

NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS

COMPLAINT FOR DISCRIMINATION

I. INTRODUCTION.

1. The Complainant, Lillian Bernier (“Lillian”), is an employee of the Respondent Turbocam, Inc. As part of compensation for employment, Turbocam provides coverage for healthcare to its employees and their dependents through a self-funded health benefits plan entitled “Turbocam, Inc. Employee Group Medical Plan (H.S.A. PPO)” (the “Plan”). The Plan is administered by the Respondent Health Plans, Inc. (“HPI”).

The Plan excludes coverage for the treatment of gender dysphoria, a serious medical condition characterized by clinically significant distress caused by the incongruence between a transgender person’s gender identity and birth sex. This exclusion contravenes the well-established conclusion of authoritative medical and professional health organizations that treatments for gender dysphoria are medically necessary.

Lillian is a transgender woman with gender dysphoria. In adopting, maintaining, and implementing the exclusion of treatment for gender dysphoria in the Plan, the Respondents deny Lillian equal compensation for equal work and deny her critical medically necessary health care because she is transgender, in violation of the employment nondiscrimination provisions of the New Hampshire Human Rights Act, Title VII of the Civil Rights Act of 1964, and the Americans with Disabilities Act.

II. PARTIES.

2. The Complainant Lillian Bernier was born and raised in New Hampshire and currently lives in Strafford County, New Hampshire. She has been an employee of Turbocam continuously since June 2019.

3. The Respondent Turbocam, Inc. is a New Hampshire domestic profit corporation with its principal office located at 607 Calef Highway, Suite 200, Barrington NH 03825.

4. Turbocam manufactures core turbomachinery flow path components and assemblies, employing over 900 engineers, machinists, technicians, and support staff worldwide. Turbocam produces turbomachinery components for the space and rocketry, aviation/aeroengine, automotive, power generation, and HVACR (heating, ventilation, air conditioning, and refrigeration) industries. On information and belief, Turbocam has annual revenues between 200 million and 300 million dollars.

5. The Respondent HPI is a Massachusetts corporation with its principal office located at 1500 West Park Drive, Suite 330, Westborough, MA 01581.

III. STATEMENT OF FACTS.

A. Background on Gender Identity and Gender Dysphoria

6. The term “gender identity” is a well-established medical concept, referring to one’s internalized, inherent sense of their own gender. For most people, gender identity aligns with birth sex. For example, people who are assigned male at birth typically have a male gender identity. For transgender people, however, that is not the case.

7. An individual whose gender identity and birth sex are incongruent is transgender.

8. For example, a transgender woman is an individual whose birth sex is male but who has a female gender identity.

9. Similarly, a transgender man is an individual whose birth sex is female but who has a male gender identity.

10. Gender dysphoria results when a transgender person is unable to live consistent with their gender identity.

11. Gender dysphoria is a medical condition.
12. Gender dysphoria is characterized by clinically significant and persistent distress and discomfort with one's birth sex.
13. Gender dysphoria is recognized in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (the "DSM 5"), and the World Health Organization's International Classification of Diseases.
14. Leading medical and mental health professional groups have affirmed that gender dysphoria is a serious condition that requires medical treatment in accordance with well-established standards of care. Examples include the American Medical Association, the American Psychological Association, the American Psychiatric Association, the Association of American Medical Colleges, American Academy of Family Physicians, and the Endocrine Society.
15. Gender dysphoria is highly treatable and can be ameliorated or cured through medical treatment.
16. The standards of care for the treatment of gender dysphoria are set forth in the World Professional Association of Transgender Health ("WPATH") Standards of Care for the Health of Transsexual, Transgender and Gender-nonconforming People (8th version), updated in September 2022, which are internationally recognized guidelines.
17. The WPATH Standards of Care have long been endorsed by authoritative professional medical and mental health organizations, including the American Medical Association, American Psychological Association, and American Psychiatric Association.
18. In accordance with the Standards of Care, transgender individuals undergo an individually tailored and medically supervised gender transition. Components of medical

transition in accordance with the WPATH Standards of Care include hormone replacement therapy and surgical treatments.

19. Without treatment, individuals with gender dysphoria experience a range of debilitating psychological symptoms such as anxiety, depression, suicidality, and other attendant mental health issues.

B. Lillian's Employment and the Impact of the Plan Exclusion on Her.

20. Lillian began employment at Turbocam on or about June 3, 2019. She has been employed there continuously since that time. She has always wanted to work as a machinist, which has been her father's long-time work as well.

21. Lillian started as a Third Shift CNC Mill Operator. She was promoted in or about June or July 2020 to a Level I Machine Operator and in or about April or May 2022 to a Level II Machine Operator.

22. Lillian has always worked the night shift (11:00 p.m. to 7:00 a.m.).

23. Throughout the time of the restrictions imposed during the COVID pandemic, Lillian worked at the Turbocam plant doing her job and putting in her regular hours. She thrived even as her workload increased in the face of furloughs and other staff turnover.

24. Lillian is a transgender woman.

25. Although assigned male at birth, she has known since a young age that she is female. This has caused Lillian significant distress. She feared rejection if she shared her understanding of her gender identity with other people in her life and she struggled with self-acceptance.

26. Lillian has been diagnosed with gender dysphoria by her primary care physician and by her mental health counselor.

27. Lillian began to transition from living as male to living as female in or about October 2020. She legally changed her name to Lillian Bernier in February 2021.

28. In or about October 2020 Lillian began receiving medical treatment of gender dysphoria. She has needed, and continues to need, hormone replacement therapy, counseling, and medically recommended surgeries to treat her gender dysphoria.

29. Lillian has been and continues to be precluded from obtaining coverage under the Plan for past and future treatments for gender dysphoria because the Plan contains an exclusion prohibiting health benefits coverage of treatment for gender dysphoria.

30. The Plan exclusion (the “Exclusion”) states:

The following are excluded from Covered Services and no benefits shall be paid for:

Gender dysphoria treatment, including but not limited to, counseling, gender reassignment surgery or hormone therapy, and related preoperative and postoperative procedures, which, as their objective, change the person’s sex and any related complications.

31. The Exclusion continues in effect. Turbocam and its attorneys have stated to Lillian and to her attorneys that Turbocam will continue to maintain the Exclusion.

32. As a direct result of the Exclusion, and Turbocam’s insistence on maintaining it, Lillian has paid out-of-pocket for some medically necessary treatments and has put off scheduling medically necessary gender transition surgery to her detriment.

33. An employer-sponsored health plan is an integral part of the “compensation, terms, conditions, or privileges of employment” under 42 U.S.C. Sec. 2000e-2(a)(1) and RSA 354-A:7 (I).

34. As a direct result of the Exclusion, and the consequential denial of medically necessary healthcare to Lillian, the Respondent Turbocam has discriminated against her on the

basis of her sex, transgender status, gender identity, and disability in violation of New Hampshire RSA Chapter 354-A, Section 7 (sex, gender identity, and disability discrimination in employment), Title VII of the Civil Rights Act of 1964 (sex discrimination), and Title I of the Americans with Disabilities Act (disability discrimination in employment).

35. The Respondent HPI, as third-party administrator for the Plan, helped, and continues to help, develop, maintain, and implement the Exclusion, including by entering into a contract with Turbocam by which it agreed, and continues to agree, to use its claims review procedures, expertise, and administrative apparatus, to deny claims for the treatment of gender dysphoria without regard to medical necessity.

36. The Respondent HPI knew or should have known that the state of New Hampshire has declared that exclusions of coverage for gender dysphoria have no medical basis and are discriminatory. See RSA 415:15; see also Commissioner Christopher R. Nicolopoulos, The State of New Hampshire Insurance Department, Docket No. INS 20-033-AB (June 8, 2020), <https://www.nh.gov/insurance/media/bulletins/2020/documents/ins-20-033-ab-gender-identity-discrimination-prohibited.pdf>.

37. Upon information and belief, HPI provided substantial assistance to Turbocam in the creation and development of the Exclusion, including by providing Turbocam with the language of the Exclusion and/or presenting example policies to Turbocam that contain categorical exclusions of treatments for gender dysphoria.

38. The Respondent HPI has discriminated against Ms. Bernier on the basis of sex, transgender status, gender identity, and disability by aiding, abetting, and inciting Turbocam in the commission of an unlawful discriminatory practice in violation of NH RSA Chapter 354-A:2 (XI) (d).

39. Lillian Bernier requests that her federal claims for discrimination on the basis of sex and disability be cross-filed with the Equal Employment Opportunity Commission.

Respectfully submitted,

Lillian Bernier

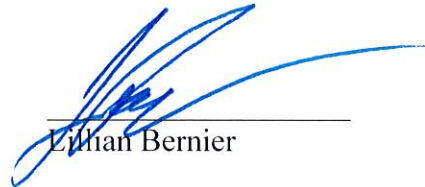
By her attorneys,


Bennett H. Klein
bklein@glad.org
(motion to appear *pro hac vice* pending)
Chris Erchull
cerchull@glad.org
NH Bar No. 266733
GLBTQ Legal Advocates & Defenders
18 Tremont Street, Suite 950
Boston, MA 02108
617-426-1350

VERIFICATION

I, Lillian Bernier, swear and affirm that I have read this Complaint and that it is true to the best of my knowledge and belief.

12/12/2022
Date


Lillian Bernier

County of Strafford, ss.
State of New Hampshire
On this 12th day of December, 2022
Lillian Bernier,
known to me or proven to be the instrument subscriber,
personally appeared before me and acknowledged that
he/she executed the foregoing instrument.
 Notary Public

