

Elizabeth K. Ehret
Alex Rate
ACLU OF MONTANA
P.O. Box 9138
Missoula, MT 59807
406-204-0284
ehrete@aclumontana.org
ratea@aclumontana.org

RECEIVED

SEP 28 2018

HUMAN RIGHTS BUREAU

MONTANA DEPARTMENT OF LABOR & INDUSTRY

Human Rights Bureau

P O Box 1728

Helena MT 59624

406/444-2798 (fax)

Eleanor Andersen Maloney



Charging Party

vs.

Yellowstone County
217 N. 27th St., Suite 701
Billings, MT 59107

Scott Twito
Yellowstone County Attorney
217 N 27th St.
Billings, MT 59101

Board of County Commissioners
Yellowstone County
P.O. Box 35000
Billings, MT 59107

Respondents.

HR Case No. 0190002
0190003
0190004

BELL No. 32D-2019-00002C

COMPLAINT OF DISCRIMINATION

1. Eleanor Andersen Maloney¹ (Eleanor) is a resident of ██████ County, Montana.
2. Eleanor is a transgender woman.
3. From February 13, 2017 to June 18, 2018, Eleanor was employed full-time by Yellowstone County's Department of Public Health and Human Services as a Senior Deputy County Attorney.
4. Eleanor received healthcare coverage through her employer, Yellowstone County. Yellowstone County provides its employees with healthcare coverage under the Yellowstone County Group Health Benefit Plan, a self-funded insurance plan.² While an employee, Eleanor was enrolled in the Yellowstone County Group Health Benefit Plan.
5. The Yellowstone County Group Health Benefit Plan explicitly excludes coverage for "[s]ervices or supplies related to sexual reassignment and reversal of such procedures." (Hereinafter "the transition-related healthcare exclusion").
6. Yellowstone County's policy regarding discrimination complaints provides that an employee who believes they have been the victim of discrimination must report the discrimination via the following process: 1) They must report the incident(s) to designated individuals at the office of human resources, and are encouraged to also report the incident to their department head or elected official; 2) Designated county officials will investigate the complaint and provide a written report of their findings to the County Commissioners within 10 days of the conclusion of the investigation; 3) The County Commissioners will take any disciplinary action they deem appropriate, given the findings of the investigation.
7. Eleanor has been diagnosed with Gender Dysphoria, F64.1, DSM-5 since approximately September 2017.

¹ Eleanor's previous legal name was ██████

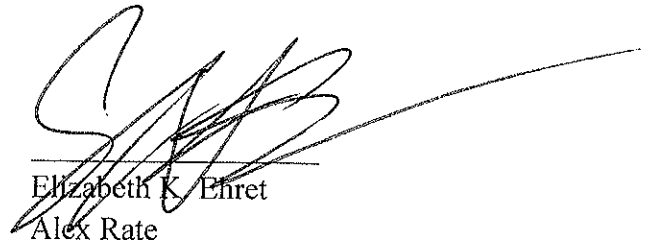
² As the Yellowstone County Group Health Benefit Plan is a self-funded insurance plan, Yellowstone County makes all decisions regarding what care is covered or excluded under the Plan. While Yellowstone County decides what to cover under the Plan, the County contracts with Employee Benefit Management Services, Inc. (E.B.M.S.) to administer the Plan.

8. In December 2017, Eleanor began engaging in therapeutic counseling with [REDACTED] on an outpatient basis as treatment for her gender dysphoria. Eleanor attended sessions with [REDACTED] approximately once per month from December 2017 to May 2018.
9. In June 2018, Eleanor received notice from [REDACTED] that he had been contacted seeking return of payments made for Eleanor's previous therapy sessions. The County's benefits administrator indicated it had mistakenly approved payment for Eleanor's sessions with [REDACTED]. They specified that the sessions were not covered services under the Yellowstone County Group Health Benefits Plan because the sessions were for treatment of gender dysphoria, and were therefore excluded services under the transition-related healthcare exclusion.
10. On June 9, 2018, Eleanor received a notice denying payment for therapy services rendered to Eleanor on April 20, 2018 as barred by the transition-related healthcare exclusion.
11. On April 11, 2018, Eleanor sought pre-approval for a consultation with a surgeon regarding transition-related surgical procedures, including [REDACTED] and [REDACTED]. Eleanor was informed that she would be unable to receive authorization for any transition-related surgical procedures because of the transition-related healthcare exclusion.
12. Following the denial of coverage on April 11, 2018, Eleanor contacted Yellowstone County Human Resources and her supervisor, Scott Pederson, Chief Deputy County Attorney, to file a formal grievance with Yellowstone County Human Resources because her healthcare services were being denied by the County under the transition-related healthcare exclusion.
13. On April 12, 2018, Eleanor sent a letter to seeking pre-approval of coverage for multiple transition-related healthcare services, specifically: (1) [REDACTED]; (2) [REDACTED]; (3) [REDACTED]; (4) [REDACTED]; and (5) other medically indicated treatments and/or surgeries.
14. On May 11, 2018, Eleanor received a letter denying her April 12 request. The letter indicated the denial was a direct result of the transition-related healthcare exclusion.
15. On May 16, 2018, Eleanor filed an appeal of the May 11, 2018 denial of coverage. Eleanor filed the appeal with the benefits administrator and Yellowstone County Human Resources.

16. In May 2018, Eleanor met with the Yellowstone County Commissioners and requested they remove the transition-related healthcare exclusion from the Yellowstone County Group Health Benefits Plan.
17. On May 24, 2018, Eleanor submitted a letter of resignation to Yellowstone County Human Resources, indicating her resignation would be effective June 18, 2018. Eleanor identified the transition-related healthcare exclusion as the sole reason for her resignation.
18. On May 29, 2018, Eleanor filed a grievance with Scott Twito, Yellowstone County Attorney, asserting that the transition-related healthcare exclusion constitutes unlawful discrimination.
19. On May 31, 2018, Eleanor filed a second grievance with the Yellowstone County Human Resources, asserting that the transition-related healthcare exclusion constitutes unlawful discrimination.
20. On June 14, 2018, Eleanor received a notice denying her May 16, 2018 appeal. The notice represented there were no further appeals available to Eleanor.
21. All of the above-mentioned services for which Eleanor sought insurance coverage were medically necessary for the treatment of her gender dysphoria.
22. Eleanor belongs to a protected class on the basis of her sex and transgender identity.
23. Respondents, through their agents and employees, discriminated against Eleanor because of her sex and transgender identity.
24. Respondent violated Eleanor's rights under the Montana Human Rights Act, Mont. Code Ann. §§ 49-2-302, -303, -308, -309; the Montana Governmental Code of Fair Practices, Mont. Code Ann. §§ 49-3-201, -205; Title VII of the Civil Rights Act, 42 U.S.C.S. § 2000e, et. seq.; the Constitution of the State of Montana, art. II, §§ 3, 4, 10, 17; the United States Constitution, amend. XIV; and Section 1557 of the Affordable Care Act, 42 U.S.C.S. § 18116.
25. By its unlawful conduct, Respondent caused Eleanor personal harm.

26. The circumstances of the unlawful and discriminatory acts of the Respondent requires an order that will prevent it from acting in a similar discriminatory and unlawful manner in the future.
27. Eleanor is represented by the undersigned counsel, who formally make their appearance by this Complaint of Discrimination. Counsel may be contacted using the information below.

DATED THIS 28th day of September, 2018.



Elizabeth K. Ehret
Alex Rate

ACLU OF MONTANA

P.O. Box 9138

Missoula, MT 59807

406-204-0284

ehrete@aclumontana.org

VERIFICATION

The undersigned states that the facts alleged in the foregoing Complaint of Discrimination are true and accurate to the best of their knowledge and belief.

Signed this 25th day of September, 2018.

Eleanor A. Maloney
Eleanor Andersen Maloney

Subscribed and sworn to before me
this 25 day of September, 2018.

Brylee Zumpf
Notary Public Dillon,
Residing at Beaverhead, Montana
My commission expires: 10/03/2021

