

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>EERIEANNA GOOD,</p> <p>Petitioner,</p> <p>v.</p> <p>IOWA DEPARTMENT OF HUMAN SERVICES,</p> <p>Respondent.</p>	<p>CASE NO. CVCV054956</p> <p>RESPONDENT'S PRE-ANSWER MOTION TO DISMISS</p>
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Respondent, the Iowa Department of Human Services (“DHS”), pursuant to Iowa R. Civ. P. 1.421(1)(f), hereby submits the following Motion to Dismiss Petitioner’s Petition for Judicial Review for Failure to State a Claim and states as follows:

1. Claim Three of Petitioner’s Petition for Judicial Review (the “Petition”) alleges that Iowa Admin. Code r. 441-78.1(4)“b” violates the Iowa Constitution’s Equal Protection Clause. However, the Eighth Circuit’s ruling in *Smith v. Rasmussen*, 249 F.3d 755 (8th Cir. 2001), held otherwise. This Court should follow the Eighth Circuit’s well-established precedent and find Petitioner has failed to allege a claim under Iowa’s Equal Protection Clause.
2. Claim Five of the Petition alleges that Iowa Admin. Code r. 441-78.1(4)“b” was the result of unreasonable, arbitrary, and capricious rulemaking by Respondent. However, the Eighth Circuit explicitly held in *Rasmussen* that “the State’s prohibition on funding of sex reassignment surgery is both reasonable and consistent with the Medicaid Act.” 249 F.3d at 761. As a result, Petitioner’s fifth claim has been dispositively resolved in federal court, and Petitioner has failed to state a claim.
3. Claims One and Two of the Petition alleges that Respondent has violated the Iowa Civil Rights Act’s (“ICRA”) protections against discrimination in “public accommodations.” However, a thorough reading of the ICRA, its federal corollary, and surrounding case law makes clear that

the ICRA's definition of "public accommodations" was not intended to include Respondent or Iowa Medicaid.

4. Claim Four of the Petition alleges an independent ground to relief based on Respondent's alleged liability under Claims One through Three of the Petition. Therefore, because Petitioner fails to state a claim for those claims, no claim has been stated for Claim Four.

WHEREFORE, Respondent respectfully moves this Court to DISMISS Petitioner's Petition for Judicial Review with prejudice pursuant to Iowa R. Civ. P. 1.421(1)(f), all costs and fees apportioned to incurring parties, and any such other, further, and different relief as the Court deems just and proper.

THOMAS J. MILLER
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***Original electronically filed via EDMS.
Electronically served on parties of record.***

PROOF OF SERVICE	
The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on this <u>9th</u> day of <u>October</u> , 2017:	
<input type="checkbox"/> U.S. Mail	<input type="checkbox"/> Hand Delivery
<input checked="" type="checkbox"/> ECF System Participant (Electronic Service)	
Signature: <u>/s/Cindy Jacobs</u>	