

Infertile woman, aged 24, accuses trust of age discrimination after being refused IVF

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A 24 year old nursery nurse who was left infertile by a ruptured appendix when she was a child is accusing her local primary care trust of age discrimination in refusing her in vitro fertilisation treatment on the NHS.

Andrea Heywood and her 25 year old husband, Aaron, have been turned down for treatment on the NHS because under the funding guidelines of the primary care trust NHS Portsmouth IVF is available only to women aged 30 to 34.

Her solicitor, Louisa Ghevaert of the law firm Porter Dodson, has written a letter before action to the trust, branding its stance “illegal, unlawful, unjustified, and unfair” and a breach of article 8 of the European Convention on Human Rights, the right to respect for private and family life.

Heywood has been left with scarred fallopian tubes after her appendix ruptured at the age of 6 and has been diagnosed as infertile.

Guidelines from the UK National Institute for Health and Clinical Excellence (NICE) say that women whose fertility problems have an identified cause or who have been trying unsuccessfully for a pregnancy for three years should be offered three cycles of IVF from the age of 23 and up to 39. Ghevaert argued that the earlier the treatment is given, the more likely it is to be successful, but the guidelines are not mandatory.

NHS Portsmouth has refused three appeals for exceptional funding. The next step would be to challenge the refusal in the

High Court, but the couple are just outside the low financial limit for legal aid.

Ghevaert, who has acted for them without charge on the appeals, told the *BMJ*, “We don’t have the funding to take judicial review proceedings at the moment. I’ve approached a number of organisations and charities, so far without success.”

New draft guidelines from NICE, issued for consultation last month, include no lower age limit and note that “the chances of a live birth following IVF treatment falls with rising female age.”¹

Ghevaert said, “NICE guidance on the provision of IVF treatment on the NHS hasn’t been updated since 2004. It is high time this is achieved to reflect better treatment success rates, equality legislation, and greater demand by women for IVF.

“However, NICE guidance is not mandatory, and it remains to be seen whether these new proposals will bring greater recognition of IVF as a legitimate clinical need or greater fairness in accessing fertility treatment on the NHS for couples like Andrea and Aaron who are currently battling with the postcode lottery and varying restrictions imposed by PCTs [primary care trusts] who continue to flout the guidance across the country.”

1 Kmiotowicz Z. IVF is cost effective up to age 43, says NICE. *BMJ* 2012;344:e3656.

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