

THE IOWA DEPARTMENT OF HEALTH AND HUMAN SERVICES

<p>CARL OLSEN, Appellant, vs. Iowa Department of Health and Human Services, Respondent.</p>	<p>DIA NO. 22IDPH0002 DIRECTOR'S FINAL ORDER</p>
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FINAL DECISION

After review of the record, the **PROPOSED** DECISION you received dated August 11th, 2022 is **ADOPTED** as the **FINAL DECISION**.

DISCUSSION

In the proposed decision dated August 11th, 2022, the Judge Affirmed the determination of the Iowa Department of Public Health (IDPH)* to deny the Appellant, Carl Olsen, a medical cannabidiol registration card. IDPH administers the Iowa medical cannabidiol program and issues registration cards to qualified patients allowing them to obtain and use medical cannabidiol for strictly limited medical purposes. Iowa Code 124E, The Medical Cannabidiol Act, governs all aspects of the permissible medical use of cannabidiol from the grant of authority to the IDPH to administer the program including the licensure and/ or registration of manufacturers, dispensaries, and persons seeking the ability to purchase it.

As listed in Iowa Code section 124E.4 titled "Medical cannabidiol registration card," the requirements for issuance of a medical cannabidiol card are that the person must be

eighteen years of age or older and a permanent resident of Iowa; the person must submit a written certification signed by a health care practitioner confirming the person is suffering from one of the debilitating medical conditions listed in Iowa Code section 124E.2(2); the person must submit an application containing his or her own full name, date of birth, address and phone number, the health care practitioner's full name, address and phone number, a caregiver's full name, address, date of birth and phone number (if any); and a copy of the person's valid photo identification. Persons applying for registration cards must also pay a processing fee.

There is no argument in this case about whether the Appellant filled out the appropriate IDPH-approved application or whether he paid the processing fee in full as required by the statute. There is no concern as to whether he provided his full name, birthdate, residential address, and phone number as required by the statute. The determinative issue is that the Appellant did not provide a certification from a health care practitioner indicating he is suffering with a qualifying debilitating medical condition at the time he submitted his application for a medical cannabidiol registration card. The Appellant does not claim to suffer from one of the debilitating medical conditions listed in Iowa Code section 124E.2(2).

Iowa Code chapter 124E uses a specific term when referring to applicants for registration cards. The term "applicant," is not used; not "candidate"; not "person". Instead, the term "patient" is used. Specifically, 124E.4(1) is subtitled "Issuance to a patient" and in all subsequent references to the person who is applying for the card, the term used is "patient." Though not defined within the statute, Merriam-Webster defines "patient" as "an individual awaiting or under medical care and treatment." The statutory

requirement for registration card applications to include a certification from the patient's health care practitioner indicating that the patient is suffering from one of the statutorily enumerated debilitating medical conditions is a measure which serves to reduce surreptitious attempts to obtain a medical cannabidiol registration card. This requirement reflects a clear desire by lawmakers to narrowly tailor access to medical cannabidiol registration cards. The statute does not include a provision providing the IDPH with authority to waive the health care practitioner certification requirement.

The Appellant cites constitutional claims of Free Exercise and Due Process to support his request for a medical cannabidiol registration card. His application did not include a certification of a debilitating medical condition from his health care practitioner, however, it did include a "Declaration," citing a religious, rather than medical need, for the card. The Appellant is a member of the Ethiopian Zion Coptic Church, which considers cannabis use to be part of its religious doctrine. The Appellant's association with the church is long standing and not in question; nor is the claim that his church does, in fact, adhere to a belief involving sacramental use of cannabis.

FINDINGS OF FACT

The Director ADOPTS the Findings of Fact contained in the Proposed Decision and incorporates them herein by reference.

CONCLUSIONS OF LAW

The Director ADOPTS the Conclusions of Law contained in the Proposed Decision and incorporates them herein by reference.

ORDER

The ORDER of the Proposed Decision is AFFIRMED and ADOPTED. As stated therein, the Constitutional Claims of the Appellant will not be resolved by the IDPH, or through this administrative appeal, and have been preserved for Review by the District Court.

The department is directed to implement the directions contained in the Proposed Decision.

Please call (515) 229-8156 if you have any questions with regard to this decision.

Under the provisions of Section 17A.19, Code of Iowa, you may file an appeal to the District Court in Polk County or in your county within thirty days of the date of this **FINAL DECISION** if you are dissatisfied with the decision. Within ten days after the filing of a petition for judicial review a copy of the petition shall be mailed to:

Kelly Garcia, Director
Department of Health and Human Services, Fifth Floor
1305 East Walnut
Des Moines, Iowa 50319-0114

Dated this 17th day of January, 2023, Des Moines, IA

IOWA DEPARTMENT OF HEALTH AND HUMAN SERVICES



Kelly Garcia

Director

KG/SR/WS

cc:

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DIA ALJ – Carla Hamborg

*Effective July 1, 2022, through July 1, 2023, the Iowa Department of Public Health (IDPH) and the Iowa Department of Human Services (DHS) shall be in a transition period as the agencies develop and implement transition plans to merge the agencies and become a new state agency, the Iowa Department of Health and Human Services (Iowa HHS). For purposes of this Agreement throughout the transition period, “Agency” or “Department” or “IDPH” means either IDPH or Iowa HHS. Throughout the transition period, IDPH and Iowa HHS shall have and may exercise all legal powers and duties of IDPH, including executing all contractual rights and obligations.

Effective July 1, 2023, the Iowa Department of Public Health (IDPH) and the Iowa Department of Human Services shall merge and become the Iowa Department of Health and Human Services (Iowa HHS). For purposes of this Agreement on and after July 1, 2023, “Agency” or “Department” or “IDPH” means Iowa HHS. On and after July 1, 2023, Iowa HHS shall have and may exercise all legal powers and duties of the former IDPH, including executing all contractual rights and obligations.