

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Brittany R. Tovar and Reid Olson;

Court File No. 16-cv-00100 (DWF/LIB)

Plaintiffs,

v.

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

JOINT RULE 26(F) REPORT

Defendants.

The parties/counsel identified below conferred, as required by Fed. R. Civ. P. 26(f) and the Local Rules, on October 22, 2018, by phone and prepared the following report.

For Plaintiff: Christy Hall, Gender Justice, 550 Rice St., St. Paul, MN 55103; christy.hall@genderjustice.us.

For Defendants Essentia Health, Innovis Health, LLC d/b/a Essentia Health West (the “Essentia Defendants”): Lisa Edison-Smith and Vanessa L. Lystad, 218 NP Avenue, PO Box 1389, Fargo, ND 58107; ledison-smith@vogellaw.com, vlystad@vogellaw.com.

For Defendants HealthPartners, Inc. and HealthPartners Administrators, Inc. (the “HealthPartners Defendants”): David M. Wilk, 2800 Wells Fargo Place, 30 East Seventh Street, St. Paul, MN 55101; dwilk@larsonking.com.

The initial pretrial conference required under Fed. R. Civ. P. 16 and LR 16.2 is scheduled for November 6, 2018, at 11:30 A.M., before the United States Magistrate Judge Leo I. Brisbois in Courtroom No. 3 of the U.S. Courthouse in Duluth, Minnesota.

Description of Case

Concise factual summary of plaintiff's claims:

Plaintiff's mother worked for Defendants Essentia Health and Innovis Health, LLC, and had an insurance policy through the company. Defendants HealthPartners, Inc., and HealthPartners Administrators, Inc., helped develop and administer the insurance policy. At all relevant times, Plaintiff was a minor and a beneficiary of his mother's insurance plan. Plaintiff is a transgender male and required medication and care for gender dysphoria. The relevant insurance plan explicitly excluded coverage for "[s]ervices and/or surgery for gender reassignment." Because of this exclusion, Plaintiff was unable to obtain and was delayed in obtaining medically necessary care. Plaintiff asserts claims based on sex discrimination under Section 1557 of the Affordable Care Act.

Concise factual summary of defendant's claims/defenses:

Defendant HealthPartners, Inc. and HealthPartners Administrators, Inc.

Defendants HealthPartners, Inc. ("HealthPartners") and HealthPartners Administrators, Inc. ("HPAI") deny that they violated Section 1557 of the Affordable Care Act. HealthPartners in no way administered the Essentia health plan at issue in this case and is not a third party administrator at all. While HPAI was the third-party

administrator of that plan, it does not receive federal funds and therefore is not a “covered entity” under the Affordable Care Act. Beyond that, HPAI did not discriminate in the administration of the Essentia health plan. Olson concedes that gender reassignment services and surgery were not covered under that plan and HPAI simply applied the plan as written. Olson’s contention that gender reassignment services and surgery were supposed to be covered under the plan must be directed to Essentia.

Defendants Essentia Health and Innovis Health, LLC, dba Essentia Health West

Defendants Essentia Health and Innovis Health, LLC deny that Plaintiff is able to maintain a Section 1557 claim against Essentia Health, as the entity did not receive Federal financial assistance during the relevant time period. 42 U.S.C. § 18116. During the relevant time period, Defendants Essentia Health and Innovis Health, LLC further acted in compliance with applicable federal regulations. 45 C.F.R. pt. 92 (2016).

In addition, Plaintiff has not suffered any economic damages as a result of Defendants Essentia Health and Innovis Health, LLC’s alleged actions. To the extent any damages exist, they were not the result of Defendant Essentia Health or Defendant Innovis Health, LLC, but were rather the result of others’ actions, over whom Defendants Essentia Health and Innovis Health, LLC have no control.

Statement of jurisdiction (including statutory citations):

This Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1331. Plaintiff's claims arise under Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116.

Summary of factual stipulations or agreements:

None at this time.

Statement of whether a jury trial has been timely demanded by any party:

The parties agree that a jury trial has been timely demanded.

Statement as to whether the parties agree to resolve the matter under the Rules of Procedure for Expedited Trials of the United States District Court, District of Minnesota, if applicable:

The parties do not wish to resolve the matter under the Rules of Procedure for Expedited Trials.

DISCOVERY & SCHEDULING PLAN:

(A) Pleadings.

Statement as to whether all process has been served, all pleadings filed and any plan for any party to amend pleadings or add additional parties to the action:

Process has been served and all pleadings have been filed. Neither party anticipates amending the pleadings or adding additional parties.

(B) Fact Discovery.

The parties recommend that the Court establish the following fact discovery deadlines and limitations:

- 1) The parties must make their initial disclosures under Fed. R. Civ. P. 26(a)(1) on or before **November 20, 2018**.
 - 2) The parties must complete any physical or mental examinations under Fed. R. Civ. P. 35 by **March 15, 2019**.
 - 3) The parties must commence fact discovery procedures in time to be completed by **March 1, 2019**.
 - 4) The parties propose that the Court limit the use and numbers of discovery procedures as follows:
 - a) Thirty (30) interrogatories for Plaintiff, the Essentia Defendants and the HealthPartners Defendants.
 - b) No limit on document requests;
 - c) Six (6) factual depositions for Plaintiff, the Essentia Defendants and the HealthPartners Defendants; and
 - d) No limit on requests for admissions.
- (C) Expert Discovery.
- 1) The parties anticipate that they may require expert witnesses at the time of trial.
 - a) Plaintiff anticipates calling one (1) expert to support his claim for damages.
 - b) Defendants do anticipate calling expert witnesses and may call rebuttal experts.
 - 2) The parties propose that the Court establish the following plan for expert discovery:
 - a) Initial experts.

- i) The identity of any expert who may testify at trial regarding issues on which the party has the burden of persuasion must be disclosed on or before **February 1, 2019**.
 - ii) The initial expert written report completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) must be served on or before **March 1, 2019**.
- b) Rebuttal experts.
- i) The identity of any experts who may testify in rebuttal to any initial expert must be disclosed on or before **March 8, 2019**.
 - ii) Any rebuttal expert's written report completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) must be served on or before **April 8, 2019**.
- 3) All expert discovery must be completed by **April 15, 2019**.

(D) Other Discovery Issues.

- 1) Protective Order. The parties have discussed whether they believe that a protective order is necessary to govern discovery and jointly submit a proposed protective order.

The parties agree that a protective order is necessary to govern discovery as it will include confidential medical information and may include trade secret or other confidential research, development, or commercial information. The parties will submit a proposed protective order consistent with the template Stipulation For Protective Order Form from the District of Minnesota.

- 2) Discovery of Electronically Stored Information. The parties have discussed disclosure, discovery, and preservation of electronically stored information, including the form in

which it should be produced. The parties have reached the following agreements and identified the following issues:

The parties believe that, in most instances, producing searchable PDFs is sufficient, and may also request that some data be produced in native format files. The parties agree to meet-and-confer to discuss any disputes or concerns over the production of Electronically Stored Information.

3) Claims of Privilege or Protection. The parties have discussed issues regarding the protection of information by a privilege or the work-product doctrine, as required by Fed. R. Civ. P. 26(f)(3)(D), including whether the parties agree to a procedure to assert these claims after production or have any other agreements under Fed. R. Evidence 502.

The parties request the Court to include the following agreement in the scheduling order:

Any party asserting a claim of privilege or protection for documents will produce a privilege log that complies with the rules of this Court for all claims of privilege or protection, except that neither party will log communications between the party and counsel of record in this litigation or documents created by counsel in this litigation.

4) The parties:

agree that a party should be required to request an informal conference with the Court before filing a discovery motion;

agree that a party should not be required to request an informal conference with the Court before filing a discovery motion; or

do not agree whether a party should be required to request an informal conference with the Court before filing a discovery motion.

(E) Proposed Motion Schedule.

The parties propose the following deadlines for filing motions:

- 1) Motions seeking to join other parties must be filed and served by **December 1, 2018**.
- 2) Motions seeking to amend the pleadings must be filed and served by **December 1, 2018**.
- 3) All other non-dispositive motions must be filed and served by **May 15, 2019**.
- 4) All dispositive motions must be filed and served by **June 15, 2019**.

(F) Trial-Ready Date.

- 1) The parties agree that the case will be ready for trial on or after **November 15, 2019**.
- 2) The anticipated length of trial is **3 days**.

Insurance Carriers/Indemnitors.

List all insurance carriers/indemnitors, including limits of coverage of each defendant or statement that the defendant is self-insured. **As will be disclosed in Defendants' Rule 26**

Initial Disclosures, Defendants' insurance information is as follows:

Defendants Essentia Health and Innovis Health, LLC d/b/a Essentia Health West's Insurance carrier: Chubb.

Coverage: Limit of liability is \$10,000,000.

Defendants HealthPartners, Inc., and HealthPartners Administrators, Inc. are self-insured for up to \$5,000,000.

Settlement.

(1) The parties discussed settlement when they met to confer prior to the Rule 16 conference. Plaintiff agrees to provide information on his attorneys' fees to Defendants prior to the Rule 16 conference.

(2) The parties propose that a settlement conference be scheduled to take place **shortly after fact discovery closes on March 1, 2019.**

(3) The parties have discussed whether alternative dispute resolution will be helpful to the resolution of this case and recommend the following: **The parties have no additional recommendations.**

Trial by Magistrate Judge.

The parties have not agreed to consent to jurisdiction by the Magistrate Judge under 28 U.S.C. § 636(c).

Dated: November 1, 2018

/s/ Christy L. Hall
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