

TLDEF Resolves Complaint for Transgender Federal Employee Denied Facial Surgery

After complaint, Biden-Harris Administration issued guidance to all insurance carriers to remove discriminatory bans on transgender medical care

Transgender Legal Defense and Education Fund (TLDEF) announced today that it has resolved a complaint filed in 2021 with the U.S. Equal Employment Opportunity Commission (EEOC) against the Office of Personnel Management on behalf of career federal employee Kelly Shaw, a transgender woman who was denied necessary facial surgery prescribed by her medical provider. In May, after the complaint and years of advocacy by TLDEF and others, the Biden-Harris administration directed all insurance carriers for Federal Employee Health Benefits (FEHB) to remove any discriminatory exclusions for health insurance coverage for transgender people.

"I'm relieved the case is settled. I was on the same plan as other federal workers, but the plan covered medically necessary facial surgery for my colleagues and explicitly excluded this coverage for transgender people," said **Kelly Shaw**. "As a transgender woman, being misgendered daily was a kick to my gut that resulted in symptoms of anxiety and depression. It is a huge weight off my shoulders that other transgender federal employees won't have to go through what I did to have my surgery and they will be allowed to access the same kind of coverage for vital medical care that is offered to my colleagues."

"We are relieved to resolve this matter for our client, and we are pleased with the steps the nation's largest employer is taking to ensure greater access to transition-related medical care for transgender federal employees, said **Ezra Cukor**, TLDEF Senior Counsel. "Whether you are a member of Congress or a postal worker or a food service worker, all federal employees, regardless of their gender identity, deserve access to the health care they need."

Kelly Shaw began working as a contract electrical engineer for the U.S. Navy in 1990 and has served in intelligence and national security roles since 2010. Kelly's health insurance plan, which was provided through the Federal Employee Health Benefits Program, had exclusions for transition-related medical care, including a categorical exclusion for facial surgery. Although her doctors agreed that such treatment was necessary for Kelly, she was denied the surgery because of her carrier's exclusion. After the denial, Kelly was forced to use a health maintenance organization (HMO) plan to access care. The process was emotionally and financially taxing on her family, and it took over a year for her to get the care she needed, but in January 2023, she had facial surgery.

In May of 2021, TLDEF filed a complaint on behalf of Kelly Shaw against the U.S. Office of Personnel Management (OPM) with the EEOC for violating federal laws that prohibits sex discrimination in employment. Denying medically necessary treatment for gender dysphoria is a violation of Title VII of the Civil Rights Act of 1964, the American Disabilities Act (ADA), and the Rehabilitation Act. Today we're announcing the resolution of Kelly Shaw's complaint against OPM which includes compensatory damages for the discrimination she experienced in attempting to access legally compliant health coverage and paying her attorneys' fees.

In June 2021, President Biden issued an executive order that mandated transgender people should have coverage for comprehensive transition-related care through the FEHB. Earlier this year, the Biden-Harris Administration distributed a letter to all insurance carriers that participate in the FEHB directing them to update their guidelines according to the Standards of Care established by the [World Professional Association for Transgender Health \(WPATH\)](#) and to remove any discriminatory blanket exclusions from health insurance coverage impacting transgender patients seeking medical care.

"For Kelly and many other transgender people, these kinds of broad exclusions can be debilitating and frequently result in poor outcomes impacting our health and personal safety. We see this directive from the Biden-Harris Administration as a substantial improvement and we are optimistic these advancements will lead to positive outcomes for both federal employees and their dependents," said **Andy Marra**, TLDEF Executive Director. "For years, TLDEF alongside other health care advocates have been urging the Administration to resolve this noncompliant gap in health insurance coverage. We are encouraged our litigation and federal advocacy has resulted in insurance carriers actively removing discriminatory barriers to care, and we look forward to continued partnership with the Administration to ensure all federal employee health insurance plans in 2024 include comprehensive medical care that does not discriminate on the basis of gender identity."

The case is *Shaw v. OPM*.

Ezra Cukor, Senior Counsel, and Andrea Green, Kirkland and Ellis Legal Fellow, are handling this matter for TLDEF. They are joined by Jeremy Wright of Kator, Parks, Weiser, & Wright.

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Media Contact

Jonathan Adams, Director of Communications

Phone: [646-845-4205](tel:646-845-4205)

Email: communications@transgenderlegal.org

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