

Inadvertent Household Error was a final administrative decision

"Section 1 of the Administrative Review Act defines an administrative decision as follows: " 'Administrative decision' or 'decision' means any decision, order or determination of any administrative agency rendered in a particular case, which affect the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency."

Pearce Hospital v. Public Aid Commission,
15 111.2nd 301, at 305, 154 N.E.2nd 691 (1958); copy attached;
emphasis in the original.

The Demand Letter for an Inadvertent Household Error (Exhibit 6-24) was not, and did not purport to be, a final administrative decision. It informed Ms. Gouard that there had been an overpayment of food stamps of \$356 and described options she had to object to Public Aid's determination or for repayment of the money. Ms. Gouard chose not to contest the fact of the overpayment and the money was recouped by Public Aid.

Recoupment of the money, however, did not preclude Public Aid from further consideration of whether the receipt of the extra money by Ms. Gouard had been inadvertent or intentional. Public Aid became aware of Ms. Gouard's employment by means of an Integrated Criteria List printed November 13, 1991 (Exhibit 3-21) Public Aid then sent to Ms. Gouard's employer a Request For employment Verification on November 27, 1991. (Exhibit 3-19) The response from the employer stated that between June 10, 1991 and November 15, 1991, Ms. Gouard had been employed. The Demand Letter for a Inadvertent Household Error was sent February 3, 1991¹ (Exhibit 6-24) and on the same date a Notice of Overpayment containing a calculation of the overpayment was sent. (Exhibit 3-13) A few days before that, on January 30, 1992, the Vermilion County Office of Public Aid sent an Overpayment Referral (Exhibit 3-9) to the Chicago office of the Bureau of Investigations. The Bureau of Investigations requested specific information and documents by a memo dated March 27, 1992. (Exhibit 3-8) On August 21, 1992, Public Aid sent Ms. Gouard a Charge and

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the hearing officer over plaintiff's objection violated Illinois and federal law. On the contrary, 305 ILCS S/11 - 8.4 provides:

"The Illinois Department, Public Aid Committees and Commissioner of Appeals shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, but shall conduct their hearings in such manner as seems best calculated to conform to substantial justice and the spirit of this [Public Aid] Code. They may make such additional investigation as they may deem necessary, and shall make such decision as to the granting of aid and the amounts thereof as in their opinion is justified and in conformity with this Code."

Plaintiff cites cases to suggest that hearsay evidence is improper and inadmissible if the hearsay has been objected to. The cases cited by Plaintiff are ones in which the hearsay evidence was the basis for the decision made, which is not true-in the case at bar. In additions, the limits of hearsay evidence in administrative proceedings in Illinois are set out by statute. 735 ILCS s/3-111

(b) provides:

"Technical errors in the proceedings before the administrative agency or its failure to observe the technical rules of evidence shall not constitute grounds for reversal of the administrative decision unless it appears to the court that such error or failure materially affected the rights of any party and resulted in substantial injustice to him or her."

In the case at bar the Plaintiff objected to the admission of evidence regarding her employment and then confirmed the evidence by her own testimony. She admitted that she should have reported to Public Aid that she had income from employment at an insurance company named Cannon and Cochran. (Transcript, page 30) She worked as a minority student intern (Transcript, p. 35) from June 10 to December 30, 1991 (Transcript, page 31 and 32). She became a full time employee on December 30, 1991 and continued working at the insurance company. (Transcript, page 31) After she had been working for two months, in August, 1991, Ms. Gouard signed a form which contained the following language regarding truthfulness:

'IBy signing this form you certify the information given is true and correct to the best of your knowledge and

that you have read these sentences and understood them .
. . Do you understand giving false information can result
in referral for prosecution for fraud. You are still
required to report to your caseworker any future changes
to the information given on this form within five working
days of the change."

(Transcript, page 6 and 7)

On the form she signed (Exhibit 3-17) Ms. Gouard stated that nobody
in her household got paid for working and that no money was
received from student loans or grants. Although it is not an issue
in this case, Ms. Gouard should have reported receipt of money from
a Pell Grant. (Transcript at 34)

At the time she signed the form erroneously denying income
from work, Ms. Gouard was a college student and later that year she
graduated from college. (Transcript at 31) The admonitions about
truthfulness on the form are simple and easy to understand, and are
certainly not beyond the comprehension of a college student.

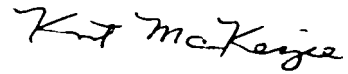
Aside from wrongly denying that she got paid for working when
she was working, there is no other evidence that Ms. Gouard
intentionally committed a program violation. (Transcript at 12 and
17) Failure to inform Public Aid of income from employment,
however, is sufficient for a finding that the violation was
intentional.

It is not uncommon for people to be required to give correct
answers on forms. The Internal Revenue Service requires each of us
to do that each year, as do health insurance companies when we
apply for coverage. The penalties for failing to give full and
correct answers can be severe. In this case, while Ms. Gouard is
disqualified for food stamps for six months, the disqualification
does not affect her children's food stamps. (Transcript, at 27)
As suggested by the representative of Public Aid, if a person is
uncertain about whether to report income to Public Aid, it is
reasonable to impose a duty upon that person to ask someone at
Public Aid about it. (Transcript at 33)

For the reasons given above this Court should affirm the Final
Administrative Decision that the record of the hearing shows by

clear and convincing evidence that Ms. Gouard committed an Intentional Program Violation of the food stamp program.

Respectfully submitted,

A handwritten signature in black ink that reads "Kurt McKenzie". The signature is written in a cursive style with a prominent initial "K".

Kurt McKenzie
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