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IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT  
VERMILION COUNTY, ILLINOIS

c/v'pp,,

ROSIE GOUARD, 1

Plaintiff, ;

vs. ;

PHIL BRADLEY, Director,  
Illinois Department of  
Public Aid; and ILLINOIS  
DEPARTMENT OF PUBLIC AID, ;

Defendants. i

**FILED**  
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MEMORANDUM IN SUPPORT OF PLAINTIFF'S COMPLAINT

I. Nature of the Case

This is an action for judicial review of a Final Administrative Decision by the Illinois Department of Public Aid and its Director (hereinafter 'IDPA'), which affirmed a finding that Plaintiff allegedly had committed an Intentional Program Violation (hereinafter 'IIPVI') when Plaintiff failed to report earned income.

II. Statement of Facts

Plaintiff Rosie Gouard receives food stamps for herself and her three children. Defendant IDPA has accused Plaintiff of an IPV, resulting in an overpayment of food stamps to Plaintiff for the three-month period from August of 1991 through October of that same year. Transcript of Administrative Hearing, p.4 (hereinafter Tr.). Plaintiff does not contest that mistakes were made. The mistakes, however, were not knowing or purposeful. Tr., p.32.

Further, in a demand letter entitled "Inadvertent Household Error," IDPA previously had informed Plaintiff, "We believe that your household has received an overpayment . . . because of an error or misunderstanding on your part." Defendant's Answer, pp. 3-11 (hereinafter l'Answer'\*). Plaintiff never initiated any review procedure of this demand letter, and it became final when the period allocated to request a review expired.

Plaintiff attended Danville Area Community College (DACC) and worked as a paid part-time intern at Cannon & Cochran Management Services through a minority internship program at DACC. Tr., p.29. A fellow student and close friend who also had participated in both DACC's internship program and the food stamp program erroneously informed Plaintiff that income earned from the internship did not count as reportable income for the food stamp program. As a result of this mistaken information, Plaintiff failed to report to IDPA income earned through the DACC internship program. &I.

In response to Plaintiff's failure to report earned income, IDPA notified Plaintiff of an Inadvertent Household Error. This demand letter placed Plaintiff on notice that IDPA considered the error inadvertent. In the demand letter IDPA never hinted of the possibility that an Inadvertent Household Error later could metamorphose into an IPV. Plaintiff merely complied with an apparent notice of her error and the demand for her to make up the resulting overpayment of food stamps. IDPA subsequently collected the overpayment through a recoupment program. Tr., pp. 35-6.

At the administrative hearing IDPA introduced hearsay evidence over the continuing objection of Plaintiff. Tr., pp. 4-6. IDPA

never established personal knowledge for the facts introduced by its representative at the hearing. See, e.g., Tr., p. 5. IDPA never established any foundation to except any of its representative's testimony from the hearsay rule. Tr., pp.4-6.

Over six months after IDPA already had notified Plaintiff of the Inadvertent Household Error, IDPA changed its story and alleged the mistake was really an IPV. Compare Answer, pp. 3-5 with pp. 3-11. At the administrative hearing, IDPA conceded it could not say whether Plaintiff was ever asked if her mistake was inadvertent or not Tr., p.16. In fact, Plaintiff never received any contact from IDPA as to the reason for her mistake. Tr., p.33. IDPA uses a standard which presumes Plaintiff's communications are fraudulent, Tr., p.12, yet IDPA itself made errors when it handled Plaintiff's case. Tr., pp.17-19,36. IDPA previously had accused Plaintiff of an IPV for failure to report income earned at a place entirely unheard of by Plaintiff.' Td.

### III. Argument

#### A. DEFENDANTS' PRIOR NOTICE TO PLAINTIFF THAT THE OVERPAYMENT WAS AN INADVERTENT HOUSEHOLD ERROR ESTOPS DEFENDANT FROM ALLEGING AN INTENTIONAL PROGRAM VIOLATION.

##### 1. Statutory Basis for Judicial Review

The Administrative Review Act governs all proceedings for judicial review of final administrative decisions of IDPA 305 ILCS 5/11-8.7 (1992). Judicial review extends to all questions of law and fact, but no new evidence is admissible &A.

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'Plaintiff does not presume IDPA's error was an intentional attempt to defraud Plaintiff, but the hypocrisy of IDPA's position reveals the untenability of its presumption.

## 2. The Estoppel of IDPA

IDPA first found Plaintiff to have committed an Inadvertent Household Error, then altered this decision to accuse Plaintiff of an IPV. The two decisions are mutually exclusive; one cannot both inadvertently and intentionally break the rules. IDPA's subsequent decision constituted a modification of its previous finding. In Pearce Hospital Foundation v. Illinois Public Aid Commission, 15 Ill. 2d 301, 154 N.E.2d 691 (1958), the Illinois Supreme Court held administrative agencies must have explicit statutory authority in order to change or reconsider prior final dispositions made by an agency. The Illinois Supreme Court noted that the Public Aid Code did not contain any statutory provision that would enable any change in a final administrative decision. 15 Ill. 2d at 306

Since Pearce Hospital Foundation, no statutory provisions have been written into the current Public Aid Code that would enable IDPA to rehear or change its final administrative decisions. Because IDPA's initial demand letter about Inadvertent Household Error became a final administrative decision when it was not **appealed**, IDPA had no power later to accuse Plaintiff of an IPV.

The Administrative Review Act defines final administrative decisions. 735 ILCS 5/3-101. The Administrative Review Act drafters contemplated that unless the parties to (an order) initiated review of it, that order would become final. . . . All review of the orders of the Department was to be initiated by the parties." People ex rel. Olin Corp. v. Department of Labor, 95 Ill. App. 3d 1108, 420 N.E.2d 1043, 1046-47, 51 Ill. Dec. 485, 488-

89 (Ill. App. Ct., 5th Dist. 1981)' (citing Pearce Hospital Foundation v. Illinois Public Aid Commission, 15 Ill. 2d 301, 154 N.E.2d 691 (1958)).

Since Plaintiff in the present case never appealed the Inadvertent Household Error demand letter, IDPA's decision became final. Pearce Hospital Foundation forbids any modification by the IDPA of this final administrative decision. IDPA exceeded the statutory scope of its authority when the subsequent IPV accusation modified the preceding final administrative decision finding Inadvertent Household Error.

The doctrine of collateral estoppel prevents an administrative agency from changing a previous decision Eckman v. Board of Trustees for the Police Pension Fund for the City of Elsin, 143 Ill. App. 3d, 493 N.E.2d 671, 97 Ill. Dec. 864 (Ill. App. Ct., 2d Dist. 1986). Collateral estoppel does apply to judgments and issues determined in administrative agency proceedings. 493 N.E.2d at 677, 97 Ill. Dec. at 870. The United States Court of Appeals for the Seventh Circuit has found that issue preclusion does apply to administrative proceedings in general. Bowen v. United States, 570 F.2d 1311 (7th Cir. 1978) (preventing subsequent appeals by agency of final administrative decision).

In the present case Plaintiff relied on IDPA's demand letter for recoupment of overpayment due to Inadvertent Household Error. She did not appeal. Plaintiff had no notice of any possible IPV

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<sup>2</sup> Although this case concerned the Department of Labor rather than Public Aid, both departments come within the purview of the Administrative Review Act. The holding applies with equally binding force to both departments.

accusation or of any possible suspension from the food stamp program. Plaintiff relies on food stamps to feed herself and her children, and the Inadvertent Household Error demand letter created a reasonable expectation that food stamps would continue as long as Plaintiff complied with the terms and conditions of the demand letter; then, IDPA changed its story. Now IDPA is collaterally estopped from its IPV accusation.

B. THE ADMISSION OF HEARSAY OVER PLAINTIFF'S OBJECTION VIOLATED ILLINOIS AND FEDERAL LAW.

Illinois law does not require an administrative proceeding to conform to every single one of the technical rules of evidence. 305 ILCS S/11-8.4; 735 ILCS 5/3-111(b). However, the rule against hearsay is not a mere technicality. To conform to the dictates of substantial justice, the protection from hearsay evidence is a fundamental requirement.

In Jackson v. Board of Review of Dept. of Labor, 105 Ill. 2d 509, 475 N.E.2d 879, 883, 86 Ill. Dec. 500, 504 (1985), the Illinois Supreme Court interpreted 735 ILCS 5/3-111(b) to not eliminate the hearsay rule for administrative proceedings. Jackson involved a woman who challenged her discharge from her janitorial position at Commonwealth Edison. Her employer accused her of drinking and possession of half a can of beer and half a bottle of vodka while on duty. The discharged woman filed for unemployment compensation, but the claims adjudicator rejected her application. The woman appealed the denial, and the Board of Review of the Department of Labor heard the appeal. 475 N.E.2d at 881, 86 111.

Dec. at 502. At the administrative review hearing, Commonwealth Edison's representatives and the referee hearing the case made repeated references to an informal memorandum never introduced into evidence that recorded the woman's supervisor's concerns about her drinking problem. 475 N.E.2d at 882, 86 Ill. Dec. at 503. The Illinois Supreme Court held that "the hearsay evidence rule applies to the administrative proceedings . . . , but hearsay evidence that is admitted without objection may be considered by the administrative body and by the courts on review" 475 N.E.2d at 883, 86 Ill. Dec. 504. IDPA failed to establish any personal knowledge for its representative's statements. None of Plaintiff's testimony came under objection. All of IDPA's evidence introduced at the hearing was inadmissible. All of Plaintiff's evidence was admissible.

In Jamison v. Weaver, 30 Ill. App. 3d 389, 332 N.E.2d 563, 568 (Ill. App. Ct., 1st Dist. 1975), an Illinois appellate court deemed the rule against hearsay "basic and fundamental, and not merely a technical rule of evidence." Jamison arose when IDPA terminated an individual's public aid grant. IDPA alleged the recipient, despite claims to the contrary, still lived with and was supported by a man who the recipient claimed as her husband. At the administrative hearing for the recipient's appeal of the denial of aid, IDPA introduced hearsay evidence from the recipient's building manager and other hearsay evidence from the recipient's case worker's notes, all over the objections of the recipient. 332 N.E.2d at 564-65. The Jamison court noted the impropriety of the use and admission of this hearsay material by the hearing officer. See 332

N.E.2d at 568. Similarly, the use and admission of hearsay in the present case was equally improper.

In Ortiz v. Eichler, 794 F.2d 889, 895 (3d Cir. 1986), the United States Court of Appeals for the Third Circuit held that admitting hearsay at state public aid agency administrative hearings is precluded by federal regulatory fairness requirements, citing 7 C.F.R. 1§ 273.15(p)(5), 273.16(e)(2)(ii) (1985) (food stamps).<sup>3</sup> Ortiz was a 5 1983 class action brought on behalf of all recipients and applicants of federally-funded public assistance benefits administered by the Department of Health and Social Services. The plaintiff class challenged the denial procedures for AFDC, food stamps, and Medicaid benefits. Id. at 891-91. The Ortiz court found the applicable regulatory language I<sup>t</sup> devoid of ambiguity<sup>tt</sup> and affirmed the rule against hearsay in administrative hearings for federally-funded public assistance benefits. Id. at 895.

IDPA never established either personal knowledge for the facts introduced by its representative at the administrative hearing or any foundation to except its representative's testimony from the hearsay rule. Tr. pp.4-6. He relied solely on inadmissible reports such as the ICL List dated November 13, 1991. The ICL List and the use of this list by IDPA at the administrative hearing was objected to as hearsay. Id. Therefore, both the testimony of IDPA's representative and the hearsay material that formed the

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<sup>3</sup> 7 C.F.R. 5 273.15(p)(S) provides household rights during a hearing for IIan opportunity to confront and cross-examine adverse witnesses.l<sup>t</sup> 273.16(e)(2)(ii) states the same rights are ttalso applicable for disqualification hearings."

basis of his testimony should have been excluded as hearsay. Since both Illinois and federal law forbid the use of hearsay evidence at an administrative proceeding, the admission of IDPA's representative's entire testimony and the reports such as the ICL List violated both Illinois and federal law and did substantial injustice to Plaintiff.

C. THE ADMISSION OF HEARSAY OVER PLAINTIFF'S OBJECTION AND THE RELIANCE UPON THAT HEARSAY TO DECIDE AGAINST PLAINTIFF VIOLATED PLAINTIFF'S FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS AND CROSS-EXAMINATION.

In Goldbero v. Kelly, the United States Supreme Court required state and city welfare officials to provide a fair hearing for welfare recipients threatened with termination of their benefits. 397 U.S. 254, 25 L.Ed.2d 287, 90 S.Ct. 1011 (1970). The Court found due process necessarily included the right for recipients to have at least an opportunity at an administrative hearing to confront and cross-examine adverse witnesses. 397 U.S. at 269-70, 25 L.Ed.2d at 300. In the present case, Plaintiff specifically objected to IDPA's representative and the Hearing Officer using the hearsay material. See, e.g., Jamison v. Weaver, 30 Ill. App. 3d 389, 332 N.E.2d 563, 568 (1975) (citing Goldbers v. Kelly, 397 U.S. 254, 25 L.Ed.2d 287, 90 S.Ct. 1011). Plaintiff's fundamental right to a fair hearing and due process was violated by the admission of this inadmissible hearsay evidence. a.

D. THE FINAL ADMINISTRATIVE DECISION LACKS THE SUBSTANTIAL EVIDENCE REQUIRED BY ILLINOIS LAW.

1. Scope of Review

The administrative findings must be based on substantial evidence. Bruce v. Department of Reaulation and Education, 26 Ill. 2d 612, 622, 197 N.E.2d 711 (1963). The administrative findings do not require nor permit a court of review 'Ito automatically place a stamp of approval on the findings of the agency merely because such agency heard the witnesses and made the requisite findings." Viera v. Illinois Racing Board, 65 Ill. App. 3d 94, 99, 382 N.E.2d 462, 466, 22 Ill. Dec. 142, 146 (Ill App. Ct., 1st Dist. 1978). The final administrative decision must be just and reasonable in light of the admissible evidence presented by the record. Dharmavan, 216 Ill. App. 3d 514, 576 N.E.Zd 361, 159 Ill. Dec. 692, 700-01 (Ill. App. Ct., 1st Dist. 1991).

2. Review of the Findings

The Final Administrative Decision in this case applies a hypocritical standard of behavior. IDPA made mistakes and accused Plaintiff of failure to report income from a place of which she had no knowledge. Tr., pp.17-19,36. Of course, no intent to defraud is imputed on IDPA from its mistakes, but when Plaintiff makes a similar mistake, IDPA irrebutably presumes intent to defraud. However, an innocent mistake is not substantial evidence of intentional fraud. IDPA never asked Plaintiff about her intent. Tr., pp.16,33. In fact, no admissible evidence indicated intent to defraud. The only evidence admissible indicated that mistakes were made. Plaintiff indicated the inadvertent nature of the mistakes

and the reason for her error. This evidence clearly presents a conclusion opposite of that reached by the Hearing Officer. The inadmissibility of the hearsay evidence leaves no substantial basis for the Final Administrative Decision.

E. IDPA FAILED TO MEET THE CLEAR AND CONVINCING EVIDENCE STANDARD OF PROOF AS REQUIRED BY FEDERAL LAW.

IDPA failed to meet the standard of proof for intent as required by federal regulation. 7 C.F.R. 9 273.16(e)(6) (1986) provides:

The hearing authority shall base the determination of intentional Program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional Program violation  
(Emphasis supplied).

Two courts have passed on the application of this federal regulation in factual contexts similar to the case at bar. Both cases dealt with whether an administrative hearing had sufficient evidence to meet the clear and convincing evidence standard set forth in 7 C.F.R. 273.16(e)(6). In the first case, Smith v. Department of Health and Rehabilitative Services, 522 So. 2d 956 (Fla. Dist. Ct. App. 1988), a food stamp recipient suffered a six-month disqualification from the food stamp program because of an alleged IPV. The food stamp recipient explained her mistake, that she did not know she had to report nonpermanent part-time earned income. None of the public aid agency's representatives had "any personal knowledge of the allegations made or of the information

contained in the documents submitted to the hearing officer.<sup>1t</sup> The appellate court noted the mandatory clear and convincing standard of proof required by 7 C.F.R. § 273.16(e)(6). The court defined clear and convincing evidence to require credible evidence, precise and explicit facts, no confusion on the part of witnesses, and evidence which creates a firm belief or conviction in the trier of fact as to the truth of the allegations 522 So. 2d at 958. The Smith court held: "Mere failure to report income does not establish by clear and convincing evidence that there was intent to commit an intentional program violation.<sup>1t</sup> 522 So. 2d at 959.

In Juste v. Department of Health and Rehabilitative Services, 520 So. 2d 69 (Fla. Dist. Ct. App. 1988), another appellate court applied the mandatory clear and convincing evidence standard of proof required by 7 C.F.R. § 273.16(e)(6). Juste also involved a food stamp recipient accused of an IPV merely because of a failure to report income correctly. The Juste court also found the uncorroborated hearsay evidence introduced at the administrative hearing not sufficiently clear or convincing to meet the agency's burden of proof. 520 So.2d at 522.

Both of these cases interpret the same law applicable in the present case. Both of these cases concerned the same factual situation of the present case: a food stamp recipient who mistakenly had failed to report income. Neither the two cited cases, nor the present case involved any direct evidence as to intent. In each case, the public aid agency sought or seeks to infer intent from a simple mistake. This inference does not meet

the clear and convincing standard of proof required by 7 C.F.R. 5 273.16(e)(6).

IV. Conclusion

There are several reasons to reverse IDPA's final administrative decision:

1. Defendant's prior notice to Plaintiff that the overpayment was an Inadvertent Household Error estops Defendant from alleging an IPV.
2. The admission of hearsay over Plaintiff's objections violated Illinois and federal law.
3. The Final Administrative Decision lacks the substantial evidence required by Illinois law.
4. IDPA failed to meet the clear and convincing evidence standard of proof as required by federal law.

If this Court finds that Plaintiff is correct in any of these points, then the Final Administrative Decision should be reversed.

Respectfully submitted,

ROSIE GOUARD, Plaintiff

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PROOF OF SERVICE

Under penalties as provided by law pursuant to the Code of Civil Procedure at 735 ILCS 5/1-109, the undersigned certifies that a true copy of the foregoing Memorandum in Support of Plaintiff's Complaint was deposited in a U.S. Mailbox in Champaign, Illinois, on August 16, 1994, in a sealed envelope, with the proper postage fully prepaid, addressed to:

Kurt McKenzie  
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Dated: 8 - 16 - 94

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