

St. Louis Federal Court Dismisses Title VII Sex Discrimination Claims by Mother of Transgender Son

AUTHOR: JAMES KEANEY

The plaintiff in the case—an employee of the defendant—sought treatment for her son’s gender dysphoria under the defendant’s health plan. Coverage was denied under one of the health plan’s exclusions. She alleged this denial forced her son to forgo or delay gender-confirming procedures, resulting in financial hardship and out-of-pocket damages.

The plaintiff pled her case, in part, under Title VII as relational sex discrimination—that is, she was discriminated against due to her relationship with her transgender son. She argued Title VII broadly prohibits discrimination against individuals for their association with a protected characteristic, like sex.

The defendant countered by arguing this case was different than other associational discrimination cases. In this case, the defendant argued, the plaintiff’s “protected characteristic is irrelevant—if Plaintiff were a different sex, the outcome would be the same.”

The Court agreed with the defendant based on a 2017 Eighth Circuit case with substantially similar facts—*Tovar v. Essentia Health*. In *Tovar*, the Eighth Circuit held the employee—a mother of a transgender son who was similarly denied insurance coverage—failed to allege discrimination against her “on the basis of her own sex.”

The plaintiff in this case attempted to argue *Tovar* was no longer good law. She claimed the Supreme Court’s 2020 landmark decision in *Bostock v. Clayton Cty., Georgia*—which first recognized transgender status as a protected characteristic under Title VII—effectively overruled *Tovar*.

The Court disagreed, noting the cases involved and decided different legal questions. Accordingly, the Court affirmed *Tovar* as “binding authority on this Court.”

The Court further rejected the plaintiff's claim the defendant had engaged in unlawful "sex stereotyping" by denying coverage: "[a]lthough Plaintiff's son's sex may be relevant to the benefits provided by the [health plan], Plaintiff's own sex and her attitudes about her son's sex are not." Using the key language from *Tovar*, the Court concluded: "Plaintiff has not shown that she is within the class of plaintiffs authorized to sue pursuant to Title VII."

A final word of caution to employers. Despite these Title VII rulings, the Court did permit the plaintiff to proceed with her claims of unlawful discrimination under the Affordable Care Act ("ACA") because it provides a "much broader prohibition on discrimination than Title VII." So, the case is not over. Only time will tell if the plaintiff can prove and prevail on her ACA discrimination claim. Stay tuned.