergman, MS, LPC, NCC
- Declaration of Clifford King, MD, PhD
- Declaration of Trisha E. Schimek, MD
- Declaration of Katherine M. Gast, MD, MS
- Declaration of Beth E. Potter, MD

Plaintiffs request that the Court enter the requested preliminary injunction as soon as practicable to avoid the significant and ongoing psychological and physical injuries to Plaintiffs due to their inability to obtain necessary health care. Plaintiffs therefore request that the Court set an expedited briefing schedule on this motion.

Based on the foregoing, Plaintiffs respectfully request that the Court grant this motion.

Dated: May 23, 2018

Respectfully submitted,

/s/ Joseph J. Wardenski

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