

IRS disallows a woman's tax deduction for SRS - citing teachings in a Catholic religious journal as a basis for its decision

A Report by Lynn Conway

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On October 15, 2005, the IRS stated in [Chief Counsel Advice 200603025](#) that a woman's transsexual sex reassignment surgery would not be allowed as a deductible medical expense. The statement was posted in the official IRS website on January 10, 2006 [[1](#)], and reported in "[TaxProf-Blog](#)" on January 23, 2006 [[2](#)].

Tax deductions for SRS have been quietly allowed for many decades, and affirmed in appeals when IRS examiners occasionally attempted to deny them. This latest ruling is being appealed and has no precedential value for other cases. Therefore, most attorneys will advise people now transitioning to simply be aware that if they take the deduction and are ever audited (which of course is pretty rare), they'll have to show that the surgery or other medical treatments were medically necessary in their individual case.

Nevertheless, this recent ruling is very troubling, because of its citation of anti-transsexual teachings in a Catholic religious journal [[3](#)] as a principal basis for the particular Executive decision. By so doing, the ruling provides a PR victory (and possible political currency) for religious zealots within the current administration who wish to depict SRS as merely cosmetic and not a serious medical condition for which treatment is medically necessary. Consider the following words in the ruling:

"Whether gender reassignment surgery is a treatment for an illness or disease is controversial. For instance, Johns Hopkins Hospital has closed its gender reassignment clinic and ceased performing these operations. See, Surgical Sex, Dr. Paul McHugh, 2004 First Things 147 (November 2004) 34-38. In light of the Congressional emphasis on denying a deduction for procedures relating to appearance in all but a few circumstances and the controversy surrounding whether GRS is a treatment for an illness or disease, the materials submitted do not support a deduction. Only an unequivocal expression of Congressional intent that expenses of this type qualify under section 213 would justify the allowance of the deduction in this case. Otherwise, it would seem we would be moving beyond the generally accepted boundaries that define this type of deduction." [[1](#), p.5]

In that citation the IRS refers to the closing of a gender clinic at Johns Hopkins, never mentioning that the closing happened decades ago (in 1979) and is "ancient history" in medicine long bypassed by later events. Nor does the citation mention that the clinic closing was the result of an internal political vendetta against the clinic by the very same Paul McHugh now cited.

[Paul McHugh](#) is an influential conservative Catholic ideologue who for some odd reason has been on a lifelong rampage to "stop sex changes" [[4](#)]. This transphobic psychiatrist (then advisor to the Vatican on sexual matters) convinced the Vatican in 2000 to declare that transsexualism "doesn't exist" and is a mental pathology instead [[5](#)]. McHugh is now positioned to similarly influence the Executive Branch, as a member of the President's Council for Bioethics [[6](#)].

In the *First Times* article McHugh ruthlessly caricatures transsexual women in a manner reminiscent of school-yard bullies instead of the "famous scientist" he claims to be. He mocks and ridicules the women in the grossest of ways, in writing clearly designed to hurt, defame, stigmatize and ostracize:

"...The post-surgical subjects struck me as caricatures of women. They wore high heels, copious makeup, and flamboyant clothing; they spoke about how they found themselves able to give vent to their natural inclinations for peace, domesticity, and gentleness—but their large hands, prominent Adam's apples, and thick facial features were incongruous (and would become more so as they aged)...." [3]

While promoting such conservative Catholic superstitions about gender variant people, the recent IRS ruling ignores the large mass of scientific and medical information on gender dysphoria and its treatment that has accumulated in the intervening 27 years.

For example, it makes no reference to the Gender Identity Research and Education Society's publication of the [current international scientific consensus on gender dysphoria](#) in a synopsis signed by many of the world's leading authorities in this area [7]. Worse yet, it takes note of the international [Standards of Care of the Harry Benjamin International Gender Dysphoria Association](#) (HBIGDA) [8], but fails to mention that those standards are in complete conflict with its own ruling that SRS is "cosmetic surgery":

"...Sex Reassignment is Effective and Medically Indicated in Severe GID. In persons diagnosed with transsexualism or profound GID, sex reassignment surgery, along with hormone therapy and real-life experience, is a treatment that has proven to be effective. Such a therapeutic regimen, when prescribed or recommended by qualified practitioners, is medically indicated and medically necessary. Sex reassignment is not "experimental," "investigational," "elective," "cosmetic," or optional in any meaningful sense. It constitutes very effective and appropriate treatment for transsexualism or profound GID...." - HBIGDA SOC V6, [8]

As a result of the many modern scientific and medical advances, the government health systems in many advanced countries such as the UK now provide government-subsidized medical and surgical treatment to those suffering from gender dysphoria [R5]. The IRS ruling completely ignores this modern medical reality.

The ruling also appears duplicitous when it states *"To our knowledge, there is no case law, regulation, or revenue ruling that specifically addresses medical expense deductions for GRS or similar procedures."* [1] After all, such medical expenses have been allowed for many decades. Furthermore, there was a prior IRS ruling on appeal in this very case, in which SRS surgery expenses were allowed after being denied by the initial examiner, as reported by GLAD in 2004: *"As the Appeals Officer determined, however, Ms. O'Donnabhain's surgery was medically necessary and an integral part of a professionally prescribed course of treatment for her diagnosed condition."* [9]

Information on the male-to-female type of sex reassignment surgery can be found in reference [10]. That information will help fair-minded people visualize that trans women don't undergo such sex reassignment procedures for "cosmetic purposes". Instead they're driven to undergo such painful and expensive surgeries in order to make their bodies, minds and souls complete and consistent - as they are in people fortunate enough to have been born with the privilege of gender

congruence. People born without such congruence find their own bodies foreign and alien to them. Their suffering is as intense as that of people suffering from serious deformities.

To deny such people medical deductions for the medical correction of their bodies - people who often face extreme financial and employment difficulties during their transitions - is unfair and inhumane. The claim that such people require a special "act of Congress" before being treated fairly exudes not only ignorance and intolerance, but also open Executive Branch hostility towards gender variant people.

Then too, [thousands of gender transitioners all around us](#) [11, 12] provide tangible evidence (in the form of their many successes in life after medical treatment) that gives lie to the pronouncements of McHugh on which the recent IRS ruling was based.

This recent IRS ruling appears to be totally without merit, and we expect it to be aggressively challenged and overturned. We also predict that fair-minded people will increasingly be repulsed by the life-long transphobic rampage of Paul McHugh. In the end, this apparent "PR victory" for the current administration's religious zealots is likely to dishonor them instead.

References:

1. Internal Revenue Service Memorandum Number 200603025, from Thomas D Moffitt, Branch Chief, IRS Branch 2, October 14, 2005.
<http://www.irs.gov/pub/irs-wd/0603025.pdf>
2. TaxProf_blog, "IRS Denies Medical Expense Deduction for Costs of Gender-Reassignment Surgery", January 23, 2006.
http://taxprof.typepad.com/taxprof_blog/2006/01/irs_no_medical_.html
3. Paul McHugh, "Surgical Sex", *First Things* 147 (November 2004): 34-38.
<http://www.firstthings.com/ftissues/ft0411/articles/mchugh.htm>
4. Lynn Conway, "Paul McHugh Defames Transsexual Women", LynnConway.com, November 26, 2004.
<http://ai.eecs.umich.edu/people/conway/TS/Bailey/McHugh/McHugh%20on%20Transsexualism.htm>
5. John Norton, "Vatican says 'sex-change' operation does not change person's gender", Catholic News Service, January 14, 2003.
<http://ai.eecs.umich.edu/people/conway/TS/CatholicTSDecision.html>
6. President's Council on Bioethics: Advising the President on ethical issues related to advances in biomedical science and technology, "Council Members", Bioethics.gov.
<http://www.bioethics.gov/about/members.html>
7. The Harry Benjamin International Gender Dysphoria Association, *Standards of Care (Sixth Version)*, February 2001.
<http://www.hbigda.org/soc.htm>

8. Gender Identity Research and Education Society (GIRES), "Definition and Synopsis of the Etiology of Adult Gender Identity Disorder and Transsexualism", with 24 signatories, 2002.
http://www.gires.org.uk/Web_Page_Assets/Etiology_definition_signed.htm
http://www.gires.org.uk/Text_Assets/Etiology_Definition.pdf
9. Gay & Lesbian Advocates & Defenders, "GLAD Wins Tax Deduction for Sex Reassignment Surgery", November 30, 2004
http://www.glad.org/News_Room/press83-11-30-04.html
10. Lynn Conway, "Vaginoplasty: Male to Female Sex Reassignment Surgery - Historical notes, descriptions, photos, references and links", LynnConway.com
<http://ai.eecs.umich.edu/people/conway/TS/SRS.html>
11. Lynn Conway, "Transsexual Women's Successes", LynnConway.com
<http://ai.eecs.umich.edu/people/conway/TSSuccesses/TSSuccesses.html>
12. Lynn Conway, "Successful TransMen", LynnConway.com
<http://ai.eecs.umich.edu/people/conway/TSSuccesses/TransMen.html>

Further readings:

- R1. The Transgender Law and Policy Institute website.
<http://www.transgenderlaw.org/>

The Transgender Law and Policy Institute (TPLI) is a non-profit organization dedicated to engaging in effective advocacy for transgender people in our society.

- R2. Concerned Women for America, "Research Condemns Sex-Change Operations", CWFA.org, October 22, 2004.
<http://www.cwfa.org/articles/6573/CWA/family/index.htm>

This CWFA alert coincided with publication of McHugh's article in *First Things* in 2004 [3], and initiated the propagation of the duplicitous rumor that Johns Hopkins had just recently closed its gender clinic in response to recent "scientific research" by saying:

"Johns Hopkins University has stopped performing sex change operations, both on adults and on infants born with ambiguous genitalia. The move is the result of long-term research showing once again that some things, like sexual identity, can not be changed surgically. Martha Kleder spoke with Dr. Janice Crouse, senior fellow with the Beverly LaHaye Institute, on this work of Paul McHugh, University Distinguished Service Professor of Psychiatry at Johns Hopkins University, published in the November, 2004 issue of First Things."

- R3. Andrea James, "Paul McHugh on transsexualism", TSRoadmap.com.
<http://www.tsroadmap.com/info/paul-mchugh.html>

- R4. Milton Diamond (Chair), et al, "Atypical Gender Development - A Review", *International Journal of Transgenderism* (2006, 9.1) (with 20 signatories). Online draft:
http://www.gires.org.uk/Text_Assets/ATypical_Gender_Development.pdf

In 2003, GIRES organized a symposium of leading researchers and clinicians that produced this comprehensive review of what is currently known in the scientific field about atypical gender development and transsexualism (building on its earlier report in 2002 [8]). None of the studies listed in the GIRES review were cited in the IRS ruling.

R5. Press for Change website (UK):

<http://www.pfc.org.uk>

Press for Change (PFC) has successfully lobbied for legal recognition and human rights for trans people in the UK. Their website includes the text of pivotal court cases regarding provision of SRS. See, for example, the following judgments from the High Court and Court of Appeal in "A.D.& G.vs North West Lancashire Health Authority" (1998):

<http://www.pfc.org.uk/legal/nwl-hc.htm>; <http://www.pfc.org.uk/legal/nwl-appl.htm>;
<http://www.pfc.org.uk/medical/nwl-2000.htm>

In this case three transsexual women took the NHS Health Authority to court because it refused to fund their surgery. The High Court found in their favor (the first reference) but the Health Authority went to appeal; the Court of Appeal upheld the original decision in favor of the trans women and, in doing so, made the decision into a legal precedent (jurisprudence in US-speak). The case required expert-witness testimony as to the nature of gender dysphoria and the known options for treating it. In the process the courts confirmed that SRS was a proper treatment for GID and that it was illegal for funding authorities to operate any system which amounted to an embargo on any part of the treatment, including surgery. The recent US IRS ruling failed to mention that advanced countries outside the US make such modern provisions for medical treatment of GID.

Citation and links to on-line versions of this report:

Lynn Conway, "IRS disallows a woman's tax deduction for SRS - citing teachings in a Catholic religious journal as a basis for its decision," LynnConway.com, Jan. 25, 2006

<http://ai.eecs.umich.edu/people/conway/TS/Legal%20Issues/Taxes/IRS%20SRS%20Rulings.html>
<http://ai.eecs.umich.edu/people/conway/TS/Legal%20Issues/Taxes/IRS%20SRS%20Rulings.pdf>

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