

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building – Third Floor
Des Moines, Iowa 50319

Carl Olsen,)	
)	Docket No. 22IDPH0002
Appellant.)	
)	
v.)	
)	PROPOSED DECISION
Iowa Department of Public Health,)	
)	
Respondent.)	

STATEMENT OF THE CASE

The Appellant, Carl Olsen, appealed from a January 7, 2022 decision of the Iowa Department of Public Health (IDPH or the Department) to deny the Appellant’s application for an Iowa medical cannabidiol registration card. A telephone hearing was held on June 15, 2022. Attorney Colin Murphy represented Olsen, who appeared for the hearing and testified. Assistant Attorneys General Heather Adams and Laura Steffensmeier represented IDPH. Owen Parker, Chief of the Bureau of Medical Cannabidiol, also appeared and testified for the Department. Department exhibits 1 - 5 were admitted into the record without objection. The Appellant submitted post-hearing briefings on July 1, and July 22, 2022. The Department filed a post-hearing brief on July 8, 2022. The matter is fully submitted.

FINDINGS OF FACT

Olsen is a member of the Ethiopian Zion Coptic Church. His church views cannabis as a sacrament, and considers the non-drug use of cannabis to be an integral part of worship.¹ Due to state and federal criminal laws regarding marijuana use, Olsen has not used cannabis as a sacrament during worship for many years. It is his hope, however, to use it legally for religious purposes through Iowa’s medical cannabidiol program. (Olsen Testimony).

On November 24, 2021, Olsen applied for a medical cannabidiol registration card from the IDPH, which administers the program. Olsen did not submit a certification from a health care practitioner, which is one of the statutory pre-requisites to receiving a

¹ See, e.g., *Olsen v. State of Iowa*, Civ. No. 83-E-301-E, 1986 WL 4045 at *1 (S.D. Iowa Mar. 19, 1986) (“Plaintiff is a priest of the Ethiopian Zion Coptic Church. This religion uses marijuana as an integral part of its religious doctrine.”).

registration card.² Instead, Olsen submitted a “Declaration” outlining his use of cannabis for religious purposes. (Resp. Exhs. 2, 5; Parker Testimony).

On January 7, 2022, the Department notified Olsen by letter that his application for a cannabidiol registration card had been denied. The Department’s sole basis for the denial was the lack of a written certification from Olsen’s health care practitioner that Olsen suffered from a debilitating medical condition. (Resp. Exh. 3; Parker Testimony).

Olsen filed a timely appeal from the denial as outlined in Iowa Administrative Code rule 641-154.7. Olsen has admitted he has not been diagnosed with a debilitating medical condition as defined in the Medical Cannabidiol Act. (Resp. Exhs. 4, 5).

APPLICABLE LAW AND DISCUSSION

Iowa Code Chapter 124E authorizes certain persons to legally possess and use medical cannabidiol, upon obtaining a registration card issued by the Department. The statute sets out specific requirements to obtain a registration card. One such requirement is a written certification from a health care practitioner that the applicant suffers from a “debilitating medical condition.”³

The statute expressly authorizes the IDPH to adopt rules ensuring it administers the program in a manner that serves the medical needs of the patient while addressing public safety issues.⁴ As per the statute, the rules also limit issuance of a registration card to persons who submit a written certification signed by the applicant’s health care practitioner certifying that the person “is suffering from a debilitating medical condition.”⁵

Here, there is no dispute Olsen does not suffer from a debilitating medical condition, and did not submit with his application a written certification from his health care provider. The clear and unambiguous language of both the statute and regulations therefore *required* that the Department deny his application.⁶

² See Medical Cannabidiol Act (the Act), Iowa Code §§ 124E.3; 124E.4(1)(c).

³ Iowa Code §§ 124E.2; 124E.3. A list of conditions qualifying as “debilitating medical condition[s]” is provided in § 124E.2; see also Iowa Admin. Code r. 641-154.1.

⁴ Iowa Code § 124E.11.

⁵ Iowa Admin. Code r. 641-154.3(1)”c.” The remaining requirements are as follows: a) the person is at least 18 years old; b) the person is a permanent resident of Iowa; d) the person submits a completed application on an IDPH form containing the information specified in the subrule; and e) the person submits the required fee. 641-154.3(1).

⁶ Iowa Code § 124E.2; 641-154.1.; *see also ABC Disposal Sys., Inc. Dep’t of Natural Resources*, 681 N.W.2d 596, 603 (Iowa 2004) (plain and rational meaning applied if statute’s language is “clear and unambiguous”); *Des Moines Area Regional Transit Authority v. Young*, 867 N.W.2d 839, 842 (Iowa 2015) (substantial deference given to agency’s interpretation of its regulations, provided the interpretation does not violate the rule’s “plain language and clear meaning”).

Olsen contends, however, that the Department’s denial of his application for a medical cannabidiol registration card violates his constitutional right to the free exercise of his religion. First, he argues that Chapter 124E (and Chapter 124) are neither religiously-neutral nor generally-applicable. Secondly, Olsen contends there is no narrowly-tailored compelling government interest to justify a prohibition against religious use of marijuana extracts. Olsen believes the Department should allow persons to seek a religious waiver from the requirement of submitting a medical certification from a health care practitioner, much like the religious waivers authorized in other Department-administered programs.⁷

Notably, the legislature—through the enabling statutes—expressly authorized the waiver processes in the examples cited by the Appellant.⁸ No such authorization exists in the Medical Cannabidiol Act.

Regardless, it is well-settled that an administrative agency lacks authority to decide constitutional issues.⁹ And although Olsen was required to raise the issues in this forum to preserve them for judicial review,¹⁰ no deference is afforded the agency’s opinion regarding the constitutionality of a rule or statute. The Iowa Supreme Court has expressly emphasized: “We will not give any deference to the view of the agency with respect to constitutionality of a statute or administrative rule, because it is exclusively up to the judiciary to determine the constitutionality of legislation and rules enacted by the other branches of the government.”¹¹ Accordingly, the merits of Olsen’s First Amendment claim are appropriately left for the district court.

⁷ See *gen.* App. Brief at 4-5.

⁸ See Iowa Code §§ 135.11(7) (embalming and disposal of dead bodies); 135.17(1)(d) (children’s dental screenings); 135.39D(10) (children’s vision screenings); 135.105D(4) (blood lead testing in children); 135.146 (vaccination of first responders); 139A.8(4)(a)(2) (children’s immunizations); 139A.38 (prophylactic drops in infant’s eyes); 139A.39 (compelling medical treatment to prevent spread of infectious disease).

⁹ *Endress v. Iowa Dep’t of Human Servs.*, 944 N.W.2d 71, 83 (Iowa 2020) (citing *Soo Line R.R. v. Iowa Dep’t of Transp.*, 521 N.W. 2d 685, 688 (Iowa 1994)).

¹⁰ See *id.* (citing *McCracken v. Iowa Dep’t of Human Servs.*, 595 N.W.2d 779, 785 (Iowa 1999)).

¹¹ *ABC Disposal Sys., Inc. v. Department of Natural Resources*, 681 N.W.2d 596, 605 (Iowa 2004) (citing Iowa Code § 17A.19(11)(b)).

DECISION

As set forth above, the Department correctly denied the Appellant's application for a medical cannabidiol registration card under the express language of the statute and applicable regulations. The undersigned lacks authority to consider his constitutional claims.

The Department's January 7, 2022 decision is **AFFIRMED**.

Dated this 11th day of August, 2022.



Carla J. Hamborg

Administrative Law Judge

cc: Carl Olsen (by Mail and Email)

Colin Murphy, Attorney for Appellant (by Mail and Email)

Laura Steffensmeier, AAG (By AEDMS)

Heather Adams, AAG (By Email)

Sarah Reisetter, IDPH (By Email)

Owen Parker, IDPH (By Email)

APPEAL RIGHTS

Any adversely affected party may appeal this proposed decision to the director of the Iowa Department of Public Health within 30 days of the date of the decision. The notice of appeal must be signed by the appealing party or a representative and contain a certificate of service. The notice must specify the party(s) initiating the appeal, the proposed decision appealed from, the specific findings or conclusions to which the party(s) takes exception, the relief sought, and the grounds for relief. If there is no appeal within 30 days, the proposed decision shall become the final decision of the department. Iowa Admin. Code r. 641-173.26; 641-173.27.

Case Title: CARL OLSEN V. IOWA DEPARTMENT OF PUBLIC HEALTH
Case Number: 22IDPH0002
Type: Proposed Decision

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Carla M. Hamborg". The signature is written in a cursive style with a large initial "C".

Carla Hamborg, Administrative Law Judge