

**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 DANIEL P. BERGMAN, MS, LPC, NCC

I, Daniel Bergman, MS, LPC, NCC, declare as follows:

1. I am a psychotherapist at Spectrum Behavioral Health, LLC, a therapy-based outpatient mental and behavioral health clinic in Green Bay, Wisconsin. I submit this declaration in my capacity as the treating therapist of Cody Flack, a plaintiff in the above-captioned matter.

2. I have a Masters of Science (M.S.) in Educational Psychology with a Community Counseling Emphasis. I am a Licensed Professional Counselor (L.P.C.) and a National Certified Counselor (N.C.C.).

3. I am licensed to practice psychotherapy in Wisconsin (license # 3484-125).

4. I have been treating Mr. Flack since October 21, 2015. Since then, I have seen Mr. Flack approximately once a week for therapy. The primary focus of my therapy with him has been to improve his coping skills and positive thinking, address his gender dysphoria, process his

past abuse, and decrease his learned helplessness. Through these years of working with Mr. Flack, I have extensive experience treating him, and have gotten to know him very well.

5. I have diagnosed Mr. Flack with Gender Dysphoria in Adolescents and Adults, a condition listed in the American Psychiatric Association's Diagnostic and Statistical Manual, 5th edition (DSM-5). Gender dysphoria is the medical and psychiatric diagnosis for distress related to individuals' gender identity differing from, or being incongruent with, their gender assigned at birth. I have also diagnosed Mr. Flack with depression, anxiety, unspecified eating disorder, and autism.

6. Mr. Flack was assigned female at birth but has identified as male for many years, and since well before we met in 2015. When I first started treating Mr. Flack, he was already living as the male he knows himself to be – he was referring to himself as Cody, and everyone that knew him, knew him as Cody. In my professional opinion, he is comfortable and well-adjusted in his male gender identity.

7. In my professional opinion, gender dysphoria related to the incongruity between Mr. Flack's male identity and his physical appearance has severely impacted his life and emotional health and well-being. He feels hampered by not feeling that his body reflects who he is. Because he does not feel at ease in his body, he does not feel he can pursue further education, a career, or volunteer opportunities. Fundamentally, he has put his life on hold because he does not feel like his true self. It is my professional opinion that his gender dysphoria also causes or complicates his anxiety and depression.

8. To treat Mr. Flack's gender dysphoria, I recommended that he receive hormonal replacement therapy (testosterone), which he began in August 2016. The testosterone deepened his voice and decreased his gender dysphoria.

9. Mr. Flack continues to suffer severe gender dysphoria because of the female-appearing breasts on his body. His chest serves as a constant reminder that his body does not reflect who he knows himself to be. For Mr. Flack, seeing his chest every day contributes to negative thinking about himself and exacerbates his depressive symptoms. Therefore, I absolutely believe, and it is my professional opinion that, the chest reconstruction surgeries he is seeking are medically necessary treatments for gender dysphoria.

10. On April 5, 2017, I provided Mr. Flack with a letter in which I indicated that I had diagnosed him with gender dysphoria and that I fully supported and recommended that he obtain chest reconstruction surgery. A true and correct copy of that letter is attached to this declaration as Exhibit A.

11. After Wisconsin Medicaid initially denied to cover his surgery in August 2017, Mr. Flack was overwhelmed. He became very depressed and started having suicidal thoughts. Our therapy helped him cope somewhat with his inability to access this medically necessary care, but the months immediately following the denial was a very dark time for Mr. Flack. While our therapy has helped, the denial is continuing to have a substantial negative impact on his mental and emotional well-being. If Mr. Flack is unable to obtain this necessary care in the near future, I believe that he would be at risk of suicidality and self-harm.

12. On November 7, 2017, I provided Mr. Flack a second letter in which I again indicated that I had diagnosed him with gender dysphoria and that I fully supported and recommended that he obtain chest reconstruction surgery. In that letter, I further added that the continued denial of his surgery could lead to significant harm, including possible suicidality and extended inpatient hospitalization. A true and correct copy of that letter is attached to this declaration as Exhibit B.

13. If Mr. Flack is not able to obtain chest reconstruction surgery, it would be very harmful. The denial of Mr. Flack's chest reconstruction surgery has had – and is continuing to have – a substantial negative impact on his mental and emotional well-being. Mr. Flack has expressed thoughts of self-harm—specifically, cutting off his breasts himself if he remains unable to obtain surgery. While he has not acted on these impulses, I am concerned that he may harm himself if he remains unable to obtain chest reconstruction and further his medical gender transition. That is the severity of his situation and how desperately he needs the surgery. Both his anxiety and depression have significantly increased since the initial denial and I have concerns that without the surgery, Mr. Flack would spiral further into depression. It is my professional opinion that continued denial of this necessary surgery could lead to possible suicidality and an extended inpatient hospitalization.

14. If, on the other hand, Mr. Flack were able to obtain the medically necessary surgeries, it is my professional opinion that it would significantly improve his gender dysphoria and alleviate his symptoms of severe depression and anxiety. If he were finally in a body that he felt was his own, he would consider going back to school and exploring different careers or various volunteer opportunities. With the chest reconstruction surgeries, Mr. Flack would finally be in a position to move forward with his life.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 14th day of May, 2018.

Daniel P. Bergman, MS, LPC, NCC
Daniel P. Bergman, M.S., L.P.C., N.C.C



SPECTRUM
BEHAVIORAL HEALTH LLC

MRN [REDACTED]

April 5, 2017

Dear Sir or Madam,

I am writing at the request of my client, namely Cody Flack (birth date: [REDACTED]) who has provided his informed consent for me to do so. As Cody's weekly outpatient psychotherapist since 10/21/2015, I have extensive experience in getting to know and working with him. I have diagnosed Cody as follows: Major Depressive Disorder, Recurrent Episode, Moderate (F33.1); Generalized Anxiety Disorder (F41.1); Social Anxiety Disorder (Social Phobia) (F40.10); Unspecified Feeding or Eating Disorder (F50.9); Autism Spectrum Disorder (F84.0); and Gender Dysphoria in Adolescents and Adults, Posttransition (F64.1). He also exhibits significant symptoms of posttraumatic stress disorder, though he does not meet the full criteria for this diagnosis in my professional opinion.

The primary focus of my individual efforts with Cody has been to improve his coping skills and positive thinking; process his past abuse / disturbing experiences as well as his personal capabilities versus personal challenges; and decrease / eliminate his learned helplessness. Though he continues to periodically struggle with the mental health concerns referenced above (albeit on a significantly less frequent and less severe basis per my ongoing assessment), his overall progress toward these ends has been very good. I should also note that Cody—who was born a biological female—has been living as a male since we first met (and well before this time). In my professional opinion, he is quite comfortable and well-adjusted in terms of his male gender identification. Furthermore, he is highly intelligent / insightful and most certainly possesses the capacity to make fully informed decisions and consent for treatment, including gender reassignment surgeries. Accordingly, Cody has my full recommendation and support with respect to his request for surgery.

If you have any questions, comments, or concerns regarding Cody or the content of this letter, please feel free to contact me as I am available for the coordination of his care. I may be reached at the address printed below, by phone at (920) 784-2644, or via fax at (920) 784-2655. Thank you for your time and consideration.

Sincerely,

Daniel P. Bergman, MS, L.P.C., N.C.C.

Daniel P. Bergman, M.S., L.P.C., N.C.C.
Psychotherapist
Spectrum Behavioral Health

1496 Bellevue Street, Suite 101, Green Bay, WI 54311-4205

EXHIBIT A



November 7, 2017

Dear Sir or Madam,

I am writing at the request of my client, namely Cody Flack (birth date: [REDACTED]). This letter has been given directly to him and only him so that it may be shared at his discretion. As Cody's weekly outpatient psychotherapist since 10/21/2015, I have extensive experience in getting to know and working with him. I have diagnosed Cody as follows: Major Depressive Disorder, Recurrent Episode, Moderate (F33.1); Generalized Anxiety Disorder (F41.1); Social Anxiety Disorder (Social Phobia) (F40.10); Unspecified Feeding or Eating Disorder (F50.9); Autism Spectrum Disorder (F84.0); and Gender Dysphoria in Adolescents and Adults (F64.1). He also exhibits significant symptoms of posttraumatic stress disorder, though he does not meet the full criteria for this diagnosis in my professional opinion.

The primary focus of my individual efforts with Cody has been to improve his coping skills and positive thinking; process his past abuse / disturbing experiences as well as his personal capabilities versus personal challenges; and decrease / eliminate his learned helplessness. Though he continues to periodically struggle with the mental health concerns referenced above (albeit on a significantly less frequent and less severe basis per my ongoing assessment), his overall progress toward these ends has been very good. I should also note that Cody—who was born a biological female—has been living as a male since we first met (and well before this time). In my professional opinion, he is quite comfortable and well-adjusted in terms of his male gender identification. Furthermore, he is highly intelligent / insightful and most certainly possesses the capacity to make fully informed decisions and consent for treatment, including gender reassignment surgeries. Accordingly, Cody has my full recommendation and support with respect to his request for surgery.

That said, Cody has brought it to my attention that Medicaid has denied his request for breast removal surgery and that he is in the process of appealing this decision. This denial and the possibility that he may not eventually be approved for what he deems to be necessary—not elective—surgery given his male gender identification has had (and is continuing to have) a substantial negative impact on his mental and emotional well-being, per his and his partner's reports as well as my professional observations and assessment. Both his anxiety and depression have recently and significantly increased, and I have concerns that the continuation of this breast removal surgery denial could lead to possible suicidality and an extended inpatient hospitalization.

1496 Bellevue Street, Suite 101, Green Bay, WI 54311-4205

EXHIBIT B



SPECTRUM
BEHAVIORAL HEALTH LLC

If you have any questions, comments, or concerns regarding Cody or the content of this letter, please feel free to contact me as I am available for the coordination of his care. I may be reached at the address printed below, by phone at (920) 784-2644, or via fax at (920) 784-2655. Thank you for your time and consideration.

Sincerely,

Daniel P. Bergman, MS, LPC, NCC

Daniel P. Bergman, M.S., L.P.C., N.C.C.
Psychotherapist
Spectrum Behavioral Health

1496 Bellevue Street, Suite 101, Green Bay, WI 54311-4205

EXHIBIT B