

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**CHRISTOPHER FAIN, et al.,**  
*Plaintiffs,*

**Civil Action No. 3:20-cv-00740  
Hon. Robert C. Chambers, Judge**

v.

**WILLIAM CROUCH, et al.,**  
*Defendants.*

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

**NOW COME** Defendants William Crouch, Cynthia Beane, and West Virginia Department of Health and Human Resources, Bureau for Medical Services, by counsel Lou Ann S. Cyrus, Roberta F. Green, Caleb B. David, Kimberly M. Bandy, and the firm of Shuman McCuskey Slicer PLLC, and, pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, hereby respectfully submit their Motion for Summary Judgment on all claims asserted against them by Plaintiffs, along with their supporting memorandum of law.

Defendants are entitled to summary judgment for each of Plaintiffs' claims. Count I of Plaintiffs' Amended Complaint asserts a claim for alleged deprivation of rights in violation of the Equal Protection Clause of the Fourteenth Amendment. Plaintiffs' equal protection claim fails for several reasons. First, Plaintiffs have not been treated differently from others similarly situated to them. Second, Plaintiffs have failed to proffer any evidence of intentional or purposeful discrimination. Third, even if Plaintiffs can demonstrate some disparate treatment based on diagnosis, Defendants' classification survives rational basis review because the State's policy is rationally related to its interests in providing coverage consistent with CMS mandates and in conserving financial resources. Finally, if the Court determines that intermediate scrutiny applies to Plaintiffs' claim, Defendants' classification survives intermediate scrutiny because the

classification serves an important governmental purpose. Therefore, Defendants are entitled to summary judgment as a matter of law.

In Count II, Plaintiffs seek declaratory and injunctive relief against all Defendants and compensatory damages against Medicaid for violation of Section 1557 of the Patient Protection and Affordable Care Act (“ACA”), 42 U.S.C. § 18116. Plaintiffs’ claims under the ACA fail as a matter of law. Defendants have not created a classification that discriminates based on gender identity. Instead, Defendants provide coverage to transgender individuals to the same extent that they provide coverage to cisgender individuals. Plaintiffs’ claim is based upon Medicaid not covering gender-affirming surgeries; however, the ACA and its accompanying regulations do not require Medicaid to cover any particular procedure or treatment. Therefore, Defendants are entitled to summary judgment as a matter of law.

In Count III, Plaintiffs seek declaratory and injunctive relief against Defendants Crouch and Beane for violation of the Medicaid Act’s Availability Requirements, 42 U.S.C. § 1396a(a)(10)(A). Plaintiffs claim that Medicaid’s policy not covering gender-affirming surgery eliminates mandatory Medicaid coverage and renders medically necessary services unavailable. Plaintiffs’ claim fails as a matter of law. The Medicaid Act does not require Defendants to cover gender-affirming surgeries, and its accompanying regulations permit a State Medicaid plan to place limits on services even if those services are required to be covered. Even if gender-affirming care falls into one of the mandatory covered service categories, State plans are permitted to place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures. Here, Medicaid has placed appropriate limits on gender-affirming care by providing coverage for most gender-affirming care and designating as non-covered gender-affirming surgeries, which Medicaid is permitted to do based on considerations such as medical necessity

and on utilization management considerations. Therefore, Plaintiffs' claim fails as a matter of law, and Defendants are entitled to summary judgment.

Count IV seeks declaratory and injunctive relief against Defendants Crouch and Beane for violation of the Medicaid Act's Comparability Requirements, 42 U.S.C. § 1396a(a)(10)(B). Plaintiffs allege that Defendants provide comparable services to cisgender beneficiaries while they do not provide those services to transgender beneficiaries. Plaintiffs' claim fails as a matter of law. The Medicaid Act and its accompanying regulations prohibit three types of discrimination: (1) against the categorically needy, (2) among the categorically needy, and (3) among the medically needy. Plaintiffs' allegations do not describe discrimination in any of these manners. Plaintiffs appear to be alleging that Defendants discriminate "among the categorically needy" by not providing coverage for gender-affirming surgery. Defendant do not, however, provide coverage for gender-affirming surgery to any Medicaid beneficiaries. Additionally, there is no requirement in the Medicaid Act that compels a state to provide a treatment for all diagnoses if the treatment is provided for any diagnosis. Therefore, Plaintiffs' claim fails as a matter of law, and Defendants are entitled to summary judgment.

Finally, Plaintiffs lack standing to bring any of their claims. Neither has submitted a claim for and been denied gender-affirming care by Medicaid. Neither has submitted a claim for gender-affirming surgery. Mr. Fain testified that he is not willing to undergo surgery until he has kicked his smoking habit, which has not yet occurred. Ms. Anderson has never had a treating physician find that she requires gender-affirming surgery to treat her gender dysphoria. Thus, neither Plaintiff has established a concrete and particularized injury that is actual or imminent. Therefore, both Plaintiffs lack standing, and Defendants are entitled to summary judgment.

In support of their Motion, Defendants submit the following exhibits, which are referred to within the Memorandum of Law by their respective Exhibit numbers:

Exhibit 1, Deposition of Sarah Young; with redactions;

Exhibit 2, Deposition of Bill Crouch;

Exhibit 3, Deposition of Cynthia Beane;

Exhibit 4, Deposition of Shauntae Anderson with redactions;

Exhibit 5, Deposition of Christopher Fain with redactions;

Exhibit 6, Affidavit of Jennifer Myers redacted version;

Exhibit 7, Deposition of Brian Thompson;

Exhibit 8, Deposition of Dan Karasic, M.D. with redactions;

Exhibit 9, Deposition of Dr. James Becker;

Exhibit 10, Deposition of Fred Lewis;

Exhibit 11, Report of Dr. Stephen Levine;

Exhibit 12, Deposition of Becky Manning;

Exhibit 13, Defendants' First Supp. Response to Plaintiff's First Set of Interrogatories;

Exhibit 14, Deposition of Jennifer Myers;

Exhibit 15, Deposition of Dr. Schechter;

Exhibit 16, Deposition of Dr. Olson-Kennedy;

Exhibit 17, Affidavit of Sarah Young;

Exhibit 18, Deposition of Dr. Stephen Levine.

For these and other reasons more fully set forth in the accompanying memorandum of law, William Crouch, Cynthia Beane, and West Virginia Department of Health and Human Resources, Bureau for Medical Services respectfully request that this Court grant summary judgment in their

favor on all claims advanced by Plaintiffs. These Defendants seek any and all further relief deemed appropriate by the Court.

**WILLIAM CROUCH, CYNTHIA BEANE, and  
WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,  
BUREAU FOR MEDICAL SERVICES,**

**By counsel**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**CHRISTOPHER FAIN** and **SHAUNTAE ANDERSON**; individually and on behalf of all others similarly situated,

*Plaintiffs,*

**Civil Action No. 3:20-cv-00740  
Hon. Robert C. Chambers, Judge**

v.

**WILLIAM CROUCH**, in his official capacity as Cabinet Secretary of the West Virginia Department of Health and Human Resources; **CYNTHIA BEANE**, in her official capacity as Commissioner for the West Virginia Bureau for Medical Services; and **WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES**,

*Defendants.*

**CERTIFICATE OF SERVICE**

Now come Defendants William Crouch, Cynthia Beane and West Virginia Department of Health and Human Resources Bureau for Medical Services, by counsel, and do hereby certify that on the 31<sup>st</sup> day of May, 2022, a true and exact copy of “**DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**” was served on counsel via electronic means as follows:

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