

IN THE COURT OF APPEALS OF IOWA

No. 6-818 / 05-1597
Filed November 30, 2006

**ANTHONY MELAKIAN and
GLADYS MELAKIAN,**
Plaintiffs-Appellants,

vs.

**IOWA DEPARTMENT OF
HUMAN SERVICES,**
Defendant-Appellee.

Appeal from the Iowa District Court for Mahaska County, Richard Morr,
Judge.

Anthony and Gladys Melakian appeal the district court ruling dismissing
their claim. **AFFIRMED.**

Stephen Greenleaf of Lynch, Greenleaf & Michael, Iowa City, for
appellants.

Thomas J. Miller, Attorney General, and Barbara E.B. Galloway, Assistant
Attorney General, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MAHAN, P.J.

Anthony and Gladys Melakian appeal the district court ruling dismissing their claim. They argue the district court erred in determining (1) it did not have jurisdiction over their claim and (2) they failed to state a claim. We affirm.

I. Background Facts and Proceedings

The Melakians adopted a child with significant developmental disabilities. In doing so, they entered into an Adoption Subsidy Agreement with the Iowa Department of Human Services (DHS). The agreement provided that DHS would cover the cost of certain medical and therapeutic care for the Melakians' adopted child.

Sometime after the adoption, the child's condition began to deteriorate. The Melakians sought assistance from the Institute for Attachment and Child Development in Kittredge, Colorado. They requested DHS to approve the use of adoption subsidy funds for the treatment. DHS refused, citing the provision in Iowa Administrative Code rule 441-201.6(1)(a)(1) for the proposition that the adoption subsidy does not cover in-patient care.¹

The Melakians filed a petition at law alleging breach of contract. In response, DHS filed a pre-answer motion to dismiss for lack of subject matter jurisdiction and failure to state a claim. See Iowa R. Civ. P. 1.421(a) and (f). The district court dismissed the claim pursuant to the grounds listed in DHS's motion. The Melakians appeal.

¹ DHS's denial was also based on the fact that the therapeutic approach is not proven to be beneficial.

II. Standard of Review

We review a motion to dismiss for lack of subject matter jurisdiction and failure to state a claim for errors at law. *Stammeyer v. Division of Narcotics Enforcement of Iowa Dep't of Pub. Safety*, 721 N.W.2d 541, 543 (Iowa 2006); *Mlynarik v. Bergantzel*, 675 N.W.2d 584, 586 (Iowa 2004) (reviewing dismissal based on failure to state a claim).

III. Merits

The Melakians argue DHS breached a contract when it refused to subsidize the treatment they requested. DHS argues its denial was an agency action under Iowa Code section 17A (2005) and that, therefore, the Melakians must pursue their claim through the administrative relief procedures outlined in section 17A.

An agency action is defined as

includ[ing] the whole or a part of an agency rule or other statement of law or policy, order, decision, license, proceeding, investigation, sanction, relief, or the equivalent or a denial thereof, or a failure to act, or any other exercise of agency discretion or failure to do so, or the performance of any agency duty or the failure to do so.

Iowa Code § 17A.2(2).

The provisions for adoption assistance are outlined in Iowa Code sections 600.17 through 600.23. In section 600.22, the legislature assigned DHS the responsibility of promulgating rules and procedures to administer the subsidies. That section states, "The department of human services shall adopt rules in accordance with the provisions of chapter 17A, which are necessary for the administration of sections 600.17 to 600.21 and 600.23." As a result, DHS

promulgated rules regulating subsidized adoptions. See Iowa Admin. Code r. 441-201.

According to the agency's rules governing subsidized adoptions, the Melakian's subsidy is a "special service." Iowa Admin. Code r. 441-201.6(1). DHS concluded that, according to the adoption subsidy rules and the Melakian's adoption agreement, only outpatient treatment is covered by the subsidy. See Iowa Admin. Code r. 441-201.6(1)(a)(1). Because the treatment requested by the Melakians required inpatient care, DHS treated the application for funds as a request for an exception to DHS policy. DHS provides no interdepartmental appeal process for the denial of requests for exceptions. See Iowa Admin. Code r. 441-1.8(1)(f) and (h). Further, since DHS's denial is neither rulemaking nor a contested case, the denial must be considered "other agency action." See *Brummer v. Iowa Dep't of Corrections*, 661 N.W.2d 167, 172 (Iowa 2003) (defining agency rulemaking and contested cases and outlining the procedures required to protect due process); *Greenwood Manor v. Iowa Dep't of Pub. Health, State Health Facilities Council*, 641 N.W.2d 823, 834 (Iowa 2002) (same). In order to challenge "other agency action," a party must file a petition for judicial review under Iowa Code section 17A.19. *Greenwood Manor*, 641 N.W.2d at 833-34. Because the Melakians failed to properly challenge DHS's determination, the ruling of the district court is affirmed.

AFFIRMED.