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Health Insurers May Not Discriminate Against Individuals With Disabilities in the Design of Health Insurance Benefits.

Ninth Circuit Court of Appeals Upholds the Right of Insureds with Disabilities to Challenge a Discriminatory Exclusion of Coverage for Hearing Loss

Seattle, WA (July 14, 2020) --Today the Ninth Circuit Court of Appeals affirmed a critical piece of the Affordable Care Act – the right of disabled individuals to receive health coverage that does not discriminate against them. In two cases, *Schmitt et al. v. Kaiser Foundation Health Plan*, and *E.S. et al., v. Regence BlueShield*, individuals with hearing loss argued that the health insurers discriminated against them by excluding all treatment for hearing loss, except for treatment for cochlear implants.

The appellate court concluded that the ACA’s anti-discrimination clause, Section 1557, prohibits disability discrimination in the design of health insurance benefits: “The primary issue before us is whether the ACA’s nondiscrimination mandate imposes any constraints on a health insurer’s selection of plan benefits. We hold that it does.”

The Ninth Circuit panel unanimously concluded that the “ACA specifically prohibits discrimination in plan benefit design, and a categorical exclusion of treatment for hearing loss would raise an inference of discrimination against hearing disabled people, notwithstanding that it would also adversely affect individuals with non-disabling hearing loss.” The Court also found that the ACA “imposes an affirmative obligation not to discriminate in the provision of health care – in particular, to consider the needs of disabled people and not design plan benefits in ways that discriminate against them.” The decision outlined how the Plaintiffs in *Schmitt* could amend the complaint to adequately plead their disability discrimination claim, despite the health insurers’ coverage of cochlear implants, a covered hearing treatment that meets the needs of only a small portion of individuals with hearing loss.

“The Affordable Care Act promised that individuals with disabilities could receive the same health coverage and benefits as everyone else,” said Eleanor Hamburger of Sirianni Youtz Spoonemore Hamburger, the attorney who argued the cases for the

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Plaintiffs. “This landmark decision ensures that the promise is kept by prohibiting health insurers from designing benefits aimed at excluding the very services that persons with disabilities need.”

For many individuals with hearing loss, hearing aids are essential to be able to live and work. “In the past, I had to plan and budget to pay for my hearing aids since they were never covered by my health insurance,” said Andrea Schmitt, one of the plaintiffs in *Schmitt v. Kaiser*. “Now, under this decision, employers like mine will be able to buy health plans for their employees that do not contain categorical exclusions of the essential treatment that their employees with hearing loss need.”

The Ninth Circuit remanded the case back to the trial court and directed the Plaintiffs to amend their complaint, in light of their decision. “Amending the complaint to meet the requirements described in the Court of Appeals decision is straightforward,” said Rick Spoonemore, another of Plaintiffs’ counsel from Sirianni Youtz Spoonemore Hamburger. “We will easily allege and ultimately demonstrate that the exclusion used by Kaiser and Regence is directed at, and disproportionately burdens, disabled individuals with hearing loss.”

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