

JUL 27 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DOROTHY CALABRESE, M.D.,

Plaintiff - Appellant,

and

BEVERLY MEYER,

Plaintiff,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES,*

Defendant - Appellee.

No. 09-56553

D.C. No. 8:09-cv-00363-CJC-
RNB

MEMORANDUM**

Appeal from the United States District Court
for the Central District of California
Cormac J. Carney, District Judge, Presiding

* Kathleen Sebelius is substituted for her predecessor, Charles E. Johnson, as Secretary of the Department of Health and Human Services under Fed. R. App. P. 43(c)(2).

** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted July 12, 2011***

Before: SCHROEDER, ALARCÓN, and LEAVY, Circuit Judges.

Dorothy Calabrese, M.D., appeals pro se from the district court's order dismissing her action alleging equal protection violations based on defendant's denial of Medicare reimbursements for food allergy testing and antigen immunotherapy. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Uhm v. Humana, Inc.*, 620 F.3d 1134, 1139-40 (9th Cir. 2010). We may affirm on any ground supported by the record, *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121 (9th Cir. 2008), and we affirm.

The district court properly dismissed the action because, to the extent that Calabrese exhausted her administrative remedies, she failed to state an equal protection claim. *See Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 601-03 (2008) (addressing "class of one" equal protection claim); *Weinberger v. Salfi*, 422 U.S. 749, 769-70 (1975) (addressing class-based equal protection claim).

Calabrese's remaining contentions are unpersuasive.

AFFIRMED.

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*. Accordingly, Calabrese's request for oral argument is denied.