

Service agency (FNS). The FNS had allegedly determined that purchases made at “store A” with Food Stamp LINK cards were not legitimate food purchases and the store was subsequently disqualified from participating in the Food Stamp program. Pl. Comp. ml 1.

The purchase of \$80.83 by Ms. Davis’ LINK card on 5/1 1/98 was one of the purchases determined by FNS as not being a legitimate food stamp purchase. Pl. Comp. ¶12. Defendants therefore alleged that Ms. Davis had fraudulently redeemed her EBT LINK card for \$80.83 at “store A”. Pl. Comp.¶10.

Ms. Davis filed a timely appeal of the charge of an IPV of the Food Stamp program and on February 26, 2001, an Administrative Disqualification Hearing was held. Pl. Comp. ¶13, 14. The defendants have the burden of proving an IPV by clear and convincing evidence. 89 Ill. Adm. Code 104.470. Ms. Davis’ testified at her hearing that she had never purchased items at “store A,” and that she had given her LINK card and PIN number to her ex-boyfriend to purchase food while she was sick. Pl. Comp.¶ 15. She was completely unaware of these purchases but thought they might have been made by her ex-boyfriend. a. Her testimony was completely uncontradicted. JcJ.

On March 23,2001, the defendants issued a final administrative decision finding that Ms. Davis had committed an IPV. Pl. Comp. ¶16. Defendants’ decision concludes that Ms. Davis’ uncontradicted testimony was “not credible.” Defendants’ Final Administrative Decision “Dec.” p. 5 Exhibit A of Pl. Comp. There was no other reference as to the credibility of Ms. Davis’ testimony. On April 6, 2001, defendants sent Ms. Davis a notice disqualifying her from Food Stamp benefits for twelve months beginning May 2001. Pl. Comp. \$21. Without these benefits, Ms. Davis will be seriously restricted in her ability to purchase food.

STANDARD FOR ISSUANCE OF A STAY

In a proceeding under the Administrative Review Act, the Circuit Court has the power to issue a stay of an administrative decision pending the final disposition of the case. 735 ILCS 5/3-11 l(a)(1). The stay can be made before or after that answer is filed, upon notice to the agency, and a showing of good cause by the plaintiff. a. Good Cause requires the plaintiff to show:

(i) that an immediate stay is required to in order to preserve the status quo without endangering the public, (ii) that it is not contrary to public policy, and (iii) that there exists a reasonable likelihood of success on the merits.

Id.

The Illinois Supreme Court held that this “provision was intended to give the court broad judicial discretion to grant or deny a stay of an administrative decision without applying traditional standards applicable for the issuance of injunctions.” Ardt v. Illinois Dep’t of Professional Regulation, 154 Ill. 2d 138, 148, 607 N.E.2d 1226, 1231 (1992). An individual requesting a stay needs only to demonstrate a “a fair question as to the likelihood of success on the merits.” Moore v. Mankowitz 127 Ill. App. 3d 1050, 1055 469 N.E.2d 1133, 1137 (4th Dist. 1984).

ARGUMENT

I. An Immediate Stay Would Preserve the Status Quo

The Illinois Court of Appeals has defined status quo as the “last actual, peaceful, non-contested status which preceded the pending controversy.” Markert v. Ryan, 247 Ill. App. 3d 915, 918, 617 N.E.2d 1373, 1376 (4th Dist. 1993).

Ms. Davis has been regularly receiving Food Stamps each month to enable her to purchase food. Without a stay her Food Stamps will end for one year beginning in May.

In Moore , the Court held that the necessity to preserve the status quo was shown inasmuch as the plaintiff's AFDC benefits would be terminated without the stay and that any retroactive benefits to plaintiff should she succeed would not adequately compensate her for their initial loss. 127 Ill. App.3d at 1055. In Ms. Davis' case, the retroactive award of Food Stamps in the future, should she prevail on the merits of the case, would not compensate for the hardship she will face trying to purchase food on her remaining disposable income of \$80 once she pays her housing expenses. It is this status quo that plaintiff is requesting be preserved.

II. A Stay Would Not Be Contrary to Public Policy

As is shown above, a stay in this case would only be preserving Ms. Davis' monthly allotment of Food Stamps until a final decision is rendered in this case. In no way would this contravene public policy. Rather, it would further the public policy intended by the Food Stamp program of ensuring that low income persons have the means to obtain food.

III. Plaintiff Has A Reasonable Likelihood of Success on the Merits

Plaintiff has alleged in her complaint that the final administrative evidence was not supported by law, and contrary to the manifest weight of the evidence. The defendants were required to find by "clear and convincing evidence" that she committed an IPV. 89 Ill. Adm. Code 104.470. Ms. Davis' uncontracticted testimony was that she never used her LINK card at the store in question, and that her ex-boyfriend used her LINK card to purchase food for her when she was sick. (Dec. p. 4).

Defendants' finding of an IPV is based entirely on the conclusion that Ms. Davis'

“contention that this transaction was not made by her or that it was made without her knowledge is not credible.” (Dec. 5). There is no explanation as to why this “contention” was not credible. By not articulating any reasons for this conclusion, it will be impossible for the defendants to demonstrate that an IPV was committed.

In order to ensure proper review of an administrative decision, the requirements with respect to administrative findings are more exacting than those relating to the findings of trial courts. Maywood Park Trotting Asso. v. Illinois Harness Racing Corn.., 15 Ill. 2d 559, 563 155 N.E.2d 626, 628 (1959) ; Reich v. Board of Fire & Police Comm’rs, 13 Ill. App. 3d 1031, 1034 301 N.E.2d 501,503 (2d Dist. 1973).

Although credibility determinations are usually entitled to great deference, see, e.g., Branson v. Department of Revenue, 168 Ill. 2d 247,265 659 N.E.2d 961,970 (1995), this does not prevent a court from reviewing determinations to see if they are not supported by the record. In Board of Regents Universities v. Illinois Educational Labor Relations Board, the petitioner claimed that the hearing officer’s determinations of credibility were arbitrary, capricious and unsupported by the record. 208 Ill. App. 3d 220, 229 566 N.E.2d 963,969 (4th Dist. 1991). In rejecting this claim, the Court noted that the hearing officer found that written evidence supported the testimony of the witnesses he found credible, and that the demeanor of the more credible witness was “forthright and credible.” Id. at 230-3 1. In addition, testimony from some of the other witnesses was contradicted by cross-examination. I&.

The federal courts have also recognized their role in reviewing credibility determinations in administrative decisions. The Seventh Circuit, in reviewing whether a disability determination by an Administrative Law Judge (“A,“) was “substantially justified,” stated:

A credibility assessment is afforded special deference because the ALJ is in the best position to see and hear the witness and determine credibility. (citation omitted) Where, however ‘the reasons given by the trier of fact do not build an accurate and logical bridge between the evidence and the result,’ we cannot uphold the ALJ’s determination.

Shramek v. Apfel, 226 F.3d 809, 811 (7th Cir. 2000), quoting, Sarchet v. Chater, 78 F.3d 305, 307 (7th Cir. 1996); Groves v. Apfel, 148 F.3d 809, 811 (7th Cir. 1998).

Plaintiff has also alleged in her verified complaint that her testimony was uncontradicted. Pl. Comp. ¶15. It is an error of law to disregard testimony that was neither contradicted nor found to be “inherently improbable.” People ex rel. Brown v. Baker, 88 Ill. 2d 81, 85 430 N.E.2d 1126, 1127 (1981); accord, Larson v. Glos, 235 Ill. 584 85 N.E. 926 (1908); Dill v. Widman, 413 Ill. 448, 109 N.E.2d 765 (1952), Kelly v. Jones, 290 Ill. 375 125 N.E. 334 (1919).

Plaintiff, therefore has a reasonable likelihood of demonstrating that the conclusion that her testimony was not credible was contrary to the manifest weight of the evidence since it was uncontradicted and no basis was provided for this finding.

CONCLUSION

For all of the foregoing reasons this Court should grant the plaintiff’s Emergency Motion for Stay, and order the defendants to continue Ms. Davis’ Food Stamps until the disposition of this case.

Respectfully submitted,

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