

FEDERAL JUDGE DISMISSES TRANSGENDER EMPLOYEE'S GENDER DISCRIMINATION CLAIMS AGAINST HEALTH PLAN ADMINISTRATOR

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Alina Boyden is a transgender person who identifies as female. As an employee of the University of Wisconsin-Madison, Boyden is insured through the State of Wisconsin's Employee Trust Funds ("EFT"), administered by Dean Health Plan, Inc. ("Dean"). Boyden sought surgical treatment for her gender dysphoria, which was denied by Dean on the basis of an unambiguous exclusion of coverage for gender conformation surgery. The exclusion from coverage under Wisconsin's EFT was based on a directive from the Wisconsin Department of Justice, opining that gender transition care is "never medically necessary" and, therefore, the denial of coverage for such treatment is not discriminatory.

Boyden sued various state entities and Dean, alleging gender-based discrimination in violation of federal antidiscrimination laws, including Title VII and the Affordable Care Act. Dean brought a motion to dismiss the claims against it, arguing that Dean did not have an employer agency relationship with Boyden. The court agreed, finding that Dean was not acting as an employer agent because: (1) it did not exist solely to accept a delegation from the University of Wisconsin to provide health insurance to its employees, and (2) Boyden was not required to participate.

Dean was not in an employer-agent relationship with Boyden because the Wisconsin EFT established the terms of Wisconsin state employee health insurance, and Dean is only a vendor responsible for administering the health plan in accordance with those terms. The court advised that Title VII is not the proper vehicle for a plaintiff to bring a claim against a health plan administrator. "[T]o hold otherwise would necessarily mean that Dean and all other health providers would be deemed at least an agent for every employer who contracted to provide healthcare plans to its employees, even though they have *no* discretion as to the scope of health benefits covered."

As Dean lacked the requisite control and discretion to be deemed an employer's agent, the federal district court dismissed Boyden's claims against Dean. *Boyden v. Conlin*, 2017 WL 5592688 (order granting motion to dismiss) (W.D. Wis.).