

**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

DECLARATION OF CODY FLACK

1. My name is Cody Flack. I am one of the plaintiffs in the above-captioned action. I have personal knowledge of the matters stated in this declaration.

2. I was born in Pennsylvania in 1988 and I moved to Wisconsin in 2012. I currently live in Green Bay, Wisconsin.

3. I have cerebral palsy. Because of my cerebral palsy, I have limited mobility and use a motorized wheelchair. I can't work because of my disability. I rely on Supplemental Security Income (SSI) for my income and Wisconsin Medicaid for my health care needs.

4. I am a transgender man. I was assigned "female" at birth, but since I was four or five years old, I have known myself to be a man. As a kid, I had disagreements with my grandmother about wearing girls' clothing that she selected for me. I pretended to shave my face and had arguments with her about whether I would have a beard when I grew up or whether I should pretend to shave my legs instead.

5. I have gender dysphoria. Simply put, my body and my mind don't match. I wake up in the morning and I see a woman's body—not my body. There is a severe disconnect there between who I am and what I see.

6. As early as 13, I began taking a few steps to live as a man, including cutting my hair in more traditionally masculine ways. Throughout my teens, I also attempted to flatten my chest using ACE bandages and tape.

7. When I was 18, I took more significant steps to transition to living as a man. I began seeing a gender therapist, adopted a traditionally male name, began wearing traditionally masculine clothing, and took some other steps to outwardly present as male. But I was afraid that coming out as transgender would isolate me from my family and friends, so I didn't feel that I would be able to complete my transition for several more years. Not being able to fully transition at that time, exacerbated my gender dysphoria.

8. After moving to Wisconsin in 2012, when I was 24, I found a supportive social network and felt ready to continue my transition. I began living and presenting as a man in all aspects of my life. I began to exclusively use the name Cody and masculine pronouns. I began wearing traditionally men's clothing and cut my hair. I also went to therapy and sought medical treatment to help further my transition and treat my gender dysphoria.

9. I have corrected most of my identity documents to reflect that I am male. I legally changed my name to Cody Jason Flack in 2014. My Wisconsin state identification card now has a male sex marker. I am also eligible to receive an amended birth certificate with a male sex marker from Pennsylvania, where I was born, but it is an expensive process, so I haven't gone through with it yet.

10. Since 2015, I have been seeing a psychotherapist, Daniel P. Bergman. He has been treating me for gender dysphoria and a few other mental health conditions. As part of my treatment for gender dysphoria, Mr. Bergman recommended that I obtain gender-confirming care, including hormone therapy and gender-confirming surgery.

11. In 2016, I contacted Dr. Amy DeGueme, an endocrinologist at Madison Medical Affiliates in Mequon, Wisconsin, to start medical treatments to support my gender transition. Dr. DeGueme determined that I'd benefit from hormonal therapy to further my transition and treat my gender dysphoria. In August 2016, Dr. DeGueme prescribed testosterone for me as hormone replacement therapy. I have continued this hormone treatment under Dr. DeGueme's supervision. The testosterone has helped me develop facial and body hair, a deeper voice, and a more masculine appearance.

12. So far, Wisconsin Medicaid has covered my hormone treatment. However, because of Wisconsin's ban on such medical treatment, I'm worried that at any point the coverage for my hormone treatments could be denied.

13. On October 11, 2016, I had a hysterectomy with bilateral salpingo-oophorectomy, meaning the total removal of my uterus, cervix, fallopian tubes and ovaries. These surgeries were primarily to treat two serious medical conditions I had: dysmenorrhea, a condition characterized by pelvic or lower abdominal pain during menstruation, and premenstrual dysphoric disorder ("PMDD"), a severe form of premenstrual syndrome. Wisconsin Medicaid covered this surgery because it was a treatment for dysmenorrhea and PMDD. However, in addition to treating these conditions, the surgery also helped significantly reduce my gender dysphoria. When I had periods, I experienced distress at the monthly reminder that my body didn't match my gender.

This distress was aggravated by my PMDD. The surgery helped bring my body more in alignment with my male identity.

14. Ever since puberty—when I realized that instead of pecs and a penis, I’d be getting breasts and a period—I’ve wanted to have the breasts on my body removed. A lot of people misgender me “female” because of my breasts. No matter how masculine I present, the general public still perceives me as a woman. Even with the testosterone I’ve been taking and wearing shirts that are way too large for me, my breasts are still noticeable. I have tried very hard to present as a man, but these breasts on my body present a visible marker of something I’m not: female. People never see me as a man, and even when I tell people I am a man, they still struggle. Often when I go out I’ll hear, “Ma’am, sir? Ma’am? Miss? Oh, sir?” or, “Is that a guy or a girl?” Each and every one of these instances where someone mistakes me for a woman chips away at my self-esteem and confidence.

15. My breasts make me experience severe gender dysphoria. Seeing these breasts on my body every day stresses me out. Because of them, I have been mistreated. Because of these breasts, at different points in my life, I have felt helpless and thought about harming myself and taking my own life. I still have these thoughts today.

16. Because my breasts make people not see me as who I am—a man—I tend to withdraw from social interaction more than I would otherwise. I can’t go out without paranoia. I continuously wonder, will people be able to see my breasts? Will they think I’m a woman? Because of that anxiety, my main source of social interaction is online. Online—unlike in public—I don’t face constant misgendering, judgment, or scrutiny of my appearance.

17. To hide these breasts, I have tried binding them. Specifically, I have used tape, ACE bandages, and specialized chest binders to flatten my breasts. Because of my disabilities, I

need help whenever I bind my chest. The binding is extremely painful and it irritates my skin to the point that I get sores from it. Also, even when I do bind, people still perceive me as a woman. Because it is painful, hard to do, and not even effective, I don't think binding is a viable or safe long-term option to alleviate the gender dysphoria I feel because of my breasts.

18. Starting toward the end of 2016, with the support of my psychotherapist and medical providers, I have sought out chest reconstruction surgery to further my gender transition and treat the severe gender dysphoria I have related to the breasts on my body. Based on my conditions, my medical providers recommended a double mastectomy and surgery to reconstruct a male chest.

19. On March 24, 2017, based on recommendations from my primary care physicians and psychotherapist, I had a consultation with Dr. Clifford King, a plastic surgeon in Madison, Wisconsin who specializes in gender-confirming surgeries for transgender individuals.

20. During the consultation, I gave Dr. King letters of support from Mr. Bergman, my psychotherapist; Dr. DeGueme, my endocrinologist; Erich G. Metzler, MD, the gynecologist who performed my hysterectomy and oophorectomy; and Maryam Shittu, MD, my primary care physician at the time. In their letters, each provider offered their medical opinion that I was diagnosed with gender dysphoria and met the criteria for gender-confirming surgery. During the consultation, Dr. King explained the chest reconstruction procedures and the associated risks and benefits. After the lengthy consultation, Dr. King determined that I met the criteria, under the applicable standards of care, for obtaining chest reconstruction.

21. Afterwards, Dr. King, through Dean Health Systems, Inc., submitted a request for prior authorization to DHS for Wisconsin Medicaid coverage of the chest reconstruction surgeries (bilateral complete simple mastectomy and breast reconstruction).

22. DHS denied my prior authorization on August 2, 2017. For both of the procedures I need, the letter stated, “THE SERVICE REQUESTED IS NOT A COVERED BENEFIT.” Accompanying that all-caps denial, was the notation, “Per WI administrative code DHS 107.03(24) transsexual surgery is a non-covered service.”

23. I was devastated by this denial and my depression and anxiety exploded. I kept thinking—will I be able to fight this? Or will I have to live life as a breasted man and be doomed to be mistaken as a woman forever? I immediately petitioned Wisconsin Department of Administration’s Division of Hearings and Appeals (“DHA”) to review the denial.

24. As part of the process in my administrative appeal, DHS notified DHA that its denial of preauthorization was based solely on Wisconsin’s exclusion of transition related care. The DHS letter even noted that the agency recognizes the requested surgeries as accepted treatments for gender dysphoria, but that it did not consider my medical necessity at all in reaching its decision.

25. I had an administrative hearing on November 14, 2017. Afterwards, the administrative law judge dismissed my petition. The ALJ affirmed the denials of my surgeries solely because the requested surgeries are excluded from coverage by the Wisconsin Medicaid program. Specifically, the judge explained that “[w]hile the proposed surgery presumably would favorably address [my] gender dysphoria, the surgery nevertheless is transsexual surgery that specifically is not covered under the code.”

26. I was again devastated by the decision and asked the judge to rehear the case. He denied my request on December 11, 2017.

27. Each denial is a new wound. This process has made me feel that I constantly need to prove to the world that I am a man. Having to do that every day feels like an interrogation when I have done nothing wrong. It makes me sick to my stomach.

28. Since being denied coverage for surgery last summer, my gender dysphoria has become even worse. My depression got worse after the surgeries were denied. I cannot afford the surgeries and so I feel hopeless. I get upset every time I see the breasts on my body. I ask myself whether I will have to live with breasts and with this distress forever. I often think about removing them myself. I also think about ending my life.

29. I am embarrassed to go out of my apartment because people often treat me as a woman. When I am in public, I am self-conscious about my breasts and, when I realize that someone may notice them, I get very upset and do whatever I can to conceal them from view. This means that I avoid social situations whenever possible.

30. The hysterectomy, oophorectomy, and testosterone did improve how I feel about myself, but the most visible cause of misgendering by others is still there. When I go out in public, my chest serves as a constant reminder of who, and what, people perceive me to be—and my confidence shatters. I am a man, but my whole life and my accomplishments throughout, feel like they belong to this woman that society sees, instead of the real me. Without the chest reconstruction surgeries that I need, I know my mental health will continue to decline. Without the chest reconstruction surgeries, I'm worried my confidence will sink even lower, that I might fall into a deep depression, or even hurt myself.

31. I want the chance to live life as me—the man that I've known myself to be for my whole life. Only then, knowing that my community sees me as *me*, will I be able to experience life fully, freely, and happily.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 16 day of May, 2018.


Cody Flack