

Publications

District Court Dismisses Weight Loss Drug Discrimination Suits

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PUBLISHED

05/13/2025

SOURCE

Groom Publication

SERVICES

Health Services

- [State Insurance Regulation](#)
- [Health Services Litigation](#)

The U.S. District Court for the District of Maine recently dismissed two separate suits alleging that health plans' coverage exclusion for weight loss drugs constitutes unlawful disability discrimination. Both complaints alleged that the plans' coverage exclusions for these medications violated the prohibition against disability-based discrimination under Affordable Care Act section 1557 ("Section 1557"). Although the cases involved Section 1557, the decisions potentially have a broader impact on plans that are not subject to Section 1557 but are subject to the Americans with Disabilities Act ("ADA"), which also prohibits disability-based discrimination.

Whittemore v. Cigna

In *Whittemore v. Cigna*, the plaintiff was enrolled in a self-funded health plan that Cigna administered. The plaintiff alleged that the plan's coverage exclusion for medications used for weight loss, such as GLP-1 drugs, amounted to disability discrimination against people diagnosed with obesity. The plaintiff sued on behalf of herself and a similarly-situated putative class of individuals diagnosed through a calculation of body mass index ("BMI") and clinical review. The plaintiff noted that these drugs were covered under the plan for other conditions, such as diabetes. The plaintiff alleged that this amounted to discrimination under Section 1557, which incorporates the definition of disability discrimination under Section 504 of the Rehabilitation Act of 1973, which, in turn, incorporates the definition of disability under the ADA.

The defendant's motion to dismiss argued that several Circuit Courts have found that obesity, without a physiological disorder, is not a disability. Further, the defendant pointed out that the exclusion does not reference obesity or any other medical condition. The defendant also noted that the plaintiff conceded that the exclusion applies to both overweight and obese participants and that being overweight is not, by itself, a disease condition or impairment, yet the plaintiff still insisted that the weight loss exclusion is just a proxy for obesity. The defendant argued that the plaintiff did not sufficiently argue that Cigna designed the weight loss drug exclusion specifically

to deny medically necessary drugs to individuals with obesity, the exclusion was facially neutral, and the application to both overweight and obese individuals showed that the exclusion does not have a disparate impact on individuals with disabilities.

The court granted the defendant's motion to dismiss on February 12, 2025, stating that:

[N]one of the allegations in Plaintiff's Complaint . . . plausibly support a finding that she is disabled merely as a function of her body mass index (BMI), let alone that every putative class member with a BMI of 30 or more is presumptively (*or as a matter of law*) disabled.^[2] Nor does Plaintiff's Complaint include allegations that would support a finding, based on any facts, that Defendant has ever regarded her (or any member of the putative class) as disabled. Disability is an essential requirement of a disability discrimination claim, and without it Plaintiff fails to state a claim of disability discrimination under [Section 1557].

[2] This is an individualized inquiry.

In assessing whether someone is disabled under the ADA, we must consider the impairment's effect on the particular individual. The limitation caused by the impairment must be permanent or long-term. Evidence of a medical diagnosis of impairment, standing alone, is insufficient to prove a disability. What is required is evidence showing that the impairment limits this particular plaintiff to a substantial extent . . . A so-called "obese" BMI score will for many individuals not even suggest a physical impairment, let alone a disability. A physician's willingness to prescribe a weight-loss medication does not dictate the answer, either.

The plaintiff appealed the ruling to the First Circuit on March 19, 2025.

Holland v. Elevance

In *Holland v. Elevance*, the plaintiff brought a putative class action against Elevance, which designs and administers the fully-insured plan for the Maine Education Association Benefits Trust ("MEABT"). Like in *Whittemore*, the *Holland* plaintiff alleged that the defendant's coverage exclusion for weight loss medications was a form of illegal disability discrimination in violation of Section 1557.

The defendant argued that the exclusion applies to participants regardless of disability status and applies equally to overweight individuals, obese individuals who are not disabled, and obese individuals who are disabled. The defendant also pointed out that some weight loss drugs may be approved for weight management if the employer chooses to pay the associated premium for such coverage, assuming the prior authorization criteria are met.

The court granted the defendant's motion to dismiss on April 9, 2025, holding that the plaintiff's conclusory allegations that the defendant regarded her as disabled do not support a finding that the coverage exclusion for weight loss drugs amounts to discrimination against the defendant or the putative class. The court explained that:

For many plan participants, the weight loss exclusion operates even if they are overweight rather than obese. And for both overweight and obese participants, the exclusion operates whether or not they are disabled. Thus, on its face, the exclusion does not turn on disability status, impacts participants whether they are disabled or not, and does not isolate disabled participants for discriminatory treatment . . . Finally, and most critically, [the] Complaint does not include allegations that would support a finding, based on any facts, that Elevance . . . has ever regarded her (let alone all obese persons) to be disabled.

A footnote states that:

[w]hether a health condition like obesity results in disability is not a formulaic inquiry based on a mere diagnosis and prescription. It is an individualized inquiry.

In assessing whether someone is disabled under the ADA, [the court] must consider the impairment's effect on the particular individual. The limitation caused by the impairment must be permanent or long-term. Evidence of a medical diagnosis of impairment, standing alone, is insufficient to prove a disability. What is required is evidence showing that the impairment limits this particular plaintiff to a substantial extent.

The court goes on to say that "[a] so-called 'obese' body mass index score will for many individuals not even suggest a physical impairment, let alone a disability. A physician's willingness to prescribe a weight-loss medication does not dictate the answer, either."

The plaintiff appealed the ruling to the First Circuit on April 21, 2025.

Takeaways

Given the high cost of weight loss drugs, many plans are considering cost-reduction measures. In addition to Section 1557, other considerations are the HIPAA nondiscrimination rules, the ADA, and GINA. These cases are helpful for plans considering the implication of Section 1557 and the ADA on these types of cost-reduction measures and show a possible reticence of courts to accept the presumptive disability status of individuals diagnosed with obesity. However, even if a court were to find that obese individuals are presumptively disabled, courts may still be skeptical of arguments—as the District of Maine was—that exclusions for *weight loss treatment* can be considered a proxy for *obesity*.