IN THE IOWA SUPREME COURT

NO. 18-0189

JULIE PFALTZGRAFF

Petitioner/Appellant,

vs.

IOWA DEPARTMENT OF HUMAN SERVICES

Respondent/Appellee.

APPEAL FOR THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY – HONORABLE SCOTT ROSENBERG, JUDGE

PETITIONER/APPELLANT'S FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT

/s/ Trent W. Nelson
Trent W. Nelson, Attorney
(AT0009958)
Sellers, Galenbeck and Nelson
An Association of Sole Practitioners
400 Locust Street, Suite 170
Des Moines, Iowa 50309-2351
Telephone: (515) 221-0111
Fax: (515) 221-2702
Email: tnelson@sgniowalaw.com

ATTORNEY FOR PETITIONER/APPELLANT

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The Supreme Court should retain this case pursuant to Iowa R. App. P. 6.1101(2)(a) as it presents questions as to the validity of administrative rules and the application thereof.

Statement of the Case

The Petitioner, Julie Pfaltzgraff (Mrs. Pfaltzgraff) is a child care provider who contracted with the Iowa Department of Human Services to provide child care on behalf of the state and federal government as part of the Child Care Assistance Program (CCAP). When the Iowa Department of Health and Human Services accused Mrs. Pfaltzgraff of having more children in her care than allowed by statute, Mrs. Pfaltzgraff challenged this determination by contested case. The Administrative Law Judge (ALJ) found that instead of a safety violation, Mrs. Pfaltzgraff had made a billing error not amounting to more than $218.88. The Department then demanded $31,815.46, which is not related to the billing error made by Mrs. Pfaltzgraff but rather represented all the money she *worked for* and earned under her CCAP agreement while her contested case was pending (i.e., recoupment). The regulations that allow this recoupment are violative of due process, not authorized by statute and equitably unjust.

Statement of Facts and Procedural History

It is undisputed that the Petitioner, Julie Pfaltzgraff (Mrs. Pfaltzgraff), is a registered child care provider in Burlington, Iowa, who is and was prior to May 6, 2016, eligible to provide services under the Child Care Assistance Program (CCAP), a state- and federally-funded program that pays eligible child care providers for child care services provided to low-income parents. (Administrative Record p. 192. (Admin. R.) App. p.198.) In 2016, Mrs. Pfaltzgraff had been a child care provider for about ten years. (Admin. R. p. 193; App. p. 199.) In 2016, she had been a registered child care provider for about eight years, being a "Category B" provider for about two years, which means she can have no more than 12 children in her care at a time. (*Id.* App. p. 199.)

On May 6, 2016, Mrs. Pfaltzgraff was notified by the Iowa Department of Human Services (Department) that her child care registration was revoked and that her CCAP Agreement with the Department was terminated (effective May 20, 2016) because her billing statements showed she had exceeded the maximum capacity for children in her care on March 22, 2016, March 23, 2016, and April 7, 2016. (Admin. R. pp. 218, 194; App. pp. 234, 200.) The notice stated, "The provider operates in a manner the Department determines impairs the safety, health, or well-being of the children in care." (Admin R. p.

218; App. p. 234.) Social Worker Chad Reckling made and sent the decision. *Id.*

The May 6, 2016, notice also stated on a page entitled "You Have the Right to Appeal," that "You may keep your benefits until an appeal is final … Any benefits you get while your appeal is being decided *may* have to be paid back if the Department's action is correct." (Admin. R. p. 220; App. p. 226. (emphasis added.)) The page does not reference any rule, regulation or statute. *Id.*

Mrs. Pfaltzgraff appealed the May 6, 2016, "Notice" on May 10, 2016, and requested that she continue to receive benefits. (Admin. R. p. 221; App. p. 227.)

On June 21, 2016, a telephone hearing was held on the matter. (Admin. R. p. 192; App. p. 198.)

In a "Proposed Decision" rendered July 29, 2016, ALJ Karen Doland found that, "This case appears to focus on Pfaltzgraff's inaccurate billing records more than an actual 'hazard' or 'safety' risk to children." (Admin. R. p. 196; App. p. 202.) As such, Judge Doland reversed the revocation of Mrs. Pfaltzgraff's child care registration for one year that had been imposed upon her. *Id.*

Judge Doland did however rely on Iowa Admin. Code r. 441-170.5(1) (2017) which states that the Department may terminate a CCAP Agreement if a provider, "… has submitted claims for payment for which the provider is not entitled." (Admin. R. p. 196; App. p. 202.) Judge Doland affirmed the termination of Mrs. Pfaltzgraff's CCAP Agreement but modified the finding to state that Mrs. Pfaltzgraff could reapply for another CCAP Agreement, "… at any time" as required by Department regulation. (Admin. R. p. 196; App. p. 202.)

Though the Department never requested a refund nor provided Mrs. Pfaltzgraff an amount it claims, Mrs. Pfaltzgraff mistakenly overcharged the Department as a result of the billing inaccuracies; Mrs. Pfaltzgraff estimated the amount overcharged to be, *at most*, $218.88. (Admin. R. p. 5; App. p. 11.[1])

A page titled "Appeal Rights" was sent attached to the July 29, 2016, "Proposed Ruling" which stated, "If you are getting benefits while the appeal is pending, you will continue to get them until the Director issues a Final Decision." (Admin. R. p. 198; App. p. 204.)

[1] Mrs. Pfaltzgraff in no way concedes that she owes $218.88, but rather made this liberal estimate as to what she might owe as a result of her billing errors. (Admin. R. p. 5-6; App. p. 11-12.) The actual amount owed is likely much less. However, Mrs. Pfaltzgraff believed it was important to attempt to determine an amount to show the disparity of the "recoupment" regulations.

Mrs. Pfaltzgraff appealed the July 29, 2016, "Proposed Ruling" to the Director of the Department for a "Final Ruling" on the matter. (Admin. R. p. 230; App. p. 236.)

While the Director's decision was pending, sometime between July 29, 2016, and September 2, 2016, Mrs. Pfaltzgraff reapplied for her CCAP Agreement. (Admin. R. p. 108; App. p. 114.)

On September 2, 2016, the Department returned Mrs. Pfaltzgraff's CCAP Agreement application stating that Mrs. Pfaltzgraff could not reapply for a CCAP agreement while an appeal was pending even though Judge Doland and Department regulations said Mrs. Pfaltzgraff could "reapply at any time." (*Id; Admin. R. p. 230; App. p. 236.)*

On September 23, 2016, the Director of the Department rendered his final decision affirming the "Proposed Ruling." (Admin. R. p. 230; App. p. 236.)

Counsel for Mrs. Pfaltzgraff attempted to ensure that Mrs. Pfaltzgraff would be able to continue CCAP services uninterrupted but was advised by counsel for the Department that Mrs. Pfaltzgraff's application could not be processed until Mrs. Pfaltzgraff's time to appeal to the District Court for judicial review had expired. (Admin. R. pp. 145-146 (September 27, 2016 email); App. pp. 151-152.) Counsel for Mrs. Pfaltzgraff, based on said

statement, filed a waiver of her right to appeal the September 23, 2016, Director's decision, in hopes this would ensure the continuity of Mrs. Pfaltzgraff's ability to provide services under the CCAP Agreement. (Admin. R. p. 200; App. p. 206.) This ended the contest of the May 6th, 2016 "Notice of Decision: Child Care."

On October 6, 2016, Mrs. Pfaltzgraff was removed from the Department billing system and was unable to enter her billing statements. (Admin. R. p. 145; App. p. 151.) Mrs. Pfaltzgraff continued to provide services to the children who received CCAP assistance.

Mrs. Pfaltzgraff received a completely separate "Notice of Child Care Assistance Overpayment" dated October 31, 2016, demanding $31,815.46 for the period of May 20, 2016, to October 23, 2016. (Admin. R. p. 203; App. p. 209.) The basis for the $31,815.46, according to the Notice is due to, "A mistake by a provider that caused DHS to pay the provider incorrectly for child care services." *Id.* The $31,815.46 is the money Mrs. Pfaltzgraff earned from providing child care to persons receiving CCAP assistance while her appeal was pending. (Admin. R. p. 216; App. p. 222.) This "recoupment" occurred, despite the fact that the Department advised Mrs. Pfaltzgraff she was authorized to continue providing services as she had prior to the May 6, 2016, "Notice of Decision." (Admin. R. pp. 198, 220; App. pp. 204, 226.)

In a notice dated November 15, 2016, Mrs. Pfaltzgraff was informed that her new CCAP Agreement had been approved as of November 1, 2016. (Admin. R. p. 206; App. p. 212.)

On November 17, 2016, Mrs. Pfaltzgraff appealed the October 31, 2016, "Notice of Child Care Assistance Overpayment." (Admin. R. p. 307; App. p. 313.)

A hearing was held on the "Notice of Child Care Assistance Overpayment" on January 30, 2017. (Admin. R. p. 59; App. p. 65.) A "Proposed Decision" was issued on March 3, 2017, denying Mrs. Pfaltzgraff relief. (Admin. R. p. 10; App. p. 16.) Mrs. Pfaltzgraff appealed the "Proposed Decision" on March 10, 2017. (Admin. R. p. 8; App. p. 14.) The Director issued his "Final Decision" on March 31, 2017, affirming the "Proposed Decision." (Admin. R. p. 1; App. p. 7.)

On April 27, 2017, Mrs. Pfaltzgraff filed her "Petition for Judicial Review" with the District Court appealing the Department's October 31, 2016, "Notice of Child Care Assistance Overpayment," the March 3, 2017, "Proposed Decision" (Appeal No. SVS 17003178) and the March 31, 2017, "Final Decision" (Appeal No. SVS 17003178). (Petition for Judicial Review, *Pfaltzgraff v. IDHS*, CVCV054004 (April 27, 2017) App. p. 323.)

Both parties extensively briefed the matter. (*See* Brief in Support of Judicial Review, (September 9, 2017) App. p. 331; Brief of Department of Human Services (October 6, 2017) App. p. 369; and Petitioner's Reply Brief (October 18, 2017) App. p. 411.) A hearing was held on November 3, 2017, and the District Court issued its "Findings of Fact, Conclusions of Law, Ruling and Order" on January 3, 2018, affirming the decision of the Department. (Findings of Fact, Conclusions of Law, Ruling and Order, (Jan. 3, 2018) (Ruling) App. p. 468.)

Mrs. Pfaltzgraff filed a request for an enlarged or expanded ruling in accordance with Iowa R. Civ. P. 1.904(2) which was denied on January 24. 2018. (App. pp. 481 and 487.)

Mrs. Pfaltzgraff appealed the January 3, 2018, and January 24, 2018, decision by the District Court on January 30, 2018. (Notice of Appeal CVCV054004 (January 30, 2018) App. p. 489.)

ISSUE I: DUE PROCESS FAILURE – NOTICE

Preservation for Review

The District Court considered this argument and found that "In the present case, the requirements of due process were met, because Mrs. Pfaltzgraff was aware of the consequences if she lost her appeal" and that she

subjected herself "knowingly" to the possibility of a recoupment action. (Ruling, p. 11; App. p. 478.)

Standard of Review

The Court should review this matter for errors at law. Iowa R. Civ. P. 6.907.

Argument

Procedural due process prohibits the government "from depriving any person of property without 'due process of law.'" *Dusenbery v. United States*, 534 U.S. 161, 167, 122 S.Ct. 694, 699, 151 L.Ed.2d 597, 604 (2002). The United States Supreme Court has decided when an individual's property interests are at stake, that person is entitled to adequate notice and a reasonable opportunity to be heard. *Id. War Eagle Vill. Apartments v. Plummer*, 775 N.W.2d 714, 719 (Iowa 2009). It is well established that a person has a constitutional right to a hearing when the adjudication of facts stand to deny a person a right or privilege. *See Bernau v. Iowa Dept. of Transp.*, 580 N.W.2d 757 (Iowa 1998) at 767; *Consumer Advocate v. COMMERCE COM'N*, 465 N.W.2d 280 (Iowa 1991); *Hollinrake v. Iowa Law Enforcement Academy*, 452 N.W.2d 598, 602 (Iowa 1990); *Allegre v. Iowa State Bd. of Regents*, 349 N.W.2d 112 (Iowa 1984).

Agencies and administrative bodies in Iowa are also required to comply with statutory due process as well. Iowa Code § 17A.12 states, "In a contested

case, all parties shall be afforded an opportunity for hearing after notice ….” Iowa Code §237A.8 states, in a regulation specifically directed at the Department, that the DHS may, “… after notice and opportunity for an evidentiary hearing before the department of inspections and appeals, may suspend or revoke a license or certificate of registration issued under this chapter [and other remedial measures].” *Chiavetta v. Iowa Bd. of Nursing*, 595 N.W.2d 799, 802 (Iowa, 1999).

When the government seeks to confiscate a private citizen’s property, that citizen must be adequately informed of the nature and extent of the interest sought. *SMB Investments v. Iowa-Illinois Gas and Elec. Co.*, 329 N.W.2d 635, 640 (Iowa 1983).

The District Court in this case found that Mrs. Pfaltzgraff “… subjected herself knowingly to the possibility of a recoupment action …,” and that “… the requirements of due process were met because she was aware of the consequences if she lost her appeal.” (Ruling, p.10; App. p. 477.)

Mrs. Pfaltzgraff did not provide testimony to the District Court about her knowledge of recoupment and this conclusion appears to be based on the District Court’s objective analysis of the notice language. Neither did the Department draw such a factual conclusion, but rather stated, “If [Mrs. Pfaltzgraff] didn’t understand the nature of this question, it was her

responsibility to seek assistance from the Department." (Admin. R. p. 2; App. p. 8.)

The fact remains, even from an objective standpoint, the notification that Mrs. Pfaltzgraff would be required to pay back any money she earned – while in full compliance with all regulations and law and simply because she chose to defend herself – is lacking. The waters are muddied even more by the fact that the "notice" of recoupment is dependent on and initially buried within an entirely separate and likewise appealable (May 6) decision.

In a "Notice of Decision: Child Care" dated May 6, 2016, Mrs. Pfaltzgraff was advised that "The Department has determined that … The provider operates in a manner the Department determines impairs the safety, health or well-being of the children in care …." (Admin. R. p. 218; App. p. 224.) Because of this determination, the letter explains Mrs. Pfaltzgraff's CCAP agreement was terminated and she would not be able to reapply for licensure for a year. (*Id.* at App. p. 224.)

The Department, under Iowa Code § 17A.18, had the authority to shut down Mrs. Pfaltzgraff's business at that time. "An agency may use emergency adjudicative proceedings involving an immediate danger to the public health, safety or welfare requiring immediate action." Iowa Code §17A.18A. The Department however ***did*** ***not*** use an emergency adjudicative proceeding and

did *not* shut down Mrs. Pfaltzgraff's business, instead explicitly advising her, "… you may continue to receive benefits (Child Care Assistance Payments) while your appeal is being decided; however, you *may* have to pay back the Department if the Department's action to revoke was correct." (Admin. R. p. 190 (Emphasis added) App. p. 196.)

By not invoking Iowa Code §17A.18, the Department was then required to afford Mrs. Pfaltzgraff "… an opportunity for hearing after notice in writing …," and other due process requirements demanded by law pursuant to Iowa Code Chapter 17A. Iowa Code § 17A.12 "Contested cases – notice – hearing – records." The Department did not. The Department contends that May 6, 2016 "Notice of Decision" effectively convicted Mrs. Pfaltzgraff of the allegation alleged.

A separate letter also dated May 6, 2016, stated, "… an overpayment of CCAP funds *may* be established for any CCAP funds paid to you *while you were out of compliance with child care rules.*" (Emphasis added). (Admin. R. p. 189.)

The "Proposed Ruling" by Administrative Law Judge Doland was also accompanied by a notice which stated, "If you are getting benefits while the appeal is pending, you will continue to get them until the Director issues a Final Decision." (Admin. R. p. 198; App. p. 204.)

While Mrs. Pfaltzgraff was explicitly notified on May 6, 2016, that she was being accused of operating in a manner which impaired the, "… safety, health or well-being of the children in her care," which Judge Doland found was not factual, the "consequence" that she *may* have to pay back the Department is buried in the boilerplate. (Admin. R. p. 220 and p. 218; App. p. 226 and 224.) *See Peak v. Adams*, 799 N.W.2d 535, 548 (Iowa 2011) in which the Iowa Supreme Court states, "We generally construe ambiguous boilerplate language against the drafter."

The word "may" (as opposed to shall) indicates that repayment is conditioned on some event, perhaps ongoing fraud or a non-fraudulent activity which results in a provider being paid "… in an amount greater than the client or provider is entitled to receive" (overpayment) while the appeal is pending. (Iowa Admin. Code r. 441-170.1 (2017) App. p. 546.)

The obvious interpretation of this sentence, "… you may continue to receive benefits (Child Care Assistance Payments) while your appeal is being decided; however you *may* have to pay back the Department if the Department's action to revoke was correct," is that Mrs. Pfaltzgraff can keep the estimated $218.88 she is alleged to have overbilled while the appeal is pending, however she may have to pay the $218.88 back if the Department is correct that she was overpaid. (Admin. R. p. 190 (Emphasis added) App. p.

196.) That the "warning" of recoupment is a restitution provision rather than an entirely separate punitive measure which has no relation to the alleged violation at issue only makes sense.

In fact, the recitation of rights found in these various notices (Admin. R. pp. 189, 190 and 198, App. pp. 195, 196 and 204.) indicates that Mrs. Pfaltzgraff *may* continue receiving benefits without penalty but that she will have to pay back any funds paid to her only *while she was out of compliance with child care rules.* (*See* notices at Admin. R. p. 189 and 198 as quoted above; App. p. 195 and 204.) In this case, Mrs. Pfaltzgraff was found to be out of compliance with the child care rules on March 22, 2016, March 23, 2016, and April 7, 2016, which resulted in a billing mistake of $218.88. (Admin. R. pp. 5, 194; App. pp. 200.) The notice dated May 6, 2016, supports this interpretation, tying the "over capacity" violation with the putative "overpayment" stating:

> If your attendance continues to indicate you are over capacity, your CCA Provider Agreement may be terminated and you will no longer be eligible to receive funding from the CCA program. Additionally, an <u>*overpayment*</u> of CCA funds *may* be established for any CCA funds paid to you *while you were out of compliance with child care rules.* (Admin. R. p. 189. App. p. 195.)

In other words, Mrs. Pfaltzgraff could expect the Department to recoup the billing error of, at most, $218.88.

Not only was Mrs. Pfaltzgraff not made aware that the Department intended to recoup *all* wages she earned during the pendency of her appeal, but the Department lured her into believing that she would be able to, logically, keep any wages which she earned while in compliance with all rules and regulations. *See, again, notices*, "… an overpayment of CCA funds *may* be established for any CCA funds paid to you *while you were out of compliance with child care rules.*" (Emphasis added) (Admin. R. p. 189; App. p. 195), and "If you are getting benefits while the appeal is pending, you will continue to get them until the Director issues a Final Decision." (Admin. R. p. 198; App. p. 204.)

Another example of how this notice is defective is that Mrs. Pfaltzgraff was not advised the amount of which she was legitimately in arrears to the Department. To this day, Mrs. Pfaltzgraff is still required to *estimate* what she mistakenly overbilled and can only state with some certainty that is it not more than $218.88 and likely less. (Admin. R. p. 5-6; App. p. 11-12.) Any notice sent to Mrs. Pfaltzgraff is required to alert her to a "A short and plain statement of the matters asserted." Iowa Code § 17A.19(2). The fact that the Department never makes such an accounting blurs the lines between what is owed and what the Department demands in recoupment after a case is resolved.

Mrs. Pfaltzgraff was not given adequate notice of this "recoupment." In fact, the notices provided indicate any "recoupment" would be either (1) conditional (that she "may" have to pay them back) (2) not applicable if she were in regulatory compliance (which she was during the months of May 20-October 23, 2016) and, most obviously, (3) in the amount she mistakenly overbilled the Department - $218.88.

If the Department intends on having a person risk what amounts to indentured servitude, a provider must be clearly and explicitly advised of this fact in a manner which leads to no misunderstanding. Mrs. Pfaltzgraff should not be forced to surrender five months of her earnings because the Department failed to provide such notice.

ISSUE II: THE RECOUPMENT REGULATIONS ARE UNCONSTITUTIONALLY VAGUE

Preservation for Review

The District Court considered this argument and found that "There is nothing vague about the statutes and administrative rules in question here." (Ruling, p. 11 (Jan. 3, 2018) App. p. 478.)

Standard of Review

The Court should review this matter for errors at law. Iowa R. Civ. P. 6.907.

Argument

The Iowa Supreme Court has said:

> A civil statute is unconstitutionally vague under the due process clause of the fourteenth amendment to the United States Constitution when its language does not convey a sufficiently definite warning of proscribed conduct, when measured by common understanding or practice. Thus, when persons must necessarily guess at the meaning of a statute and its applicability, the statute is unconstitutionally vague." *Incorporated City of Denison v. Clabaugh*, 306 N.W.2d 748, 751 (Iowa 1981) (citations omitted). [The Iowa Supreme Court has] also stated: "A statute is said to be vague in the constitutional sense when it forbids or requires the doing of an act in terms so uncertain that men of common intelligence must necessarily guess at its meaning and differ as to its application." *Wright v. Town of Huxley*, 249 N.W.2d 672, 676 (Iowa 1977). *Greenawalt v. Zoning Bd. of Adjustment of City of Davenport*, 345 N.W.2d 537, 545 (Iowa 1984).

In the case at bar, the regulations that the Department claims grant them authority to confiscate wages earned by a provider pending an appeal, clearly do not grant such authority. Specifically, Iowa Admin. Code r. 441-170.9, 170.9(2) and (3), and 7.9(3) were cited by the Director of the Department in its decision to deny Mrs. Pfaltzgraff relief. (Admin. R. p. 2; App. p. 8.)

A. Iowa. Admin. Code r. 441-170.9 (2017)

Iowa Admin. Code r. 441-170.9 (2017) states, "All child care assistance *overpayments shall* be subject to recoupment." (Iowa Admin. Code r. 441-170.9 (2017) App. p. 565.) "Overpayment" is defined as "… any benefit or payment received in an amount greater than the client or provider is entitled to receive." (Iowa Admin. Code r. 441-170.1 (2017) App. p. 546.) This coincides with the layman's definition of "overpayment" which means: "payment in excess of what is due." (Merriam-Webster, https://www.merriam-webster.com/legal/overpayment. (accessed April 2, 2018) App. p. 569.) This also coincides with Judge Doland's finding in regard to the estimated $218.88 overcharged which was described, based on regulation, of "… claims for payment for which the provider is not entitled." (Admin. R. p. 196; App. p. 202.)

"Recoupment" means, "… the repayment of an *overpayment* by a payment from the client or provider or both." (Iowa Admin. Code r. 441-170.9 (2017). (Emphasis added) (App. p. 545.)

"Overpayment" does not mean *any* money *earned* by a provider pending an appeal as the Department would contend. Mrs. Pfaltzgraff worked for and earned wages during the appeal period. Mrs. Pfaltzgraff *was entitled* to receive those funds.

There was no evidence presented or even a suggestion that Mrs. Pfaltzgraff was in violation of any regulation or law during the appeal period. The $31,815.46 the Department is now attempting to collect does not constitute an "overpayment." The use of the word "overpayment" and the Department's official definition of that term do not even suggest that a provider could get, much less receive, sufficient warning that an overpayment included all money earned by a provider while in compliance with all applicable law and statutes.

A person of common intelligence would presume, as would any wage earner, that they were entitled to receive money they worked for and legitimately earned during the pendency of their appeal. In fact, Iowa Code § 91A.5 forbids employers from withholding wages. Getting paid for work completed is the "common understanding or practice" of the vast majority of Iowa laborers. *Incorporated City of Denison v. Clabaugh,* 306 N.W.2d 748, 751 (Iowa 1981).

Furthermore, from a procedural standpoint, the Department did not have the right to deprive Mrs. Pfaltzgraff of her participation in the CCAP until *after* she was provided a hearing in accordance with Iowa Code § 17A and Iowa Code § 237A.8. Mrs. Pfaltzgraff was entitled to those funds as the

Department had not established its right by virtue of Iowa Code Chapter 17A to terminate Mrs. Pfaltzgraff's contract.

B. Iowa Admin. Code r. 441-170.9(2) (2017)

Iowa Admin. Code r. 441-170.9(2) (2017) states, "*Determination of overpayments*. All overpayments due to client, provider, or agency error or due to benefits or payments issued pending an appeal decision shall be recouped. Overpayments shall be computed as if the information had been acted upon timely."

This rule is specifically and exclusively about the determination of *overpayments*, and nothing more. (Iowa Admin. Code r. 441-170.9(2) (2017) App. p.566.) As discussed above, the definition of "overpayments" does not include money earned pending an appeal, but rather, "… any benefit or payment received in an amount greater than the client or provider is entitled to receive." (Iowa. Admin. Code r. 441-170.1 (2017) App. p.546.) *See again* reference to the estimated $218.88 as "… claims for payment for which the provider is not entitled." (Admin. R. p. 196; App. p. 202.)

Mrs. Pfaltzgraff worked for and earned the money paid to her during the pendency of her appeal for the services she rendered. Mrs. Pfaltzgraff was entitled to those funds and they are not "overpayments," either in the traditionally understood sense of the term or the Department's own definition.

Therefore, there were no "overpayments" to be recouped, "… due to benefits or payments issued pending an appeal decision …." (Iowa Admin. Code r. 441-170.1, 170.9(2) (2017); App. p. 566.)

This regulation only states that overpayments are to be computed (determined) as if the information had been acted upon timely and *does not* expand the definition of "overpayments" found in Iowa Admin. Code r. 441-170.1 (2017) (App. p. 546)

C. Iowa Admin. Code r. 441-170.9(3) (2017)

Iowa Admin. Code r. 441-170.9(3) (2017) states, "*Benefits or payments issued pending appeal decision.* Recoupment of overpayments resulting from benefits or payments issued pending a decision on an appeal hearing shall not occur until after a final appeal decision is issued affirming the department."

Again, this regulation refers to "overpayments" and thus does not apply to the situation at hand. This regulation does not redefine or expand what constitutes "overpayments" but only states that "overpayments" made during an appeal are not to be recouped until after a final appeal decision. For instance, a person who overbilled the Department $218.88 would not be required to pay that sum until after the Director's decision confirmed said sum was owed. Likewise, a person who continued to overbill the Department during an appeal, would also be required to pay back any overpayment.

D. Iowa Admin. Code r. 441-7.9(3) (2017)

Iowa Admin. Code r. 441-7.9(3) (2017) states:

> Recovery of excess assistance paid pending a final decision on appeal. Continued assistance is subject to recovery by the department if its action is affirmed, except as specified at subrule 7.9(5).
>
> When the department action is sustained, excess assistance paid pending a hearing decision shall be recovered to the date of the decision. This recovery is not an appealable issue. However, appeals may be heard on the computation of excess assistance paid pending a hearing decision.

Again, this rule talks in terms of "excess" assistance which is *given to* beneficiaries of the child care assistance program. Mrs. Pfaltzgraff *earned* the money she received while providing a service to the Department in compliance with all laws and regulations. Therefore, this money is not "excess" as it does not constitute an overpayment.

Mrs. Pfaltzgraff, as a provider of child care services, is not a recipient of "assistance." Iowa Admin. Code r. 441-7.1 (2017) defines "assistance" as including, "… food assistance, medical assistance, the family investment program, refugee cash assistance, child care assistance, emergency assistance, family or community self-sufficiency grant, PROMISE JOBS, state supplementary assistance, healthy and well kids in Iowa (HAWK-I) program, foster care, adoption, aftercare services, or other programs or services

provided by the department." (Iowa Admin. Code r. 441-7.7(1)(b) (2017) App. p. 520.) This rule as well as the other rules are directed at individuals who receive child care assistance as opposed to those vetted to provide those services.

A person would be rational in presuming that a provider does not receive "benefits" as opposed to a parent who receives a gratuitous benefit under this program. In fact, the Department regulation titled "Payment" states that "The department shall make payment for child care provided to an eligible family when the family reports their choice of provider to the department …." (Iowa Admin. Code r. 441-170.4(7) (2017) App. p. 561.) Nowhere in the multiple provisions of Rule 170.4(7) is "payment" to a child care provider referred to as a "benefit." (*Id.* App. p. 561.)

If Iowa Admin. Code r. 441-7 (2017) does, *arguendo,* apply to Mrs. Pfaltzgraff, any putative "assistance" she received was earned – not excessive - and not presented to her gratuitously.

E. The regulations cited do not provide sufficient warning

The District Court, without any additional analysis found that there was "Nothing vague about statutes or administrative rules here." (Ruling, p. 11. (Jan. 3, 2018) App. p. 478.)

Mrs. Pfaltzgraff disagrees.

The regulations cited by the Director of the Department as the basis for this "recoupment" give *no* indication, much less a definite warning, that Mrs. Pfaltzgraff would have to pay back to the Department all of the money she earned while her case was pending on appeal. *See* Iowa R. App. P. 6.904(3), "In construing statutes, the court searches for the legislative intent as shown by what the legislature said rather than what it should or might have said."

To find that the cited regulations allow for recoupment of all money rightfully earned during an appeal, you would have to be seeking for such a meaning in order to validate such a scheme. Even then, as explained above, the language of these regulations simply do not state that every time a provider appeals and earns money pending said appeal that all earnings shall be paid back. *Id.*

A person of common intelligence would conclude, based on the language used, that Mrs. Pfaltzgraff would only have to pay back money which she received *in excess* of or in an amount greater than the services she provided. In fact, Iowa Admin. Code r. 441-170.1's definition of "overpayment" states exactly this. ((2017)App. p. 546.)

While Iowa Admin. Code r. 441-170.9(2) (2017) makes clear that overpayments are to be calculated as if timely acted upon and Iowa Admin. Code r. 441-170.9(3) (2017) states that overpayments will not be recouped

until after a final appeal decision is reached, *neither* of these regulations warn – even implicitly - that the Department has the right to recoup *all* payments made to a provider during an appeal regardless of whether that money was earned in compliance with all rules and regulations. This is especially true when the enabling statutes for these regulations demand due process before a CCAP agreement can be terminated.

Both Iowa Admin. Code r. 441-170.9(2) and (3) are also restricted by the unambiguous definition of "overpayment" found in Iowa Admin. Code r. 441-170.1 (2017). (App. p. 546.) Common understanding and practice would dictate that "… the benefit or payment received in an amount greater than [Mrs. Pfaltzgraff] is entitled to receive," (overpayment as defined by the Department) is the estimated maximum of $218.88 she mistakenly overbilled the Department in March and April of 2016. (Iowa Admin. Code r. 441-170.1 (2017) App. p. 546.) Again, Judge Doland, citing regulations referred to the estimated $218.88 as "… claims for payment for which the provider is not entitled." (Admin. R. p. 196; App. p. 202.)

The Department *has never shown* that the amount Mrs. Pfaltzgraff earned between May 20 to October 23, 2016, was *in excess of* what she earned by providing childcare services to the parents who are the beneficiaries of this federal program. The only *excess* payment made was the estimated $218.88

Mrs. Pfaltzgraff acknowledges she mistakenly billed the Department in March and April of 2016.

The "Notice of Childcare Assistance" form also supports an interpretation that the Department does not have the right to collect – wholesale – earnings made during an appeal. (Admin. R. p. 203; App. p. 209.) That notice states that the $31,815.46 is due to, "Mistake by a provider that caused DHS to pay the provider incorrectly for child care services." (Admin. R. p. 203; App. p. 209.)

> Provider error is defined as:
>
> 1. Presentation for payment of any false or fraudulent claim for services or merchandise;
>
> 2. Submittal of false information for the purpose of obtaining greater compensation than that to which the provider is legally entitled;
>
> 3. Failure to report the receipt of child care assistance payment in excess of that approved by the department;
>
> 4. Charging the department an amount for services rendered over and above what is charged private pay client for the same services;
>
> 5. Failure to maintain a copy of Form 470-4535, Child Care Assistance Billing/Attendance Provider Record, signed by the parent and provider.
> (Iowa Admin. Code r. 441-170.1 (2017) App. p. 546.)

Nowhere in this definition of "provider error" does it include choosing to defend oneself, taking advantage of due process rights as required by Iowa

statute or providing child care services in compliance with all laws and regulation while an appeal is pending. Mrs. Pfaltzgraff made no mistake. She continued to provide childcare services as she was invited to do by the Department and as she was allowed to do until her due process rights were fulfilled. See, i.e., May 6, 2016 notice, Admin. R. p. 220; App. p. 226; May 12, 2016 notice, Admin. R. p. 223; App. p. 229; and the July 29, 2016, Proposed Order, Admin. R. p. 198; App. p. 204, which states "If you are getting benefits while the appeal is pending, you will continue to get them until the Director issues a final decision."

This conclusion that the overbilled $218.88 is the amount owed does not require a person of common intelligence to guess at the meaning of these provisions. It is obvious that these provisions apply to the amount Mrs. Pfaltzgraff was overpaid ($218.88) as opposed to the wages she rightfully earned ($31,815.46). A person of common intelligence would not even dream that Mrs. Pfaltzgraff would be denied the $31,815.46 she earned as payment for her labor. It is inherently unfair and unlawful.

Any person who works for a living would expect to be required to pay back money for which they had not worked and mistakenly billed or received. Mrs. Pfaltzgraff would have been agreeable to that. Conversely, no person would anticipate that they would be required to "pay back" money they

rightfully earned. This denies common sense and undermines the very purpose for why people go to work.

If the Department intends its regulations to result in its contracted providers to risk indentured servitude, these rules must explicitly state that intention. *Greenawalt v. Zoning Bd. of Adjustment of City of Davenport*, 345 N.W.2d 537, 545 (Iowa 1984). These rules, cited by the Department, do not convey a sufficiently definite warning that all wages earned during an appeal will be recouped and must be deemed unconstitutionally vague.

The District Court also states in regard to this matter that "Mrs. Pfaltzgraff's depiction of the rules as being unclear or not providing proper notice would render the intent and purpose of the rules to be a nullity." (Ruling, p. 11. (Jan. 3, 2018) App. p. 478.)

The District Court does not state why rendering these rules a nullity forecloses a finding that these rules are vague. In fact, rendering the intent and purposes of these rules (presumably to deprive providers of their hard-earned money) void is the very reason Mrs. Pfaltzgraff asked the Court to find these rules vague.

Mrs. Pfaltzgraff also disagrees with the Court's determination that a ruling in her favor would nullify these regulations. The regulations cited by the Department can effectively be used to collect an actual ***overpayment,*** such

as monies gratuitously given to a parent who is discovered to be unqualified to receive benefits, a provider who continues to bill in a manner which results in excess payments being made or to retrieve $218.88 from a woman who mistakenly overbilled the Department $218.88.

Regardless, if the intent and purpose of these regulations is to rob contracted child care providers of their rightful earnings, the applicability of these regulations should be reconsidered. The putative recoupment provisions, as applied to providers such as Mrs. Pfaltzgraff, should be deemed void as vague.

ISSUE III: RECOUPMENT REGULATIONS ARE BEYOND THE AUTHORITY OF THE DEPARTMENT AND INAPPOSITE TO CCAP ENABLING STATUTES

Preservation for Review

The District Court considered this argument and found that "Section 237A.13, the Code of Iowa, establishes Iowa [sic] Child's Care Assistance Program. DHS has promulgated regulations and rules in conformance with this statute in the Iowa Administrative Code." (Ruling, p. 10 (Jan. 3, 2018) App p. 477.)

Standard of Review

The Court should review this matter for errors at law. Iowa R. Civ. P. 6.907.

Argument

The Iowa Legislature has deemed that:

> An agency shall have only that authority or discretion delegated to or conferred upon the agency by law and shall not expand or enlarge its authority or discretion beyond the powers delegated to or conferred upon the agency. Unless otherwise specifically provided in statute, a grant of rulemaking authority shall be construed narrowly. Iowa Code § 17A.23(3).

Iowa Admin. Code r. 441-170.9 (2017) states that "All child assistance overpayments shall be subject to recoupment," and that "overpayments resulting from benefits or payments issued as a result of pending an appeal decision…" are subject to recoupment only "… after a final appeal decision is issued affirming the department." (Iowa Admin. Code r. 441-170.9(3) (2017) App. p. 545.) *See also* definition of "overpayment" which means "… any benefit or payment received in an amount greater than the amount the client or provider is entitled to receive." (*Id.* at subsection 170.1; App. p. 546.)

Iowa Code Chapter 237A is the code chapter the Department cites in the regulation as its authority in enacting Rule 170.9.

The subsection in Iowa Code Chapter 237A most closely related to Rule 170.9 is Iowa Code § 237A.29 titled "Public Funding of child care – sanctions." Iowa Code § 237A.29. This subsection is focused on the *fraudulent* procurement of public funds. Even then, the rule states that the

Department can only take action *after* an administrative hearing, the disposition of a judicial proceeding or a confession, any of which, again, must indicate ***fraud***. Iowa Code § 237A.29(2)(b). (Emphasis added).

There is nothing in Iowa Code § 237A.29 which allows for the recoupment of wages earned by a provider, even in the case of fraud.

There are a few other subsections of Iowa Code Chapter 237A where one would expect such a recoupment provision to be found, but none exists. Iowa Code § 237A.8, does not discuss recoupment of wages, however reiterates the due process notion that "The administrator, ***after*** notice and *opportunity for an evidentiary hearing before the department of inspections and appeals*, may suspend or revoke a license or certificate of registration …."

In the January 3, 2017, Order the District Court states that Iowa Code "Section 237A.13 … establishes Iowa Child's [sic] Care Assistance Program. DHS has promulgated regulations and rules in conformance with this statue in the Iowa Administrative Code." (Ruling, p. 10 (Jan. 3, 2018) App. p. 477.)

The statute relied upon by the Court is Iowa Code § 237A.13(3) which states:

> The Department shall set reimbursement rates as authorized by appropriations enacted for payment of the reimbursements. The department shall conduct a statewide reimbursement rate survey to compile information on each county and the survey shall be conducted every two years. The department shall set rates in a

> manner so as to provide incentives for an unregistered provider to become registered.

Iowa Code §237A.13(3) states that: (1) the Department may determine the rate at which providers are going to be paid (2) the Department shall conduct surveys to gather information about provider rates in each Iowa county and (3) the Department is to establish rates so as encourage providers to become registered (i.e. take on more children/responsibility). Nowhere does Iowa Code § 237A.13(3) grant the authority to divest an individual provider of money already paid to them for services already rendered (recoupment). Nor does Iowa Code § 237A.13(3) state that a provider should incur financial penalty for attempting to defend themselves. If anything, this code section encourages the Department to pay providers appropriately for their services. *See again*, Iowa R. App. P. 6.904(3)(m), "In construing statutes, the court searches for the legislative intent as shown by what the legislature said, rather than what it should or might have said."

Iowa Code § 237A.13 *does not conceive* of the recoupment of earned *wages in any manner*, however it does make assurances about how child care providers should be paid and explains that "… if the department determines that a bill has an error or omission, the department shall notify the provider of the error or omission and identify any correction needed before issuance of

payment to provider." Iowa Code § 237A.13(4). While not making any statements about how *earned* income should be dealt with during an appeal, this subsection does suggest that if a billing error were made – say an overcharge of $218.88 – that the agency would have the right to remedy the situation and the child care provider could go on about providing quality child care to these needy children as intended by federal law and the Iowa Legislature.

In short, *nothing* in Iowa Code Chapter 237A (or specifically subsection 13) authorizes the Department to adopt a rule which allows for the confiscation of wages earned from a provider when that provider works in compliance with all laws and rules during the pendency of an appeal.

Iowa Admin. Code r. 441-7.9 (2017) states that:

> **7.9(7)** *Recovery of excess assistance paid pending a final decision on appeal.* Continued assistance is *subject* to recovery by the department if the department's action is affirmed, except as specified at subrule 7.9(9). When the department's action is sustained, *excess* assistance paid pending a final decision shall be recovered to the date of the decision. This recovery is not an appealable issue. However, appeals may be heard on the computation of excess assistance paid pending a final decision. (Emphasis added)

As stated above, this rule does not apply to providers nor does it allow the recoupment of money earned pursuant to all rules and regulations as such funds are not excessive. Nor does this rule state which "date of decision"

excess assistance "shall be recovered to …," or if providers even receive *assistance*. *(See* Iowa Admin. Code r. 441-170.4(7) (2017) which refers only to the *payment* to providers, as opposed to assistance. However, even if *arguendo,* it does apply to providers, there is nothing in Iowa Code § 17A which authorizes the Department to promulgate such a regulation.

This Court has found that when agencies impose authority which deviates from traditional regulations that such departures, "… must be clearly manifested by legislative enactment." *Iowa-Illinois Gas & Elec. Co. v. Iowa State Commerce Comm'n,* 334 N.W.2d 748, 754 (Iowa 1983).

All of these rules relied upon by the Director and Department deviate from all theories of law and equity as found in the "Iowa Wage Payment Collection Law," the "fairness" sought in Iowa Code § 17A.19, due process at both the state and federal level, and the simple concept that *one ought to be paid for a day's work. See Iowa Waste Sys., Inc. v. Buchanan County*, 617 N.W.2d 23, 28 (Iowa App. 2000) which states a person should be entitled to "the reasonable value of the services provided, and the market value of the materials furnished."

The Department's recoupment of wages earned by a provider who is providing a service on behalf of the State is a clear departure from traditional regulations and traditional methods of doing business. *See Kersten Co., Inc.*

v. Dept. of Soc. Services, 207 N.W.2d 117, 120 (Iowa 1973) where the Iowa Supreme Court said a State's entering into a contract waives the sovereign's immunity from suit, because, "Any other conclusion would ascribe to the General Assembly an intent to profit the State at the expense of its citizens." *Id*. p. 120. The recoupment of a child care provider's wages is also an intent by the Department to profit at the expense of Iowa citizens, namely child care providers like Mrs. Pfaltzgraff.

Mrs. Pfaltzgraff is not aware of any other agency regulation or law which allows for an entity to confiscate money legally *earned* by an individual.

To be able to deprive a person of wages earned, the legislature must clearly and expressly manifest an agency's authority to do so. Regarding Rules Iowa Admin. Code r. 441-170 and 7.9 (2017), the Legislature has not manifested such authority.

These rules, as applied by the Department against child care providers does not constitute *narrow* rulemaking authority. Iowa Code § 17A.23(3). The Department in enacting and enforcing these rules has reached out of its sphere of authority and somehow turned the estimated $218.88 overpayment into a $31,815.46 fine.

In contrast to the Legislature's intent to build a fence around agencies' rule-making ability pursuant Iowa Code § 17A.23(3), Iowa Admin. Code r. 441-170 and 7.9 (2017) are quite expansive. The Department has exceeded the expectation by the drafters of Iowa Code Chapter 237A, that it would devise a rule which, in its application, violates federal and Iowa law, ignores due process, defies the purpose of the Child Care Assistance program and offends all notions of fairness.

These "recoupment" provisions must be found to exceed the authority allocated to the Department by the Iowa Legislature.

Furthermore, Iowa Code Chapter 17A requires that an agency afford an opportunity for hearing after reasonable notice before reaching a decision on the matter. Iowa Code § 17A.12. Chapter 17A also requires that the agency itself or one or more administrative law judges must be the presiding officer in a contested case. Iowa Code § 17A.11.

In the matter at bar the Department claims the recoupment provisions allow it to reach all the way back to the May 20, 2016, "Notice of Decision" and collect all the money earned from that point on. The Department has no right to that money. Pursuant to Iowa Code Chapter 17A the Department's putative claim to Mrs. Pfaltzgraff's earnings had not yet vested as the May 20, 2016 "Notice of Decision" preceded any hearing on the matter and there was

no presiding officer in accordance with Iowa Code §17A.11. Chad Reckling, the social worker who issued May 20, 2016 "Notice of Decision" is neither "… the agency, one or more members of a multimember agency, [n]or one or more administrative law judges …." Iowa Code §17A.11.

By reaching back to recoup all the money earned by a provider as of the notice date, the Department is effectively extending the punishment backward in time, prior to the provider having a chance to defend herself as required by Iowa Code Chapter 17A.

The Iowa Administrative Procedure Act (Iowa Code Chapter 17A) specifically states that the Act is to, "… increase the fairness of agencies in their conduct of contested case proceedings." Iowa Code § 17A.1(3).

The Child Care Assistance Block Grant Act of 2014 (Act) (which funds this program) states that one of the purposes of this program is "… to promote parental choice to empower working parents to make their own decisions regarding the child care services that best suit their family's needs," to "… assist States in delivering high-quality coordinated early childhood care and education services to maximize parents' options and support parents trying to achieve independence from public assistance," "to improve child care and development of participating children," and "to increase the number and percentage of low-income children in high-quality child care settings." *Child*

Care and Development Block Grant Act of 1999, 42 USC 9801 (Nov. 19, 2014).

When (or if) child care providers are told if they attempt to defend themselves they may have to pay for the privilege if they are wrong, such a provision undermines the fairness that Iowa Code Chapter 17A attempts to achieve and lends more to limiting the agency appeal process rather than encouraging it.

As a result, good childcare providers like Mrs. Pfaltzgraff are discouraged from defending themselves. In this case an $218.88 billing error meant Mrs. Pfaltzgraff had to choose between accepting the revocation of her childcare registration for a year (which was reversed) or fighting for her years-long career and the parents and children who depend on her. The risk is not the $218.88 she overbilled or even costs associated with the appeal as one would rationally expect, but rather the substantial amount of money both in "recouped" earnings and lost overhead.

Even when a provider decides to defend herself, this "recoupment" provision discourages a full and zealous defense. This denies a provider a fair hearing. Counsel dare not engage in discovery or ask for an extension of the

10-day appeal period to brief the matter (as counsel naively did in this case[2]) lest his client add to the ever accruing "recoupment" if she should happen to lose. If those responsible for the Director's appeal decide to wait to render a final decision or if, as here, technological concerns delay an agreement's reinstatement, then the meter for "recoupment" just continues to run.

It was found that Mrs. Pfaltzgraff did not pose a safety risk to children. (Admin. R. p. 196; App. p. 202.) She had to fight to prove this. She was saved from a year-long revocation. Regardless, this "recoupment" policy still robbed her of nearly half a year's income. What is worse is that Mrs. Pfaltzgraff actually had to work and pay overhead to lose the $31,815.00.

Mrs. Pfaltzgraff and other providers like her are left asking whether, even with a partial victory - is it worth fighting? Mrs. Pfaltzgraff's $218.88 mistake became a $31,815.00 liability. This "recoupment" policy impairs

[2] Counsel for Mrs. Pfaltzgraff requested a continuance to procure testimony and statements from parents who benefited from Mrs. Pfaltzgraff's services that their children were not in Mrs. Pfaltzgraff's care on the alleged dates of over occupancy. (Admin. R. p. 194-195. App. p. 200-201.) This testimony helped prove that Mrs. Pfaltzgraff was not over capacity but made a billing mistake. (Admin. R. p. 196. App. p. 202.) This reduced her discipline from a one-year suspension to renewal of her contract "at any time." (Admin. R. p. 196. App. p. 202.) Had Mrs. Pfaltzgraff or counsel been aware that the continuance would have increased her liability such investigation or other discovery measures would have been discouraged or even avoided.

contested case outcomes and undermines the fairness Iowa Code Chapter 17A intends to achieve.

Furthermore, the goal of this program – to provide high quality child care to low income families – is jeopardized as these efforts by the Department to end the careers of providers over a billing mistake and by discouraging providers from defending themselves, diminishes the pool of qualified child care providers instead of expanding it.

The District Court, on the other hand, ignores the mandates of Iowa Code Chapter 17A and the federal laws and states that, "… an adoption of Mrs. Pfaltzgraff's interpretation 'would mean that any provider with common sense would bill as much and as possible during the appeal, and ask for as many continuance as she could get – knowing that everything she billed while stalling, she would get to keep even if she eventually lost her appeal.'" (Ruling, p. 10-11 (Jan. 3, 2018) App. p. 476-477.)

This finding simply does not make sense.

Even during the pendency of an appeal, the Department (or more precisely the parent-beneficiaries) *are receiving a service*. Even if a provider does stall the appeal process, that only means the Department is able to continue providing services to the individuals this program was intended to assist.

Second, a provider only continues to provide services at the invitation of the Department. The Department believes it has the power to revoke a CCAP Agreement once a "Notice of Decision" is issued by the Department. Presumably, the Department also has the authority to prevent participation in the program *at that time.* Also, as previously mentioned, the Department can use an emergency adjudicative proceeding (Iowa Code §17A.18A) if there is an "immediate danger to the public health, safety, or welfare …." It is the Department's decision to allow providers to continue working during an appeal – this fact should not narrow the provider's opportunity to defend oneself (pursuing discovery and continuances if needed). Discouraging the provider from preparing a proper defense in this fashion only secures the advantage to the Department allowing it to inch its eager fingers even closer toward the wages rightfully earned by the provider.

Finally, Iowa Code Chapter 17A and 237A both demand due process rights. This finding by the District Court presumes guilt (as the department does) and completely disregards any right the provider may have to defend oneself.

in short, the District Court is advocating the Department's message to these providers which is "shut up and take your punishment." This denies the

"fairness" these statutes were meant to achieve. This prevents the best providers from continuing to offer competent child care.

Not only does the Department ***not*** have the authority to promulgate recoupment rules, but by doing so it has undermined the fairness and helping hand these federal and state provisions were intended to achieve.

ISSUE IV: MATTERS PRESERVED FOR APPEAL

Preservation for Review

The District Court stated that beyond the substantive and procedural due process questions raised by Mrs. Pfaltzgraff, that no other matters raised were preserved for appeal. (Ruling, p. 7 (Jan. 3, 2018) App. p. 474.)

Standard of Review

The standard of review for this issue is errors at law. Iowa R. Civ. P. 6.907.

Argument

The District Court states that "… the only real issue for review is whether or not the recoupment exercised by the Agency and affirmed by DHS in its final decision of March 31, 2017, comports with due process both procedurally and substantively." (Ruling, p. 7 (Jan. 3, 2018) App. p. 474.)

This statement is not explained in any greater detail.

Though the District Court does address Mrs. Pfaltzgraff's due process claims (Issues I and II herein) and Mrs. Pfaltzgraff's arguments that these regulations are beyond the scope of the Department's authority to promulgate (Issue III); the District Court does not address Mrs. Pfaltzgraff's unjust enrichment claim or those regarding the Department's delay in reinstating her CCAP contract. (Issues V and VI below).

Mrs. Pfaltzgraff did preserve these issues for appeal. Mrs. Pfaltzgraff raised the issue of the delayed contract in her agency "Brief in Support of Appeal" filed prior to the agency hearing on the matter. (Admin. R. p. 180-181; App. p. 186-187.) Mrs. Pfaltzgraff raised her unjust enrichment argument in that same filing. (Admin R. p. 181-183; App. p. 187-189.)

In Mrs. Pfaltzgraff's appeal of the ALJ decision to the Director of the Department she incorporated all arguments in the "Brief in Support" and provided some additional authority. (Admin. R. p. 8; App. p. 14.)

The District Court states that the "…Child Care Assistance Plan Provider Agreement, was not timely appealed. Therefore, the ruling was final and under 237A.13, the Code of Iowa, and the Iowa Administrative Code Rules in Chapter 441, DHS was authorized to recoup the benefits paid to Mrs. Pfaltzgraff." (Ruling, p. 11 (Jan. 3, 2018) App. p. 478.)

Under Iowa Code Chapter 17A a contested case is a "proceeding … in which the legal rights, duties and privileges of a party are required by Constitution or statute to be determined by an agency after the opportunity for an evidentiary hearing." Iowa Code § 17A.2(5). The District Court appears to claim that Mrs. Pfaltzgraff does not have legal right to money she earned as a result of her labor. Or, the Court appears to say that she waived the right to those wages when she decided not to appeal the May 6, 2016 "Notice of Decision: Child Care" which contained what turned out to be an *unfounded* allegation of impairing the safety and welfare of children.

The Department or any agency does not have the power to include limitations on what can or cannot be appealed. Iowa Code Chapter 17A forbids it. Mrs. Pfaltzgraff has a legal right to money she earned – or at least a claim to it. Iowa Code § 17A.2(5). This is especially true when the arguments presented by Mrs. Pfaltzgraff essentially are that Department doesn't have the authority – under law or equity – to promulgate the rule in the first place. The agency might be able to get away with declining to review the authority of the Department to promulgate and impose recoupment provisions as such an inquiry is outside the scope of agency review. *Soo Line R. Co. v. Iowa Dept. of Transp.*, 521 N.W.2d 685, 688 (Iowa 1994). However,

the District Court cannot avoid this duty. Iowa Code § 17A.19(10) specifically states:

> The court shall reverse, modify, or grant other appropriate relief from agency action, *equitable or legal* and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is any of the following:
> …
> b. Beyond the authority delegated to the agency by any provision of law or in violation of any provision of law.
> c. Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.
> …
> g. Action other than a rule that is inconsistent with a rule of the agency.
> …
> i. The product of reasoning that is so illogical as to render it wholly irrational.
> j. Not required by law and its negative impact on the private rights affected is so grossly disproportionate to the *benefits accruing to the public interest* from that action that it must necessarily be deemed to lack any foundation in rational agency policy.
> …
> l. Based on an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.
> …
> n. Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.
> Iowa Code § 17A.19(10) (Emphasis added)

The District Court did incorrectly state that the recoupment provisions are in "conformance" with Iowa Code §237A.13 (despite stating that the only

real issue for review is whether … the recoupment … comports with due process ….” (Ruling, p. 7, 10 (Jan. 3, 2018) App. p. 474, 477.)

The District Court fails to mention Mrs. Pfaltzgraff’s unjust enrichment argument – an equitable claim, which can be brought under Iowa Code §17A.19, and also invokes subsections (i)(j)(l) and (n) of Iowa Code §17A.19(10). This Court should find error with the District Court’s conclusion that the due process claims are the only issues preserved and review all claims to relief made by Mrs. Pfaltzgraff.

ISSUE V: RECOUPMENT REGULATIONS ARE UNJUST AND INEQUITABLE

Preservation for Review

The District Court did not address this argument. The District Court stated that Mrs. Pfaltzgraff did not preserve error during the agency review process. (Ruling, p. 12 (Jan. 3, 2018) App. p. 479.) Mrs. Pfaltzgraff presumes this argument is one the District Court found was not preserved. However, Mrs. Pfaltzgraff did raise this issue in her “Brief in Support of Appeal” filed with the Department on November 30, 2016, in a section titled “Unjust Enrichment.” (Admin. R. p. 182; App. p. 188.) This argument was also made during the agency hearing on this matter. (Admin. R. p. 97; App. p. 103.) Additionally, such equitable argument can be raised in appeal to the court

under its own preserve. *State, Dept. of Human Services ex rel. Palmer v. Unisys Corp*., 637 N.W.2d 142, 149–50 (Iowa 2001).

Standard of Review

Because the District Court did not address this matter despite it being preserved at the agency level and because this relief is based in equitable principles the review by this Court should be *de novo*. Iowa R. Civ. P. 6.907.

Argument

The doctrine of unjust enrichment is based on the principle that a party should not be permitted to be unjustly enriched at the expense of another or receive property or benefits without paying just compensation. *Credit Bureau Enters., Inc. v. Pelo,* 608 N.W.2d 20, 25 (Iowa 2000). Although it is referred to as a quasi-contract theory, it is equitable in nature, not contractual. *See Iowa Waste Sys., Inc. v. Buchanan County*, 617 N.W.2d 23, 29 (Iowa Ct.App.2000). It is contractual only in the sense that it is based on an obligation that the law creates to prevent unjust enrichment. *State, Dep't of Human Servs. ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d 142, 154 (Iowa 2001).

The elements a plaintiff must prove to recover under unjust enrichment are that (1) the defendant was enriched by the receipt of a benefit; (2) the enrichment was at the expense of the plaintiff; and (3) it is unjust to allow

the defendant to retain the benefit under the circumstances. *Hunting Sols. Ltd. Liab. Co. v. Knight*, No. 16-0733, 2017 WL 2684337, p. 2 (Iowa Ct. App. June 21, 2017).

The Iowa Supreme Court has stated that unjust enrichment:

> … evolved from the most basic legal concept of preventing injustice. [citation omitted] Thus, the idea of unjust enrichment is deeply engrained in our law and is widely applied. *Id.* at 2. It not only cuts across many areas of the law, such as contract and tort, "but it also occupies much territory that is its sole preserve." *Id.* It is a theory to support restitution, with or without the existence of some underlying wrongful conduct. *See Smith v. Harrison*, 325 N.W.2d 92, 94 (Iowa 1982) ("Unjust enrichment is a doctrine of restitution."); 1 Dobbs, § 4.1(1), at 553 (plaintiff may confer benefit without any wrongdoing by defendant). Moreover, it has not only given rise to specific derivative theories, such as contribution and indemnity, but can stand on its own as an open-ended, broad theory of restitution. *See* I Palmer, § 1.1, at 5 ("Unjust enrichment is an indefinable idea in the same way that justice is indefinable."). We first recognized the principle of unjust enrichment early in the history of our court, see Dist. Town*ship of Norway v. Dist. Township of Clear Lake*, 11 Iowa 506, 507 (1861), and have applied it in a wide variety of cases since that time. *State, Dept. of Human Services ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d 142, 149–50 (Iowa 2001).

Unjust enrichment, "… may arise from contracts, torts, or other predicate wrongs, or it may also serve as independent grounds for restitution in the absence of mistake, wrongdoing, or breach of contract …. unjust enrichment is a broad principle with few limitations." *Id.* at 154.

In the case at bar, the Department would be enriched if it is allowed to recover this money from Mrs. Pfaltzgraff. Mrs. Pfaltzgraff will not only have provided services to parents and children in need on behalf of the Department (meaning the Department is credited for providing such services) and the Department, if allowed to recoup this money, will have been able to provide those services, on the back of Mrs. Pfaltzgraff, for free.

The child care services provided by Mrs. Pfaltzgraff are obviously at Mrs. Pfaltzgraff's expense as she will have been forced into servitude for five months. In addition to having had to pay back her gross earnings, Mrs. Pfaltzgraff will additionally be out the overhead she spent during that time on items such as food, outings, staff and other expenses. If found to be liable for the amount the Department is claiming, Mrs. Pfaltzgraff will have lost thousands more in out-of-pocket expense than $31,815.46 the Department is trying to collect.

Mrs. Pfaltzgraff provided child care services from May 20 to November 1, 2016. The Department cannot and does not deny this. Neither has the Department accused Mrs. Pfaltzgraff of being out of compliance with all applicable rules and regulations during the period of May 20 to November 1, 2016.

In Iowa, the State has an interest in assuring its citizens are paid for labor expended. *Runyon v. Kubota Tractor Corp.*, 653 N.W.2d 582, 585 (Iowa 2002). Iowa has codified this interest in statute. Iowa Code Chapter 91A. See, e.g., Iowa Code § 91A.5(1)(a) which states "An employer shall not withhold or divert any portion of an employee's wages unless … The employer is required or permitted to do so by state or federal law or by order of a court of competent jurisdiction …."

Iowa case law also recognizes quasi-contract theories to assure someone is paid for their labor. *See State Pub. Def. v. Iowa Dist. Ct. for Woodbury County*, 731 N.W.2d 680, 684 (Iowa 2007) in which the Supreme Court explains, "…[when] one person renders services for another which are known to and accepted by him, the law implies a promise on his part to pay therefor. [citations omitted] The theory of *quantum meruit* is premised on the idea that it is unfair to allow a person to benefit from another's services when the other expected compensation."

Though Mrs. Pfaltzgraff was paid, the Department is now engaging in its own self-help methods to recover the wages she rightfully earned (a traditional employer or contractor would have to resort to the courts). By engaging in this method of "recoupment," the Department appears to satisfy the requirements that Mrs. Pfaltzgraff be paid, but then opts to pull the funds

back – not by the courts – as any other employer would have to do, but by simple notice and a false accusation that these funds are being taken based on a "mistake" by the care child provider. This is an egregious sleight of hand on the part of the Department.

The secret behind the trick, however, is that the Department continues to pay providers after that initial "Notice of Decision" even when accusing said provider of impairing "… the safety, health or well-being of the children in care." (Admin R. p. 187; App. p. 193.) If the Department were to immediately cut funding, no provider would (or likely could continue) to provide services.

Instead, the Department, upon a showing of any violation of regulation – no matter how benign – forces its providers to choose between effectively closing their business or taking the gamble that they will prevail on agency appeal. This option is only apparent, of course, if a provider can understand the shrouded warnings that they are pledging servitude to the Department for the period of appeal – the length of that appeal being under the total control of the Department. This constitutes an arbitrary and unreasonable abuse of discretion on the part of the Department. Recoupment is unconscionable.

The most egregious fact is that the Department cannot show that this "recoupment" benefits the individuals it was meant to protect – the families who are the beneficiaries of the CCAP and the public trust.

The Department claims that money is "recouped" as a benefit to beneficiaries of the program to avoid individuals from exhausting their "allotment" of child care funds. (Admin. R. p. 74-75; App. p. 80-81.) However, this is neither true nor an applicable argument.

Not only are Child Care Assistance funds available to beneficiaries on a weekly basis at a capped amount, but the purpose of the program is to provide day care services to eligible parents, so they may maintain a job or improve their status by other means while their children are cared for. *Id.*

If Mrs. Pfaltzgraff had not provided child care services during those months, another childcare provider would have had to have been paid by the Department to provide said services. The CCAP funds would have been spent either way. It is obviously financially advantageous for the Department to have had Mrs. Pfaltzgraff provide the services during the appeal, because now they are claiming she agreed to provide them for free. However, any argument that the "recoupment" somehow provides more services for families than they would otherwise receive is a completely erroneous red herring.

The money is not recouped for the benefit of the program participants – the parents who rely on this program receive the same benefit (child care) regardless. If anything, the potential interruption in service to these parents undermines the program should Mrs. Pfaltzgraff have opted to shut down her business instead.

The only beneficiary from the "recoupment" is the Department, which can show that it provided the same service for half the cost and may be able to avoid investing more money into Child Care Assistance which can be reallocated toward other Department purposes.

There is no discernable benefit to the public by this recoupment and this regulation, as applied, deprives Mrs. Pfaltzgraff of half a year's salary, plus overhead.

Finally, the $31,815.46 the Department is trying to collect has no rational relationship to the billing errors Mrs. Pfaltzgraff was found to have made. (Admin. R. p. 228; App. p. 234.)

Mrs. Pfaltzgraff provided childcare services and was paid for those services prior to May 20, 2016. Mrs. Pfaltzgraff provided the same childcare services after May 20, 2016 and she was paid for those services.

Now, solely because Mrs. Pfaltzgraff attempted to defend herself, the Department believes it has some unclear, but sovereign right to reach its hands

into Mrs. Pfaltzgraff's pockets and strip her of $31,815.46 she earned as a result of her *not more than* $218.88 billing error. Though the Department claims that providers do not have to pay for appeals, this regulation, in practice, indicates otherwise.

For all of these reasons, the Department's attempt to collect Mrs. Pfaltzgraff's is unjust enrichment.

As an equitable remedy, the claim of unjust enrichment is appropriately before this Court under its own preserve. *State, Dept. of Human Services ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d 142, 149–50 (Iowa 2001).

The unjust enrichment analysis also demonstrates that the application of this rule in attempt to confiscate five months of Mrs. Pfaltzgraff's earnings is: "The product of reasoning so illogical as to render it wholly irrational;" "Not required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy" and an "Otherwise unreasonable, arbitrary, capricious or an abuse of discretion." Iowa Code §§ 17A.19(10)(i), (k) and (n).

As the Iowa Supreme has explained an, "… agency's action is "arbitrary" or "capricious" when it is taken without regard to the law or facts of the case.... Agency action is "unreasonable" when it is "clearly against

reason and evidence," "An abuse of discretion occurs when the agency action rests on grounds or reasons clearly untenable or unreasonable." *Dico, Inc. v. Iowa Emp't Appeal Bd.*, 576 N.W.2d 352, 355 (Iowa 1998). In additional to all of these Iowa Code § 17A.19 bases to reverse these absurd and overly punitive measure, for an employer – *a government agency no less* – to deprive a person of money they worked for and earned just because they earned while an appeal was pending is simply unjust.

ISSUE VI: DHS VIOLATED ITS OWN RULE WHEN IT REFUSED TO ACCEPT THE CCAP RE-APPLICATION.

Basis for Judicial Review

The District Court did not address this argument. The District Court stated that Mrs. Pfaltzgraff did not preserve error during the Agency review process. (Ruling, p. 12 (Jan. 3, 2018) App. p.479.) However, Mrs. Pfaltzgraff did raise this issue in her "Brief in Support of Appeal" filed with the Department on November 30, 2016, in a section titled "September 23, 2016 to October 23, 2016" (Admin. R. p. 180-182; App. p. 186-188.) This argument was also made during the agency hearing on this matter. (Admin. R. p. 76-80; App. p. 82-86.)

Standard of Review

Since the District Court did not address this issue stating that it was not preserved for error, this Court should review this matter *de novo. Renda v. Iowa Civ. Rights Commn.*, 784 N.W.2d 8, 14 (Iowa 2010). However, if this Court should find that a determination on this matter was within the discretion of the agency, the standard should be for errors at law. *Id.;* Iowa Code § 17A.19(a) and (b).

Argument

The July 29th, 2016, "Proposed Decision" by Judge Doland stated that Mrs. Pfaltzgraff could reapply for another Child Care Assistance Provider Agreement "at any time." (Admin. R. p. 196; App. p. 202.)

Iowa Admin. Code r. 441-170.5(5)(a) (2017) states, "The first time the agreement is terminated, the provider may reapply for another agreement *at any time.*" (App. p. 564.) (Emphasis added).

Mrs. Pfaltzgraff reapplied for her Child Care Assistance Agreement sometime after the July 29th, 2016, "Proposed Ruling." The Director affirmed the proposed decision on September 23, 2016. On October 6, 2016, Mrs. Pfaltzgraff discovered she was no longer in the Department system. (Admin. R. p. 150; App. p. 156.)

On September 2, 2016, the Department returned Mrs. Pfaltzgraff's CCAP Agreement application stating that she could not reapply for a CCAP while an appeal was pending. (Admin. R. p. 108; App. p. 114.)

On September 27, 2016, the attorney for the Department advised counsel for Mrs. Pfaltzgraff that Mrs. Pfaltzgraff could not reapply with an appeal pending. (Admin. R. p. 149; App. 155.)

Counsel for Mrs. Pfaltzgraff (unwisely) waived judicial review of that matter so Mrs. Pfaltzgraff's application for a new CCAP agreement could move forward. While Mrs. Pfaltzgraff was operating under her existing CCAP agreement from May to October 2016 as allowed by the Department, counsel for Mrs. Pfaltzgraff advised her to re-apply in light of the "any time" language in attempt to assure continuity should the Director affirm the proposed decision.

Mrs. Pfaltzgraff was forced to reapply on October 12, 2016 (as opposed to prior to September 2, 2016). (Admin. R. p. 142-143; App. p. 148-149.) Mrs. Pfaltzgraff was reinstated on November 1, 2016. (Admin. R. p. 206; App. p. 212.)

Mrs. Pfaltzgraff understands arguments made by the Department that her first application could not be processed because, as there was an appeal pending, a new registration could not be entered into the Department's

computer system. However, these pragmatic concerns about how a provider exists in the Department databank cannot thwart a published regulation which states that Mrs. Pfaltzgraff may reapply for another Childcare Assistance Provider Agreement "… *at any time*." (Iowa Admin. Code r. 441-170.5(5)(a) (2017) App. p.564.) There are no contingencies to that regulatory statement. "At any time," means "at any time," including while an appeal is pending. Technological hurdles should not be used as an excuse to deprive a regulation of its meaning and function.

Mrs. Pfaltzgraff's new agreement was not able to be placed back into the Child Care Assistance Agreement Program until November 1, 2016. This was due to the Department's unwillingness to consider Mrs. Pfaltzgraff's new application for a CCAP Agreement in violation of the Department's own regulation and the ALJ's Order (even if due to pragmatic technological concerns).

As such, Mrs. Pfaltzgraff requests that she not be held liable for any debt the Department claims she owes from July 29, 2016 to October 23, 2016, and that Mrs. Pfaltzgraff be able to bill the Department for any applicable child care services she provided during that period and up to November 1, 2016, for which she was not able to bill at that time.

ISSUE VII: REQUEST FOR ATTORNEY FEES

Preservation for Review

The District Court did not address this argument and such relief is not available without a decision favorable to Mrs. Pfaltzgraff. However, Mrs. Pfaltzgraff raised this request at the agency level. (Admin. R. p. 183; App. p. 189.) despite it only being available as a matter of judicial review and made a request in her brief to the District Court. (Brief in Support of Judicial Review, CVCV054004 p. 33. (September 18, 2018) App. p. 363.)

Standard of Review

De novo. The agency does not have the authority to grant such relief and the District Court did not address the matter presuming that the District Court considered it moot.

Argument

Mrs. Pfaltzgraff sought attorney fees in accordance with Iowa Code Chapter 625.29 and filed a claim for relief as part of her request for judicial review in accordance with Iowa Code § 625.29(3). Mrs. Pfaltzgraff attached the attorney fees accrued on this matter to date to the District Court proceeding and will submit additional fees once a final disposition is made. (App. p. 366.)

Conclusion

During the period of May 20 to October 23, 2016, Mrs. Pfaltzgraff cared for children whose parents qualified for the Child Care Assistance Program. Mrs. Pfaltzgraff provided Child Care Assistance services in compliance with all regulations and law.

These parents chose Mrs. Pfaltzgraff as their provider, even after she was required to post the "Notice of Decision" for all of her clients to see. Mrs. Pfaltzgraff worked hard during that period and incurred overhead she expected to recover from the CCAP payments the Department invited her to continue receiving while her case was pending.

The Department, when citing health and safety concerns (as were proven false in this case), has tools available to it to immediately shut down a provider under Iowa Code Chapter 17A. The Department, despite its incorrect allegation of safety concerns, opted not to shut down Mrs. Pfaltzgraff's business at that time.

The Department believes it has the authority to shut down a provider once that initial notice is issued by the social worker – this is evidenced by the fact that the Department believes it can reach back to that date for recoupment purposes.

Instead of shutting down Mrs. Pfaltzgraff however, the Department invited this allegedly unsafe (proven otherwise) provider to continue providing services until her ultimate guilt could be determined so any money she earned can be "recouped."

If the Department does have the authority to shut down a provider at first notice (which Mrs. Pfaltzgraff rejects), then the Department's decision to allow a provider to continue providing services should more appropriately be considered a stay of enforcement and should not give rise to the threat of recoupment. The Department simply can't have it both ways – expect a provider to continue offering services, while punishing them with non-payment.

Providers like Mrs. Pfaltzgraff, when faced with such an appeal, are asked to defend or close their business.

Providers are not warned that they *shall* have to pay back any money they earn if they choose to defend themselves.

The regulations do not provide sufficient warning to providers that they *shall* have to pay back to the Department any money they earn if they choose to defend themselves.

There is no statute or law which allows or enables the Department to confiscate any money a provider earns if they choose to defend themselves.

The recoupment regulations render the Administrative Procedure Act defunct.

The recoupment regulations deny the simple and universally-accepted notion that a person ought to be paid for their labor.

The recoupment regulations are, in a word – unjust.

Outside of the administrative realm (or even within in, except for these regulations), a person who pays another for services would not legally be able to deprive that person of just compensation for services rendered – *even* if that payor is the government. The Department has warped this concept and by *regulating* this exchange of payment for services has excused itself of its legal obligation to pay. This is the most "unreasonable, arbitrary, capricious …" and abusive exercise of agency power counsel has ever attempted redress. Now, the District Court is a participant in this clear and unconscionable abuse of administrative process. These recoupment regulations must be ended.

Mrs. Pfaltzgraff respectfully asks this Court to reverse the decision of the District Court in this case and deny the recoupment sought in the October 31, 2016, "Notice of Child Care Assistance Overpayment" issued to Mrs. Pfaltzgraff by the Department. Mrs. Pfaltzgraff also requests this Court to construe the recoupment regulations which are purported to demand recovery

of all payments legally earned by a provider during an appeal and the application thereof as void based on any or all the arguments presented above.

Judicial Notice

In the interest of judicial economy, Mrs. Pfaltzgraff would like to make the Court aware that a second case, filed by the same counsel, that addresses the recoupment issues (Issues I-V) as pertains to child care providers has been filed in the District Court for Polk County: *Endress v. Iowa Department of Human Services*, CVCV 055284, and is scheduled for oral argument on May 4, 2018. Mrs. Pfaltzgraff is not requesting that any action be taken regarding this case at this time, however, due to the complexity and almost identical nature of the arguments involved in both, the Court may wish to review these cases at the same time if an appeal of *Endress* is necessary.

Respectfully Submitted,
/s/ Trent W. Nelson

Trent W. Nelson, Attorney (AT0009958)
Sellers, Galenbeck and Nelson
An Association of Sole Practitioners
400 Locust Street, Suite 170
Des Moines, Iowa 50309-2351
Telephone: (515) 221-0111
Fax: (515) 221-2702
Email: tnelson@sgniowalaw.com

ATTORNEY FOR PETITIONER/APPELLANT

CERTIFICATION OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1), because this brief contains 13,585 words, excluding the parts of the page proof brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f), because this brief has been prepared in proportionally spaced typeface using Microsoft Office Word 2016 in 14-point Times New Roman.

Respectfully Submitted,
/s/ Trent W. Nelson

Trent W. Nelson, Attorney (AT0009958)
Sellers, Galenbeck and Nelson
An Association of Sole Practitioners
400 Locust Street, Suite 170
Des Moines, Iowa 50309-2351
Telephone: (515) 221-0111
Fax: (515) 221-2702
Email: tnelson@sgniowalaw.com

ATTORNEY FOR PETITIONER/APPELLANT

REQUEST FOR ORAL ARGUMENT

Petitioner/Appellant respectfully requests to be heard orally upon submission of this cause to the Iowa Supreme Court.

Respectfully Submitted,
/s/ Trent W. Nelson

Trent W. Nelson, Attorney (AT0009958)
Sellers, Galenbeck and Nelson
An Association of Sole Practitioners
400 Locust Street, Suite 170
Des Moines, Iowa 50309-2351
Telephone: (515) 221-0111
Fax: (515) 221-2702
Email: tnelson@sgniowalaw.com

ATTORNEY FOR PETITIONER/APPELLANT

ATTORNEY COST CERTIFICATE

I hereby certify that the actual cost paid for printing the foregoing "Petitioner-Appellant's Final Brief" was $0.00.

Respectfully Submitted,
/s/ Trent W. Nelson

Trent W. Nelson, Attorney (AT0009958)
Sellers, Galenbeck and Nelson
An Association of Sole Practitioners
400 Locust Street, Suite 170
Des Moines, Iowa 50309-2351
Telephone: (515) 221-0111
Fax: (515) 221-2702
Email: tnelson@sgniowalaw.com

ATTORNEY FOR PETITIONER/APPELLANT

CERTIFICATE OF SERVICE

I, Trent W. Nelson, attorney for Petitioner-Appellant, hereby certify that I mailed one (1) copy of "Petitioner-Appellant's Final Brief" to the following attorney-of-record, by enclosing same in an envelope addressed to:

Tabitha Gardner
Hoover State Office Building
1305 East Walnut
Des Moines, Iowa 50309

on the 29th Day of May, 2018, in full compliance with the provisions of the Rules of Appellate Procedure.

Respectfully Submitted,
/s/ Trent W. Nelson
Trent W. Nelson, Attorney (AT0009958)
Sellers, Galenbeck and Nelson
An Association of Sole Practitioners
400 Locust Street, Suite 170
Des Moines, Iowa 50309-2351
Telephone: (515) 221-0111
Fax: (515) 221-2702
Email: tnelson@sgniowalaw.com

ATTORNEY FOR PETITIONER/APPELLANT