

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>JESSE VROEGH,</p> <p>Plaintiff,</p> <p>v.</p> <p>IOWA DEPARTMENT OF CORRECTIONS, IOWA DEPARTMENT OF ADMINISTRATIVE SERVICES, WELLMARK, INC., d/b/a WELLMARK BLUE CROSS AND BLUE SHIELD OF IOWA, and PATTI WACHTENDORF, Individually and in her Official Capacities,</p> <p>Defendants.</p>	<p>Case No. LACL138797</p> <p>WELLMARK, INC., d/b/a WELLMARK BLUE CROSS AND BLUE SHIELD OF IOWA’S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF’S AMENDED PETITION</p>
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Defendant Wellmark, Inc., d/b/a Wellmark Blue Cross and Blue Shield of Iowa (“Wellmark” or “Defendant”), by and through its undersigned counsel, hereby answers Plaintiff Jesse Vroegh’s (“Vroegh” or “Plaintiff”) Amended Petition as follows:

PARTIES, VENUE & JURISDICTION

1. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 1 and, therefore, denies the allegations in Paragraph 1.
2. Defendant admits the allegations in Paragraph 2.
3. Defendant admits the allegations in Paragraph 3.
4. Defendant admits the allegations in Paragraph 4.
5. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 5 and denies the allegations on that basis.

6. Defendant admits that the Court has jurisdiction over this case and that venue is proper. Defendant denies Paragraph 6 to the extent it alleges Vroegh's claims have merit or that damages are appropriate.

CONDITIONS PRECEDENT

7. Defendant admits Plaintiff filed charges with the Iowa Civil Rights Commission. Defendant denies the remaining allegations of paragraph 7.

8. Defendant admits the Iowa Civil Rights Commission issued a right-to-sue letter. Defendant denies the remaining allegations in Paragraph 8.

9. Defendant admits that the Court has jurisdiction over this case but denies the remaining allegations in Paragraph 9.

FACTS COMMON TO ALL COUNTS

10. Defendant incorporates its responses to paragraphs 1-9 as if fully set forth herein.

11. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 11 and denies the allegations on that basis.

12. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 12 and denies the allegations on that basis.

13. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 13 and denies the allegations on that basis.

14. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 14 and denies the allegations on that basis.

15. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 15 and denies the allegations on that basis.

16. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 16 and denies the allegations on that basis.

17. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 17 and denies the allegations on that basis.

18. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 18 and denies the allegations on that basis.

19. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 19 and denies the allegations on that basis.

20. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 20 and denies the allegations on that basis.

COUNT I
**DISCRIMINATION IN USE OF FACILITIES BASED ON GENDER IDENTITY AND
SEX**
Iowa Code Chapter 216 (2016)
(Vroegh v. Iowa Department of Corrections and Wachtendorf)

Paragraphs 21 – 39. This Count is not directed at Defendant Wellmark, contains no allegations directed to Defendant Wellmark, and seeks no relief from this Defendant. Defendant therefore makes no answer to this Count. To the extent any allegations of this Count are construed as directed to Defendant Wellmark, said allegations are denied.

COUNT II
**DISCRIMINATION IN PROVISION AND ADMINISTRATION OF BENEFITS ON THE
BASIS OF SEX AND GENDER IDENTITY**
Iowa Code Chapter 216 (2016)
**(Vroegh v. Iowa Department of Corrections and Iowa Department of Administrative
Services)**

Paragraphs 40 – 46. This Count is not directed at Defendant Wellmark, contains no allegations directed to Defendant Wellmark, and seeks no relief from this Defendant. Defendant

therefore makes no answer to this Count. To the extent any allegations of this Count are construed as directed to Defendant Wellmark, said allegations are denied.

COUNT III
**VIOLATION OF EQUAL PROTECTION PROVISIONS OF THE IOWA
CONSTITUTION BASED ON SEX**
**(Vroegh v. Iowa Department of Corrections, Iowa Department of Administrative Services,
and Wachtendorf)**

Paragraphs 47 – 59. This Count is not directed at Defendant Wellmark, contains no allegations directed to Defendant Wellmark, and seeks no relief from this Defendant. Defendant therefore makes no answer to this Count. To the extent any allegations of this Count are construed as directed to Defendant Wellmark, said allegations are denied.

COUNT IV
**VIOLATION OF EQUAL PROTECTION PROVISIONS OF THE IOWA
CONSTITUTION BASED ON TRANSGENDER STATUS**
**(Vroegh v. Iowa Department of Corrections, Iowa Department of Administrative Services,
and Wachtendorf)**

Paragraphs 60 – 65. This Count is not directed at Defendant Wellmark, contains no allegations directed to Defendant Wellmark, and seeks no relief from this Defendant. Defendant therefore makes no answer to this Count. To the extent any allegations of this Count are construed as directed to Defendant Wellmark, said allegations are denied.

RELIEF SOUGHT FOR COUNTS I – IV
**(Vroegh v. Iowa Department of Corrections, Iowa Department of Administrative Services,
and Wachtendorf)**

Counts I through IV are not directed at Defendant Wellmark, contain no allegations directed to Defendant Wellmark, and seek no relief from this Defendant. Defendant therefore makes no answer to this request for relief for these Counts. To the extent any allegations of Counts I – IV and the request for relief related to those Counts are construed as directed to Defendant Wellmark, said allegations and requests for relief are denied.

COUNT V
**DISCRIMINATION IN PROVISION AND ADMINISTRATION OF BENEFITS BASED
ON SEX AND GENDER IDENTITY**
Iowa Code Chapter 216 (2016)
(Vroegh v. Wellmark, Inc.)

66. Defendant incorporates its responses to paragraphs 1-65 as if fully set forth herein.

67. Defendant admits the allegation in Paragraph 67, and affirmatively states that its subsidiary Wellmark Health Plan of Iowa, Inc. provides medical benefit plans to State of Iowa employees.

68. Defendant denies the allegations in Paragraph 68.

69. Defendant denies the allegations in Paragraph 69.

70. Defendant denies the allegations in Paragraph 70.

71. Defendant denies the allegations in Paragraph 71.

72. Defendant denies the allegations in Paragraph 72.

To the extent the paragraph beginning “WHEREFORE” that follows paragraph 72 requires a response, Defendant denies all liability, damages, attorney’s fees and costs and further denies each subparagraph (A, B, and C). Defendant requests the court enter judgment in Defendant’s favor and against Plaintiff, at Plaintiff’s cost.

JURY DEMAND

73. No response to Plaintiff’s jury demand is required.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiff’s Amended Petition fails to state a claim upon which relief may be granted.

Second Affirmative Defense

Some or all of Plaintiff's claims may be barred by the applicable statute of limitations.

Third Affirmative Defense

Some or all of Plaintiff's claims are barred by the doctrines of waiver, estoppel, judicial estoppel, laches, and unclean hands.

Fourth Affirmative Defense

If Plaintiff was damaged in any amount, he failed to mitigate his damages, and therefore, recovery is either barred or must be reduced proportionately.

Fifth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, because to the extent Plaintiff suffered any compensable damages, those damages were proximately caused by the acts, omissions, or fault of persons or entities over whom Defendant exercised no control or for whose acts, omissions, or fault Defendant cannot be held liable.

Sixth Affirmative Defense

Plaintiff's claims are barred to the extent that Plaintiff failed to exhaust administrative remedies by making his allegations the subject of a timely filed, verified and investigated charge with the Iowa Civil Rights Commission for which he subsequently received an administrative release.

Seventh Affirmative Defense

Plaintiff's claims are barred, in whole or in part, because Defendant Wellmark is the third-party claim administrator of Plaintiff's group health plan, rather than the insurer, and therefore cannot be held liable for alleged violations of the terms of the plan.

Eighth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by, or for failure to comply with, the express terms, conditions, and exclusions of his plan.

Ninth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, to the extent Plaintiff's plan does not afford fiduciary status to Defendant Wellmark.

Tenth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, to the extent they were paid for by secondary insurance.

Eleventh Affirmative Defense

Plaintiff's claims are barred, in whole or in part, to the extent they rely upon theories that have not been pleaded in this case or have been dismissed in this case.

Twelfth Affirmative Defense

No action taken by Defendant Wellmark with respect to Plaintiff was done with malice or any willful, wanton or reckless disregard for his rights or with the intention of violating the laws or the public policy of the state of Iowa.

Reservation of Rights

Defendant Wellmark reserves the right to assert additional defenses at such time and to such extent as warranted by discovery and the factual developments in this case.

Dated: January 24th, 2018.

/s/Angel A. West

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BLUE CROSS AND BLUE SHIELD OF IOWA

CERTIFICATE OF SERVICE

I certify that on January 24, 2018, I electronically filed the foregoing with the Clerk of Court using the ECF system, which will send notification of such filing to the parties participating in the Court's electronic filing system.

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/s/Angel A. West