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Transgender Medicaid Beneficiaries Secure Victory in Landmark Class Action Health Care Rights Lawsuit Against State of Wisconsin

Landmark Decision Invalidating Wisconsin's Blanket Exclusion on Gender-Confirming Health Services Cemented by State's Decision Not to Pursue Appeal

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Contact:

Andy DiAntonio, 202.621.1023, diantonio@healthlaw.org

Joe Wardenski, 202.728.1888, jwardenski@relmanlaw.com

Washington, D.C. – A decades-old Wisconsin policy categorically denying gender-confirming health care to transgender Medicaid beneficiaries is history. Today, civil rights law firm [Relman, Dane & Colfax](#), the [National Health Law Program](#) (NHeLP), and Milwaukee law firm [Davis & Pledl](#) announced a victory in [Flack v. Wisconsin Department of Health Services](#), a class action lawsuit challenging Wisconsin Medicaid's longstanding coverage exclusion on gender-confirming treatments and services for transgender beneficiaries with gender dysphoria. The State of Wisconsin did not appeal a federal court's ruling that the exclusion violated federal law, and has agreed to settle the named plaintiffs' remaining claims.

The *Flack* lawsuit, filed in May 2017 against the Wisconsin Department of Health Services (DHS) and its Secretary, challenged a 1997 Wisconsin regulation that categorically excluded Medicaid coverage for surgical and hormone treatments for gender dysphoria. During the 22 years the policy was in place, countless transgender Medicaid beneficiaries in Wisconsin were denied coverage for medically necessary gender-confirming health care.

DHS's decision not to appeal and today's settlement ensure that a Wisconsin federal court's landmark decision invalidating the discriminatory policy will stand. On August 16, 2019, U.S. District Judge William Conley of the Western District of Wisconsin in Madison granted summary judgment to plaintiffs on all of their claims. In a [38-page decision](#), Judge Conley ruled that the challenged exclusion violated Section 1557 of the Affordable Care Act; the federal Medicaid Act; and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. In the decision, Judge Conley recognized the "consensus within the medical profession that gender dysphoria is a serious medical condition, which if left untreated or inadequately treated can cause adverse symptoms, such as anxiety, depression, serious mental distress, self-harm, and suicidal ideation," and that "there is no dispute that the Challenged Exclusion prevents Wisconsin Medicaid from covering the medical treatment needs of those suffering from gender dysphoria."

On November 8, the Court entered [final judgment](#) for plaintiffs, permanently enjoining DHS from enforcing the exclusion and ordering the agency to adopt a coverage policy for previously excluded treatments for gender dysphoria.

“We applaud the Wisconsin Department of Health Services for accepting the Court’s rulings and the medical consensus that gender-confirming health care saves lives,” said Joseph Wardenski, Counsel at Relman, Dane & Colfax and the lead attorney on the case. “We are delighted that the Court’s decision invalidating Wisconsin’s legally and medically indefensible coverage exclusion is now permanent.”

“This case highlights the importance of strong federal protections against discrimination in health care under the ACA and the Medicaid Act,” said Abigail Coursolle, senior attorney at NHeLP and co-counsel on the case. “As the Court’s well-reasoned decision confirms, federal law guarantees transgender people the right to equal access to medically necessary care.”

“We congratulate our clients for standing up for their own rights, sharing their stories with the court, and improving the lives of countless other transgender Wisconsin residents as a result of this victory,” said Rock Pledl, co-counsel in the case.

The successful outcome of the case follows a string of earlier victories for the plaintiffs. In July 2018, Judge Conley issued a [preliminary injunction](#) barring DHS from denying coverage for gender-confirming surgeries to the two original plaintiffs, Cody Flack from Green Bay and Sara Ann Makenzie from Baraboo. In September 2018, Marie Kelly from Milwaukee and Courtney Sherwin from Janesville joined the suit as plaintiffs. In April 2019, the Court issued a [decision](#) certifying the case as a class action on behalf of the estimated 5,000 transgender adults on Wisconsin Medicaid and expanding the preliminary injunction for the entire class.

The named plaintiffs responded to the resolution of the case as follows:

Cody Flack: “When I first sought gender-confirming surgery, I simply had my own transition and will to live in mind. This case gave me an opportunity to advocate for more than just myself. I am light years better off having gotten the surgical care I needed, and I’m proud to have had a hand in paving the way for others to receive theirs and find joy and hope in life without gender dysphoria holding them back. Simply put, gender-confirming health care save lives.”

Sara Ann Makenzie: “Because of this case, I can finally be the person I am inside. Getting the surgery I needed has turned my life around. I have become confident about who I am and positive with myself and others. I feel phenomenal. Knowing that others won’t have to go through the same struggles I went through feels incredible. We can now rely on a system that will provide us with the health care we need.”

Marie Kelly: “When I decided to join the case, I knew in my heart that this was not just for me, but for every trans person in the state to have access to transition-related care. Knowing that others will not have to struggle to get the health care they need—and that I’ve helped make that happen—is a very good feeling. For trans people, having doctors and nurses that understand you, what you’re going through, and listen to your health needs, is important. In helping me fight for the care I need, this case has helped me to become more of who I truly am and that feels amazing.”

Courtney Sherwin: “I feel overwhelmed with joy and happiness for all trans people in Wisconsin. When gender dysphoria is treated, it will help people and save lives. I am honored to be a part of history. Inspiring so many people is the best feeling and accomplishment ever!”

As part of the [settlement agreement](#) announced today, DHS will pay damages to the four named plaintiffs, as well as plaintiffs' attorneys' fees and costs.

Plaintiffs were represented by attorneys Joseph Wardenski, Jennifer Klar, Orly May, and Alexa Milton of Relman, Dane & Colfax; Abigail Coursolle and Catherine McKee of NHeLP; and Rock Pledl of Davis & Pledl.

Wisconsin Medicaid beneficiaries with questions on how the Court's decision affects them are encouraged to contact Joseph Wardenski at 202.728.1888 or jwardenski@relmanlaw.com.

Photographs of Mr. Flack, Ms. Makenzie, Ms. Kelly, and Ms. Sherwin are available here: <https://relmanlaw.smugmug.com/Flack-Plaintiff-Photos/n-sZ8CSW/> (photo credit to Nicole Acosta).

More information about the case, including court filings, is available here: <https://www.relmanlaw.com/cases-flack>.

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[Relman, Dane & Colfax PLLC](#) is a national civil rights law firm based in Washington, D.C. The firm's litigation practice focuses on combating discrimination in the areas of housing, lending, employment, public accommodations, education, policing, and health care.

[National Health Law Program](#), founded in 1969, advocates for the rights of low-income and underserved people to access quality health care.

[Davis & Pledl, S.C.](#), a law firm based in Milwaukee, Wisconsin, advocates in state and federal court, educational settings, and administrative hearings for a wide range of legal issues affecting individuals with disabilities and their families.