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THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

DIANE DAVIS,)
)
Plaintiff,)

-v-

No. 01 CH 6270

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NATIONAL CENTER
ON POVERTY LAW

LINDA RENEE BAKER, Secretary of)
the Illinois Department of Human)
Services; ILLINOIS DEPARTMENT OF)
HUMAN SERVICES, >

Defendants.)

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S
MOTION FOR REVERSAL OF FINAL ADMINISTRATIVE DECISION**

Plaintiff, Diane Davis, filed her complaint as a writ of certiorari seeking reversal of Defendants' final administrative decision. That decision found that there was clear and convincing evidence that Ms. Davis had committed an Intentional Program Violation of the Food Stamp program, and, as a result of that finding, she will be barred from receiving Food Stamps for twelve months. The basis for this ruling was Defendants' factual finding that Ms. Davis' Food Stamp debit card ("LINK card") was used to fraudulently redeem \$80.83 worth of benefits. In addition, Defendants found Ms. Davis' testimony that an ex-boyfriend had used her card while she was experiencing problems from leg surgery not credible.

I. LEGAL FRAMEWORK

The Food Stamp program is a federal nutrition program that helps people with low income to buy food and maintain a healthful diet. 7 C.F.R. 0 271.1. The U.S. Department of

Agriculture is in charge of the program nationally. The program is administered in Illinois by the Illinois Department of Human Services. Defendants therefore must follow federal law, state law, and their own administrative procedures.

In an effort to combat fraud, the federal regulations and Illinois law require that individuals who commit an Intentional Program Violation ("WV") be disqualified from receiving Food Stamps. An IPV occurs when a Food Stamp recipient has intentionally:

- 1) made a false or misleading statement, or misrepresented, concealed or withheld facts, or 2) committed an act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons or ATP's.'

7 C.F.R. 8 273.16 (c); 89 Ill. Adm. Code §121.150 (2000).

Individuals who are found to have committed an IPV are disqualified from the Food Stamp program. In Illinois, the first violation results in a 12-month disqualification, the second violation results in a 24-month disqualification, and the third violation results in a permanent disqualification. 89 Ill. Adm. Code 0 121.151(a) (2000).

Because disqualification is such a drastic result for Food Stamp recipients, IPV cases have procedural protections not found in other administrative cases. Defendants must prove by "clear and convincing evidence that an IPV occurred." 89 Ill. Adm. Code §104.470 (2000), **amended and renumbered at** 89 Ill. Adm. Code 6 14.370 (2001). In almost all other cases,

' ATP -- an authorization to participate card -- is defined as a document which is issued by the state agency to a certified household to show the allotment the household is authorized to receive on presentation of such document. 7 C.F.R. 9 271.2

Defendants need only to prove their case by a preponderance of the evidence. 5 ILCS 100/10-15.

In addition, IPV cases are automatically scheduled for hearings, without the need of an appeal being filed by the accused individual, and the hearing is held even if the individual does not attend. Compare 89 Ill. Adm. Code ~~§0~~ 104.430,104,440 (2000), ***amended and renumbered at 89*** Ill. Adm. Code 914.330,14.340 (2001) with 89 Ill. Adm. Code 99104.10,104.60, ***amended and renumbered at 89*** Ill. Adm. Code 914.10, 14.60 (2001).

II. STANDARD OF REVIEW

The standard of review for a writ of certiorari is essentially the same as those under the Administrative Review Law. Hanrahan v. Williams, 174 Ill. 2d 268,272,673 N.E.2d 251, 253 (1996). Under the Administrative Review Law, courts generally do not interfere with an agency's discretionary authority unless the exercise of that discretion is arbitrary and capricious or against the manifest weight of the evidence. *Id.* at 273,673 N.E.2d at 254. However, questions of law are subject to de novo review. Taylor v. Cook County Sheriff's Merit Bd., 316 Ill. App. 574, 579,736 N.E.2d 673,677 (1st Dist. 2000); Northern Trust Co. v. Bernardi, 115 Ill. 2d 354,365,504 N.E.2d 89,94 (1987). Although the issue of whether or not an individual engaged in particular acts is a question of fact, whether the agency considered the intent as well as the actions, and made its findings under the "clear and convincing" standard are questions of law, which this Court can resolve for itself. Martins v. R.I. Department of Human Services, No. PC 89-6950, 1991 R.I. Super. LEXIS 122, at *9 (Feb. 28, 1991); Forester v. Ohio Department of Human Services, 122 Ohio App. 3d 750,753, 702 N.E.2d 959,962 (Ohio App. 1997).

III. STATEMENT OF FACTS

On August 9,2000, Defendants sent Ms. Davis a notice charging her with an IPV.

Certified Administrative Record (“R”) 5-8 . Defendants alleged that Ms. Davis committed a violation of the Food Stamp Act by fraudulently redeeming her LINK ² card for cash at a store called Chicago Live Poultry. Id. Defendants came to this conclusion based on an investigation of Chicago Live Poultry by the Food and Nutrition Service agency (“FNS”) of the United States Department of Agriculture. Id. The FNS had determined that a number of purchases made at Chicago Live Poultry with Food Stamp LINK cards were not legitimate food purchases, and the store was subsequently disqualified from participating in the Food Stamp program. I& FNS based this conclusion on the large amount of purchases at this store during a short interval of time, which exceeded the store’s limited capacity to prepare food items sufficient for all the Food Stamp purchases it showed, and on the store’s limited ability to process so many transactions for checkout. Id

The purchase of \$80.83 on Ms. Davis’ LINK card on May 11, 1998 was one of the purchases flagged by FNS as not being a legitimate Food Stamp purchase. Id. Defendants therefore alleged that Ms. Davis had fraudulently redeemed her LINK card for \$80.83 in cash at Chicago Live Poultry. Id.

Ms. Davis filed a timely appeal of the IPV charge. An administrative disqualification hearing was held on February 26,2001. R. 20. At the hearing, Defendants’ caseworker introduced a charge letter from the USDA informing the owners of Chicago Live Poultry that

² In Illinois Food Stamp benefits are accessed through an electronic benefit transfer system (EBT) using a LINK card. The card operates like a debit card. Individuals can use the card at participating retailers to purchase food items, with the purchase price deducted from their account balance.

they had violated the terms and conditions of the Food Stamp program. R. 23,9-14. The caseworker read from the charge letter, which summarized the findings of an FNS representative who described the store as a small to medium-sized food store with one cash register and one point of sale device, which sold nothing but live poultry. R. 23-24. The charge letter also specified that on the settlement date of May 12, 1998, four consecutive manual withdrawals were made at the store in a four-minute period. R. 24. The withdrawals (one of which was from Ms. Davis' link card) totaled \$487.17. Id. The case worker also introduced evidence indicating that Ms. Davis' LINK card had been used for an \$80.83 purchase during this four-minute period. R. 18.

Ms. Davis testified at the hearing that she had never visited Chicago Live Poultry. However, she had given her LINK card and PIN number to her ex-boyfriend to purchase food because she had leg surgery and was still experiencing problems. R. 27-28. He would always bring back the items she asked for, and she had no indication that he had misused the card. R. 28.

IV. THE FINAL ADMINISTRATIVE DECISION

On March 23, 2001, Defendants issued a final administrative decision finding that Ms. Davis had committed an IPV. R. 43-50. Defendants' decision found the same facts that USDA had alleged in its disqualification letter to Chicago Live Poultry, and, in particular, that Ms. Davis' LINK card had been used for an \$80.83 transaction during a four-minute period where \$487.17 of purchases were allegedly rung up. R. 47- 48. Defendants acknowledged Ms. Davis' testimony that she had not used her LINK card at the store, and that she had given her LINK card to her ex-boyfriend when she was ill. R. 48.

Defendants concluded that there was clear and convincing evidence that Ms. Davis had

committed an IPV because her “contention that this transaction was not made by her or that it was made without her knowledge is not credible.” R. 49.

V. ARGUMENT

There can be no doubt that IPV cases involve serious accusations and result in severe penalties. In this case, however, Ms. Davis will suffer these severe penalties because of Defendants' bare assertion that her testimony was not credible under a "clear and convincing" standard. Defendants cite no facts or reasons in their decision to justify their disbelief, much less to justify their disbelief under the relevant high standard of proof. Instead they simply want this Court to affirm the decision by accepting at "face value" the Hearing Officer's conclusions. This position, however, is not consistent with the standard of review for IPV cases.

A. Defendants' Hearing Decision Fails To Meet Minimum Standards For ProDer Review By This Court.

The federal regulations governing the Food Stamp program specify that IPV hearing decisions shall "summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent Federal regulations." 7 C.F.R. §273.15 (q)(2). In Illinois, the federal mandate to identify the evidence supporting the reasons for an IPV hearing decision overlies a general rule that administrative findings have more exacting requirements than findings of trial courts. Maywood Park Trotting Ass'n. 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). The Illinois Supreme Court has noted that administrative findings of fact must be sufficiently specific to enable the courts to review them intelligently. Illinois Central Railroad Company v. Illinois Commerce Comm'n., 411 Ill. 526,528,104 N.E.2d 796,797 (1952).

In Ms. Davis' case, Defendants simply rejected her testimony that she allowed an ex-boyfriend to use her LINK card to obtain food for her while she was experiencing problems from

leg surgery, finding the “contention that this transaction was not made by her or that it was made without her knowledge is not credible.” R. 49. Defendants offered no explanation about why Ms. Davis’ testimony should not be believed. Defendants’ dismissive treatment of Ms. Davis’ testimony does not satisfy the federal requirement that the hearing officer identify the supporting evidence for his/her findings. 7 C.F.R. §273.15 (q)(2). It also makes it impossible for this Court to review the findings intelligently.

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), a court may still look at those what they are based on. Thus, in Board of Regents of Regency Universities v. Illinois Educational Labor Relations Board, the petitioner challenged the hearing officer’s determinations of credibility as 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 challenge, the appellate court noted that the hearing officer found written evidence to support the testimony of the witnesses he found credible, and commented on the “forthright” demeanor of the more credible witnesses. *Id.* at 230-31, 566 N.E.2d at 970. In addition, testimony of some of the other witnesses was successfully impeached on cross-examination. *Id.*

The federal courts have also recognized that a reviewing court cannot give “carte blanche” to credibility determinations in administrative decisions. The Seventh Circuit, looking at whether a disability determination by an Administrative Law Judge (“ALJ”) 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....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)(internal citation omitted) quoting Sarchet v. Chater, 78 F.3d 305,307 (7th Cir. 1996). Accord, Groves v. Apfel, 148 F.3d 809, 811 (7th Cir. 1998).

Besides failing to articulate any explanation for his “credibility” finding, the hearing officer in Ms. Davis’ case committed an error of law by labeling Ms. Davis’ testimony “not credible” where it was uncontradicted. In People ex rel. Brown v. Baker, the Illinois Supreme Court held:

While we agree that the credibility of witnesses and the weight to be accorded their testimony are typically jury considerations a jury cannot arbitrarily or capriciously reject the testimony of an unimpeached witness Where the testimony of a witness is neither contradicted, either by positive testimony or by circumstances, nor inherently improbable, and the witness has not been impeached, that testimony cannot be disregarded even by a jury.

88 Ill. 2d 81, 85, 430 N.E.2d 1126, 1127 (1981)(internal citations omitted). Accord, Larson v. m, 235 Ill. 584, 587, 85 N.E. 926,927 (1908); Dill v. Widman, 413 Ill. 448,454, 109 N.E.2d 765,768 (1952); Kelly v. Jones, 290 Ill. 375,378, 125 N.E. 334, 335 (1919).

Ms. Davis’ testimony that her ex-boyfriend used her card on occasion to purchase food for her while she was experiencing problems from leg surgery was neither inherently improbable nor contradicted. Therefore, the hearing officer committed an error of law by dismissing it out of hand.

B. Defendants’ Hearing Decision Does Not Support Finding That Ms. Davis Committed An Intentional Program Violation Under Any Other Theory.

Defendants have asserted, that even if Ms. Davis’ testimony is accepted as true, she still

committed an IPV because she was responsible for protecting her LINK card and PIN, and was not allowed to give her card or PIN number to anyone else. Defendants' Response To Plaintiff's Emergency Motion To Stay, p. 4. This "strict liability" analysis is not consistent with the law.

1. A Violation of the Food Stamp Rules Does Not Automatically Constitute An IPV.

The definition of an IPV requires that one intentionally have:

- 1) made a false or misleading statement, or misrepresented, concealed or withheld facts, or 2) committed an act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons or ATP's.

7 C.F.R. 3 273.16 (c); 89 Ill. Adm. Code §121.150 (2000) (emphasis added).

In interpreting this regulation, courts have required more than just an act that violates the Food Stamp rules. In Smith v. Dept. of Health and Rehabilitative Services, the court found that, although the plaintiff had signed forms indicating that she had no earned income and was apprised of her rights and responsibilities under the Food Stamp program, her failure to report her part-time work did not constitute an IPV. 522 So. 2d 956,959 (Fla. Dist. Ct. App. 1988). The "mere failure to report" was a violation, but there was no clear and convincing evidence that the violation was intentional. Id

In Forester v. Ohio Department of Human Services, the court found that, absent clear and convincing evidence that one intentionally concealed facts or withheld information, the mere failure to report earnings does not amount to an IPV. 702 N.E.2d at 964. Although the plaintiff in Forester had signed a redetermination form where she had answered "no" to the question asking whether her daughter was employed, and this statement was false, the court found that plaintiff did not "affirmatively, intentionally misrepresent" her daughter's employment status.

Id. Although the Forester court acknowledged that signing a redetermination form without carefully reviewing it is “extremely imprudent,” signing a form containing a mistaken answer did not amount to intentional misconduct. Id.

Similarly, in this case, allowing her ex-boyfriend to use her LINK card and PIN number to purchase food when she could not go out to purchase food herself may have been imprudent on Ms. Davis’ part, but without additional proof, it does not demonstrate the intent necessary to commit an IPV. Defendants’ argument to the contrary would make every violation of a Food Stamp rule or policy an IPV, and subject every violator to at least 12 months of hunger.

2. Ms. Davis Cannot Be Held Liable For Her Ex-Boyfriend’s Unauthorized Acts.

For someone to be held liable for the actions of another there must be some kind of legally recognized relationship between them. For example, an agency relationship exists when the parties have a consensual fiduciary relationship created by law. Peoples Gas Light & Coke Company v. Barrett, 118 Ill. App. 3d 52,55,454 N.E.2d 713,716 (1st Dist. 1983). “No fiduciary or confidential relationship arises out of the kinship of the parties alone.” Hubbard v. Schumaker, 82 Ill. App.3d 476,479,402 N.E.2d 857, 860 (2d Dist. 1980). Instead it requires an agreement with definite terms and consideration. Rovall v. Chicano Streamlite Corporation, 178 F.2d 81, 84 (7th Cir. 1949).

Here Ms. Davis merely asked her ex-boyfriend to do her a favor, picking up groceries for her while she was experiencing problems from leg surgery. There was no consensual fiduciary relationship with benefit flowing to one party and detriment to the other. Thus, there is no legal basis for holding Ms. Davis responsible for her ex-boyfriend’s actions.

Even if there had been agency relationship between Ms. Davis and her ex-boyfriend (and there was not), she cannot be held liable for his unauthorized or illegal acts unless she later

ratified the action. Fortune v. Bavard Stockton, 182 Ill. 454,459, 55 N.E. 367, 369 (1899); Karetzkis v. Cosmopolitan National Bank, 37 Ill. App. 2d 484,491, 186 N.E.2d 72,76 (1st Dist. 1962). A principal must have full knowledge of the agent's acts before he can be considered to have ratified the action. Security Insurance Company of Hartford v. Mato, 13 Ill. App. 3d 11, 17, 298 N.E.2d 725,730 (2d Dist. 1973).

The uncontradicted evidence was that Ms. Davis did not authorize her ex-boyfriend to use her LINK card in ways that the Food Stamp Act prohibited, and that she had no knowledge that her card had been used improperly until the IPV charges were brought against her. She did nothing to ratify this unauthorized act and therefore cannot be held liable for it.

VI. CONCLUSION

For all of the foregoing reasons, this Court should grant Plaintiff's Motion for Reversal of Final Administrative Decision.

Respectfully submitted,

Andrew J. Cohen

Andrew J. Cohen
Dawn Howell
Legal Assistance Foundation of Chicago
111 W. Jackson Blvd., 3rd floor
Chicago, IL 60604
(312) 347-8307
Atty. No. 91017