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Doe v. Mutual of Omaha Insurance Company

Settled

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Overview

Settled, January 8, 2019: The parties have reached a settlement in the lawsuit *Doe v. Mutual of Omaha Insurance Company* (United States District Court for the District of Massachusetts) that challenged Mutual's policy of declining applicants who take the medication Truvada as pre-exposure prophylaxis for HIV (known as "PrEP) from long-term care insurance.

Mutual of Omaha has revised its underwriting guidelines and no longer declines long term care insurance applicants solely on the basis that an applicant takes Truvada as PrEP for HIV prevention. Mutual will issue a long-term care insurance policy to the plaintiff, who proceeded under the pseudonym John Doe.

Mr. Doe was represented by Bennett Klein, AIDS Law Project Director for GLBTQ Legal Advocates & Defenders (GLAD) and attorney John Ward. Mr. Klein said, "We are pleased that Mutual no longer declines insurance coverage based on the use of HIV pre-exposure prophylaxis, and we call upon other providers of life, disability, and long-term care insurance to do the same."

Update July 18, 2018: GLAD filed a [motion for summary judgment](#) in a first-of-its-kind case challenging discrimination against a gay man who takes the medication Truvada as pre-exposure prophylaxis (PrEP) to prevent the transmission of HIV.

Our plaintiff in *Doe v. Mutual of Omaha* asserts that the insurance company's refusal to sell him a long-term care policy is based on its categorical exclusion of anyone who is HIV-negative and takes PrEP. Doe asserts that Mutual's blanket exclusion is sexual orientation discrimination because 80% of PrEP users are gay men. He also presses a claim for discrimination on the basis of perceived disability.

This case, the first to challenge the anti-gay policy that is widespread in the industry, has brought national prominence to the issue and prompted some state insurance agencies to consider action. In June 2018, the New York Department of Financial Services issued a [directive](#) that the exclusion of people on PrEP from life, disability and long-term care insurance is unlawful discrimination.

Filed in the U.S. District Court for the District of Massachusetts, the motion also rebuts Mutual's jurisdictional objections.

Overview



eral court charging that Mutual of Omaha Insurance Company discriminated term care insurance because he is taking Truvada. Truvada, a form of PrEP or medication prescribed to HIV-negative people to prevent the transmission of he country challenging discrimination against a person on PrEP. The case is currently in the discovery phase.

Case History

GLAD has filed a complaint in Massachusetts Superior Court charging that Mutual of Omaha Insurance Company discriminated when it denied a gay man long term care insurance because he is taking Truvada. Truvada, a form of PrEP or Pre-Exposure Prophylaxis, is a medication prescribed to HIV-negative people to prevent the transmission of HIV. This is the first lawsuit in the country challenging discrimination against a person on PrEP.

Truvada, approved by the Food and Drug Administration in 2004 as a treatment for HIV and in 2012 as a method of preventing HIV infection, is considered by public health experts to be a major medical breakthrough in HIV prevention, with the potential to end the epidemic.

The complaint describes how Doe, a 61-year-old Boston man, applied for long-term care insurance with Mutual of Omaha in November 2014. Long-term care insurance pays for some or all of the costs of nursing homes, assisted living facilities, and home health care for people unable to take care of themselves and is part of end-of-life planning. He received a denial letter in February 2015, which openly stated that the reason for the denial was that he was taking Truvada as PrEP. Mr. Doe appealed the denial, and his appeal was rejected in April 2015.

The claim filed with MCAD asserts that Mutual of Omaha illegally denied Mr. Doe access to a place of public accommodation based on sexual orientation and on disability. Disability anti-discrimination laws protect those who are treated adversely based on false beliefs about a health condition.

[Frequently Asked Questions](#)

John Doe's story

John Doe is a 61-year-old gay man “with survivor’s guilt.”

“When I walk down the streets of Provincetown, I see ghosts everywhere,” he says. Doe lost dozens of friends to the epidemic during its peak in the 1980’s and 90’s. “Every week, we were reading the obituaries of people who died at age 30.”

Like many men of his generation, he was scarred and schooled by the epidemic, and now takes an HIV test regularly and is very mindful of his health and that of his partner of 25 years.

“The AIDS epidemic changed me. It made me politically aware and politically active,” he says. “If there is anything I can do personally to stop it, I will. That’s why when Truvada became available, it was to me such an incredible breakthrough and a huge opportunity.”

Doe’s doctor prescribed him Truvada around the same time Doe’s partner’s mother became very ill. “We took care of her until she died,” he said. “That made me very aware of the fact that I am aging and have no children who would take care of me.” So in 2014, Doe applied for long-term care insurance with Mutual of Omaha, and was denied because he is taking Truvada.

“I’m trying to do the right thing,” he says. “I think insurers should be begging people to take Truvada instead of discouraging it.”

Case Documents



[Summary Judgment](#)

[Part of Summary Judgement and Opposition to Defendant's Motion for Summary Judgment](#)

[Plaintiff's Statement of Undisputed Facts in Support of Motion for Summary Judgment](#)

[Affidavit of Kenneth Mayer](#)

[Plaintiff's Response to Defendant's Statement of Facts](#)

[Complaint, MA Superior Court](#)

[Complaint, MCAD](#)