

No. 127712

IN THE  
SUPREME COURT OF ILLINOIS

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<p>AYESHA CHAUDHARY,</p> <p style="text-align: center;">Plaintiff-Appellee,</p> <p style="text-align: center;">v.</p> <p>ILLINOIS DEPARTMENT OF HUMAN SERVICES; and GRACE B. HOU, in her official capacity as Secretary of the Illinois Department of Human Services,</p> <p style="text-align: center;">Defendants-Appellants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>On Appeal from the Appellate Court of Illinois, Second Judicial District, No. 2-20-0364</p> <p>There Heard on Appeal from the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, No. 19 MR 1341</p> <p>The Honorable BONNIE M. WHEATON, Judge Presiding.</p>
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**BRIEF AND APPENDIX OF DEFENDANTS-APPELLANTS**

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## **NATURE OF THE ACTION**

The Illinois Department of Human Services discovered that it had overpaid Ayesha Chaudhary \$21,821 in Supplemental Nutrition Assistance Program (“SNAP”) benefits because she and her former husband received benefits on separate accounts at the same home address, even though SNAP rules required them to have one account. After investigating, the Department sent Chaudhary an overpayment determination notice for that amount, and she initiated an administrative appeal. After an administrative hearing, the Department’s Secretary issued a final administrative decision upholding the determination. Chaudhary thereafter filed an action in the circuit court for judicial review of that decision through a common law writ of certiorari. The circuit court reversed the decision on the basis that the Department’s administrative law judge (“ALJ”) improperly placed the burden to prove that the determination was wrong on Chaudhary during the hearing, and that Chaudhary had presented sufficient evidence to defeat the Department’s determination in any event.

The Department and its Secretary appealed. The appellate court upheld the circuit court’s decision. In doing so, it recognized that the Department’s rules governing SNAP overpayment collection hearings did not specifically assign the burden of proof to either party, but held that the Department bore that burden even though Chaudhary initiated the administrative appeal to challenge the Department’s determination. The appellate court also ruled that

the Secretary's decision was against the manifest weight of the evidence. This Court granted the Department's and Secretary's petition for leave to appeal.

**ISSUES PRESENTED FOR REVIEW**

1. Whether the appellate court erred as a matter of law in ruling that the Department bears the burden of proof at an administrative hearing to establish by a preponderance of the evidence that its SNAP overpayment determination was correct, rather than following the general rule that the party initiating a challenge to the Department's determination bears the burden to prove that the Department was wrong.

2. Whether the Secretary's decision upholding the Department's SNAP overpayment determination was not against the manifest weight of the evidence because it was supported by evidence that Chaudhary and her ex-husband lived at the same address and that the overpayment amount was correct.

## JURISDICTION

The circuit court entered a final order reversing the Secretary’s final administrative decision on June 4, 2020. (C 754).<sup>1</sup> The Department and its Secretary timely filed a notice of appeal on June 30, 2020 (C 755-58), within 30 days of the circuit court’s judgment, *see* Ill. Sup. Ct. R. 303(a)(1). On September 16, 2021, the appellate court issued an opinion affirming the circuit court’s judgment. (A 1-25). The Department and its Secretary did not seek rehearing. On September 30, 2021, the Department and its Secretary filed a motion for an extension of time to file a petition for leave to appeal to this Court (A 88), and this Court granted the motion on October 6, 2021, allowing the petition to be filed by November 25, 2021 (A 89). The Department and its Secretary filed a petition on November 23, 2021. (A 90). On January 26, 2022, this Court allowed the petition. (A 91).

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<sup>1</sup> This brief cites the record on appeal as “C \_\_,” the supplemental record as “Sup R \_\_,” the opening brief filed in the appellate court as “AT Br. \_\_,” the reply brief filed in the appellate court as “RY Br. \_\_,” and the appendix to this brief as “A \_\_.”

## **STATEMENT OF FACTS**

Chaudhary came to the United States from Pakistan in 2007 or 2008. (C 586-87). Beginning as early as January 2012, she was enrolled in SNAP (C 104), commonly known as “food stamps,” which is a government program that helps low-income residents by increasing food-buying power, 7 U.S.C. § 2011. As early as May 2015, she and her three children received SNAP benefits with her as the primary account holder at their address of 1433 White Oak Lane in West Chicago, Illinois (“White Oak address”). (C 17, 93-96).

Jon Mohammad Ramzan is Chaudhary’s ex-husband and the father of her children. (C 586). Beginning in May 2015, he and his child from a different marriage also received SNAP benefits at the White Oak address under a separate account. (C 17, 105-10, 527-28, 535). SNAP rules require all benefit recipients living at the same address to be on one account, with their income sources reported to the Department and considered jointly. (C 60-61). Both Chaudhary and Ramzan received SNAP benefits at the White Oak address under their own separate accounts from May 2015 through December 2017. (C 61).

### **SNAP and the Department’s proceedings**

The SNAP system is a federal benefits program that authorizes States to develop and administer their own programs to assist low-income households. 7 U.S.C. § 2011. The Department administers Illinois’ program, 305 ILCS 5/12-4.4 (2020), which is entirely federally funded, 7 U.S.C. § 273.18.

As part of that administration — and as a condition of the continued receipt of federal funds — the Department must identify and collect any overpayment of SNAP benefits pursuant to the Illinois Public Aid Code, 305 ILCS 5/12-1 (2020), and the Illinois Administrative Code (“Code”) 89 Ill. Admin. Code § 165.10(a). 7 C.F.R. § 273.18; (A 8-9). SNAP overpayments are considered federal debts. 7 C.F.R. § 273.18(a)(2). The Department has that obligation regardless of whether it or the recipient caused the overpayment, 305 ILCS 5/12-12 (2020); 7 C.F.R. § 273.18; (A 8-9), or whether the recipient intentionally violated the Illinois Public Aid Code, 305 ILCS 5/12-15 (2020); 7 C.F.R. § 273.18. The Code also provides a means for a benefit recipient to contest overpayment determinations and collections by initiating an administrative appeal (“Assistance Appeal”). 89 Ill. Admin. Code § 14.1, *et seq.* These provisions mirror the federal requirements for SNAP fair hearings. 7 C.F.R. § 273.15.

#### **A. The Department’s investigation**

In December 2017, Ramzan stopped receiving SNAP benefits at the White Oak address when he changed his mailing address. (C 60, 521). His address change alerted the Department to the fact that he and Chaudhary had each been receiving benefits on their own accounts at the White Oak address, in violation of SNAP rules, since May 2015. (C 60, 523-24). The separate payments to Chaudhary’s account (four recipients) and Ramzan’s account (two recipients), cumulatively, were more than would have been paid if all six

recipients had properly been on one account. (*Id.*). That resulted in overpayments charged to Chaudhary, as the primary account holder at the White Oak address, from May 2015 through December 2017. (C 523-24).

In response, the Department initiated an investigation according to its internal procedures. (C 60-61, 114, 538). It found more evidence indicating that Ramzan lived at the White Oak address during the overpayment period. (C 115-246, 530, 538, 558). Based on its evidence, the Department determined that Chaudhary had received overpayments totaling \$21,821 (C 60-61), and began the overpayment collection process required by its rules (C 111-13).

The Department sent Chaudhary an overpayment determination notice explaining how the overpayment occurred, itemizing each payment making up the \$21,821, and advising that she was liable for repayment but could appeal the determination. (*Id.*). She challenged the determination by initiating an administrative appeal to try to show that Ramzan never lived with her at the White Oak address such that she was not actually overpaid. (C 40, 52-55). In response, the Department sent her documents explaining the administrative hearing process and scheduling the hearing (C 40-52), a Statement of Facts summarizing the reasons for the overpayment determination (C 52-54), and a copy of the Department's file with documents verifying the overpayment (C 52, 56-246, 327-459). As part of the pre-hearing exchange of evidence, Chaudhary sent the Department a letter explaining her relationship with Ramzan (C 461), a notice of change in social security payments for one of her children (C 462-

66), a judgment for dissolution of marriage to Ramzan (C 467-69), and a name-change petition (C 470). The Department's representative for the hearing, Ernesto Chairez, then held the required pre-appeal review with Chaudhary to discuss the documents that each had submitted in advance of the hearing. (C 502, 506).

## **B. The administrative hearing**

After reviewing the submitted documents, a Department ALJ held an administrative hearing in Chaudhary's appeal. (C 496, 500). Chairez, a non-attorney, represented the Department (C 502, 506), and Chaudhary appeared in her own behalf (C 500-01). No other witnesses testified. (C 501-02). Before the testimony began, the ALJ advised Chaudhary that she had the burden of proving by a preponderance of the evidence that the determination by the Department was wrong and explained that concept of burden of proof. (C 510-11). Chaudhary made no objection at this time. (*Id.*).

### **1. The Department's evidence of overpayment**

At the hearing, the Department presented the following evidence. Chaudhary was receiving SNAP benefits in May 2015 as the primary recipient on her household account at the White Oak address. (C 523-24). Under SNAP rules, all persons living at the same address must be on a single account. (C 523-24, 530-31). Chaudhary's account had four people: herself and her three children. (C 524).



Ramzan is the father of Chaudhary's three children. (C 586). In May 2014, he began receiving state medical benefits and had listed the White Oak address as his home address on his account for those benefits. (C 535). In May 2015, he opened his own separate SNAP account as the primary recipient, also at that address. (C 527). Ramzan's daughter from another marriage, was also on both of those accounts. (C 527-28, 535). His SNAP account disclosed two income sources: Ozark Pizza Company and his daughter's social security payments. (C 60, 484-85, 530-31, 534-35). Thus, as of May 2015, there were two separate SNAP accounts at the White Oak address and Ramzan had different children on each one. (C 527, 535).

According to SNAP rules, Ramzan and his daughter should have been added to Chaudhary's account with their income disclosed and factored into her benefit amount. (C 524, 530-31). And it was Chaudhary who should have reported the addition of Ramzan, his daughter, and their income because she was the first, and thus the primary, account holder at the White Oak address. (C 530-31).

In December 2017, Ramzan stopped receiving SNAP benefits at the White Oak address when he changed his mailing address. (C 60, 521). That address change alerted the Department to the fact that he had been receiving benefits on his own account at the White Oak address since May 2015, in violation of SNAP rules. (C 60, 523-24). The separate payments to Chaudhary's account (four recipients) and Ramzan's account (two recipients),

cumulatively, were more than would have been paid if all six recipients had properly been on one account. (*Id.*). Thus, the payments from May 2015 through December 2017 caused overpayments to Chaudhary as the primary account holder at the White Oak address. (C 523-24).

When the Department discovered the issue in December 2017, it sent an overpayment referral to its Bureau of Collections. (C 114, 538). The Bureau of Collections further investigated and found more evidence of an overpayment (C 115-246, 530, 538, 558), which included:

- records of telephone interviews of Chaudhary conducted by the Department in May 2015 (C 126-34) and December 2015 (C 135-42), in which she reported that her only household members were herself and her three children (C 132, 141, 535, 541-43);
- SNAP payments to Chaudhary on her account at the White Oak address during the relevant time period (C 143-62, 186-98), and to Ramzan at that address during the same time period (C 163-80, 199-206);
- the West Chicago Post Office's verification from February 2018 that Ramzan was receiving mail at the White Oak address at the relevant times (C 210-11, 558-59);
- vehicle records showing both Chaudhary and Ramzan with vehicles registered to the White Oak address (C 212-21, 559-60);
- Ramzan's income from Ozark Pizza Company during the relevant period (C 227-34, 562);
- internal Department records showing receipt of benefits for both Chaudhary and Ramzan at the White Oak address (C 237-46, 563-66);
- Illinois Secretary of State records showing a company, Yasmar, Inc., registered to Ramzan at the White Oak address listing Ramzan as president and Chaudhary as secretary (C 471-76, 568);

- property records showing that Ramzan and his former wife, Shannon, once owned the White Oak address property (C 477-83, 569-70, 572-73);
- social security records showing Ramzan's daughter's receipt of benefits at the White Oak address (C 484-85, 570, 572);
- Department overpayment calculator reports that documented each individual overpayment, and on which Chairez circled the relevant recipients and figures (C 275-305, 516-18); and
- Department ledger inquiries that showed overpayments by amount and individual, and upon which Chairez made notes for ease of explanation (C 306-23, 518-24).

None of those documents showing the White Oak address for either Ramzan or Chaudhary contained a unit or apartment number. Chairez authenticated each document and explained their contents during the hearing. (C 516-24, 535, 541-43, 558-60, 562-66, 568-70, 572-73).

## **2. Chaudhary's evidence**

Chaudhary presented the following evidence during the hearing. After Chaudhary and Ramzan divorced in 2012, she lived in Glendale Heights, Illinois with her three children. (C 573, 577). In January 2013, they moved to the White Oak address. (C 574). She said that Ramzan once lived there and moved out after his second wife died (*id.*), but also that she had no idea whether Ramzan had ever lived there (C 575). When the ALJ tried to clarify this point, Chaudhary gave several different responses, including:

- "Maybe yeah, yeah. I don't know." (*id.*);
- "This whole time where Jon was living, I don't know at the time, I don't know at the time, yeah." (C 576); and

- “He was not living there. He told me he was not living there. But he said that he was living there before, I don’t know. But at the time I moved in he was not there.” (*id.*).

Ramzan added Chaudhary’s name to Yasmar, Inc.’s business records as the secretary in 2006. (C 577). He later transferred the business to another person who lived in Pakistan, and for whom Chaudhary performed accounting services. (*Id.*). She was surprised that the business records had not been updated. (*Id.*).

After receiving the overpayment determination notice, Chaudhary learned that Ramzan used the White Oak address to receive mail because his mail got lost when he lived elsewhere. (C 577-78). Until then, she had no idea that Ramzan received mail at the White Oak address, as she never looked through the mail. (C 578-79). Instead, a person who lived in a basement apartment at the White Oak address sorted through all the mail. (*Id.*). “A couple guys” lived in that apartment, one named “Nisakut [phonetic]” and the other named Kahn; she did not know their last names. (C 580). One of them would give Chaudhary her mail and she did not know what he did with Ramzan’s mail. (C 579). She said: “[W]hatever (is Ramzan’s) maybe they have been giving it to you since I [inadudible 00:17:21] yeah.” (*Id.*). She “didn’t have any idea that the mailing address is going to bring [her] here like this.” (C 580).

At the close of the evidence, Chaudhary offered to submit additional documents, besides the ones that she submitted before the hearing, to show

that Ramzan lived elsewhere, and the ALJ agreed to hold the record open for several days. (C 589). Within that additional time, Chaudhary submitted: Ramzan's e-mail and affidavit dated after the hearing stating that he did not live at the White Oak address, describing their residence history, and attaching documents showing a different home address for him (C 595-643); affidavits from Nizakat Khan, Sher Dil Khan, and Mohammad Shakeel dated after the hearing stating that Chaudhary lived at the White Oak address with only her children (C 644-46); and her lease for the White Oak address (C 647-58).

### **C. The ALJ's findings**

After the hearing, the ALJ issued a decision (C 665-67), making factual findings under a preponderance of the evidence standard. Specifically, the ALJ found that the Department determined that Chaudhary received an overpayment of \$21,821 in SNAP benefits from May 2015 through December 2017, because: she and Ramzan received SNAP benefits on separate accounts when they were required to be on a single account together as part of the same household living at the same address, and she did not report Ramzan's work and social security income to the Department. (C 665-66).

In addition, the ALJ found that the overpayment occurred because Ramzan's income and Kiran's social security payments were not included on Chaudhary's SNAP account, but should have been because Ramzan also had an active account at the same address. (C 666). The post office verified the White Oak address as his mailing address, and he used it for registration of a

corporation and his vehicles. (*Id.*). Thus, the ALJ found, Ramzan was part of Chaudhary's household. (*Id.*). In summarizing Chaudhary's evidence, the ALJ recounted her family history with Ramzan, and noted her testimony that she was unaware that Ramzan had once lived at the White Oak address, that he received his mail there, and that he registered a business there with her as an officer. (C 666-67).

#### **D. The Secretary's decision**

The Secretary thereafter issued a final administrative decision upholding the Department's and the ALJ's overpayment determination. (C 663-74). In the decision, the Secretary summarized (C 666-67) and analyzed (C 672-74) the relevant evidence from the administrative hearing, and adopted the ALJ's factual findings (C 666, 673). The Secretary also found that Chaudhary's testimony "lack[ed] credibility" (*id.*), noting that: "[i]t is highly implausible" that she did not know that Ramzan once owned and lived at the White Oak address (*id.*); "it is highly unlikely" that others collected the mail every day and that she was "clueless" or "completely oblivious" to the fact that Ramzan got his mail there (*id.*); and her testimony that she and Ramzan never lived together during their marriage contradicted her written statement that they had not lived together "since" their divorce (*id.*).

The Secretary concluded that because Chaudhary did not show by a preponderance of the evidence showed that Ramzan lived elsewhere at the relevant times, the Department's and the ALJ's overpayment determination

was correct. (C 665-67, 672-74). In so concluding, the Secretary relied on the “abundance” of documents from the Department’s investigation showing the White Oak address as Ramzan’s address — Secretary of State records listing Ramzan and Chaudhary as officers of Yasmar, Inc., post office address verification, and state vehicle registration records — to find that it was more likely than not that both lived there during the overpayment period. (*Id.*). As a result, the Secretary ruled, Ramzan should have been included on Chaudhary’s account and his income reported. (C 673). The Secretary also found that Chairez’s testimony and the Department’s documents showing the overpayment calculation sufficiently verified the \$21,821 determination. (*Id.*).

### **The circuit court proceedings**

Chaudhary filed a complaint in the circuit court against the Department and its Secretary, seeking review of the Secretary’s final administrative decision via a common law writ of certiorari. (C 11-12). In the complaint, Chaudhary, now represented by counsel, did not claim that the burden of proof was improperly placed on her during the administrative hearing or that she was denied due process in the administrative proceeding. (*See id.*). As the answer to the complaint, the Department and its Secretary filed the administrative record. (C 36-39).

Chaudhary’s memorandum in support of her complaint summarized the evidence from the administrative hearing, and for the first time raised the burden of proof issue and contended that she was denied due process. (C 710-

13). The Department and its Secretary then filed a memorandum in support of the final administrative decision (C 726), summarizing the evidence from the hearing and arguing that: the decision was not against the manifest weight of the evidence (C 731-32); the Secretary found that Chaudhary was not a credible witness (C 733-35); Chaudhary forfeited the burden of proof and due process issues (C 739); and she correctly had the burden of proof during the hearing and received due process in any event (C 735-39).

The circuit court held a hearing during which Chaudhary argued that the Department should have had the burden of proof at the administrative hearing and did not meet it. (Sup R 4, 6-8). The Department and its Secretary countered that the burden of proof was assigned correctly during the hearing, Chaudhary forfeited that issue anyway, and there was evidence supporting the final administrative decision such that it was not against the manifest weight of the evidence regardless of the placement of the burden of proof. (C 731-37; Sup R 9-18).

The circuit court reversed the Secretary's final administrative decision, reasoning that the ALJ incorrectly placed the burden of proof on Chaudhary, the Department bore the burden of proving a SNAP overpayment (C 754), and the Department did not produce enough evidence to sustain its burden of proof that Ramzan lived at the White Oak address during the overpayment period (Sup R 20-22).

The Department and its Secretary appealed. (C 755-58).



### **The appellate court proceedings**

On appeal, the Department and its Secretary first explained that issues not raised before the agency generally will not be considered for the first time on administrative review. (A 59). And under the applicable standards of review, they observed, the Secretary's factual findings should be deemed *prima facie* true and correct (A 59-60), and the Secretary's finding with respect to Chaudhary's lack of credibility was entitled to deference (A 78).

On the merits of burden of proof issue, the Department and its Secretary first detailed the statutory and regulatory scheme that governs the conduct of the Department's administrative hearings, including those for overpayment collections. (A 63-69). They acknowledged that the provisions governing administrative hearings did not specifically place the burden of proof on either party to the proceeding (A 63), but argued that burden was impliedly assigned to the party initiating the administrative appeal, here Chaudhary, because — most significantly — the Department was allowed to immediately proceed to collect an overpayment without any further steps to prove it if the other party did not appeal and proceed with a hearing (A 66-67 (citing 89 Ill. Admin. Code § 14.60)). Next, they stressed that the general rule under Illinois law is that the party who initiates an administrative appeal of an agency's decision bears the burden at a hearing to prove that the agency was wrong, and that the precedent upon which Chaudhary and the circuit court relied did not even discuss the burden of proof issue. (A 69-70). Additionally,

they argued that the burden of proof issue should be deemed forfeited because Chaudhary did not first raise it before the Department. (A 62). Finally, they stressed that the placement of the burden of proof on Chaudhary did not violate her due process rights (A 72-75), but that she forfeited the due process issue in any event (A 71-72).

The Department and its Secretary further argued that the Secretary's final administrative decision was not against the manifest weight of the evidence regardless of the assignment of the burden of proof. (A 75-79). They pointed out that the Secretary's decision turned on factual questions and so should be reviewed under the "manifest weight" standard, which requires an agency's factual finding to be upheld if there was any evidence in the record to support it. (A 76). And they detailed the evidence upon which the Secretary relied indicating that Ramzan lived at the White Oak address during the overpayment period (A 76-77), showing that evidence in the record supported the Secretary's finding and required that it be upheld (A 77-79).

The appellate court chose to overlook Chaudhary's forfeiture of the burden of proof issue and address that issue on the merits. (A 10-11). It agreed that the governing Code provisions did not assign the burden of proof to either party, and that the "default rule" in that scenario places the burden on the party who initiates the proceeding. (A 14). But the court concluded that it was the Department rather than Chaudhary who initiated the administrative hearing. (A 14-15). In doing so, the court relied on precedent

that did not discuss the burden of proof issue, and rejected precedent from this Court and the Illinois Appellate Court applying the “default rule” — that the individual rather than the agency had the burden of proof — in in cases, like this one, where an agency first took action against an individual and the individual then initiated an administrative proceeding to prove the agency wrong. (A 15-17).

Next, the appellate court decided that regardless of who bore the burden of proof, the Secretary’s finding that Ramzan lived at the White Oak address during the overpayment period was against the manifest weight of the evidence. (A 20-21). According to the court, the Secretary should not have relied on the Department’s evidence because it “was largely from outside the overpayment period” (A 21); instead, the evidence that Chaudhary offered showing a different mailing address for Ramzan should have been credited (A 22-23). Finally, the court disregarded the finding that Chaudhary was not a credible witness, stating that the Secretary’s “final decision was unreasonable.” (A 24).

For those reasons, the appellate court affirmed the circuit court’s judgment reversing the Secretary’s final administrative decision. (*Id.*). The Department and its Secretary petitioned this Court for leave to appeal the appellate court’s decision (A 90), and this Court allowed the petition (A 91).

## ARGUMENT

**I. The appellate court erred in ruling that the Department bore the burden of proof at an administrative hearing to establish by a preponderance of the evidence that its SNAP overpayment determination was correct.**

The appellate court erred as a matter of law by ruling that the Department bore the burden to prove at the administrative hearing that its overpayment determination was correct. Because the Department’s regulations did not explicitly assign the burden of proof at the hearing, but by implication placed it on Chaudhary as the party challenging its overpayment determination, the “general” or “default” rule under Illinois law placed the burden on her rather than the Department.

**A. The standard of review is *de novo*.**

A question about which party bears the burden of proof in a proceeding is one of law that is reviewed *de novo*. *1350 Lake Shore Assocs. v. Healey*, 223 Ill. 2d 607, 627 (2006). Resolution of that question here also turns on the interpretation of the Department’s administrative regulations, which have the force and effect of law, *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 38, and to which statutory construction principles apply, *People ex rel. Madigan v. Ill. Commerce Comm’n*, 231 Ill. 2d 370, 380 (2008). Issues of statutory construction are also reviewed *de novo*. *Evans v. Cook Cnty. State’s Atty.*, 2021 IL 125513, ¶ 41.

**B. The Department’s regulations impliedly assigned the burden of proof to Chaudhary, and the Department’s ALJ and the Secretary applied the burden correctly.**

The Department’s regulations impliedly placed the burden of proof on Chaudhary as the party who initiated the challenge to the Department’s overpayment determination, such that the “default rule” rule under Illinois law placed the burden of proof on her. And the Department’s ALJ and the Secretary applied the burden of proof correctly.

When determining which party bears the burden of proof in the context of an administrative proceeding, a court begins by examining the statute or administrative regulation at issue. *See, e.g., Schaffer v. Weast*, 546 U.S. 49, 56 (2005)<sup>2</sup>; *Citizens Org. Project v. Dep’t of Nat. Res.*, 189 Ill. 2d 593, 597 (2000). In that context, the United States Supreme Court has indicated that if the relevant statute or regulation does not explicitly allocate that burden, “the ordinary default rule” is that the parties who initiate the action “bear the risk of failing to prove their claims.” *Schaffer*, 546 U.S. at 56 (citing C. Mueller & L. Kirkpatrick, *Evidence* § 3.1, p. 104 (3d ed. 2003)). The United States Congress has “also expressed its approval of th[is] general rule” as applied to administrative review proceedings. *Id.* at 57 (citing *Dir., Off. of Workers’ Comp. Programs v. Greenwich Collieries*, 512 U.S. 267, 271 (1994)).

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<sup>2</sup> Federal case law is relevant to this analysis because the Illinois Administrative Review Law is patterned after federal law, *Ceja v. St. Police Merit Bd.*, 12 Ill. App. 3d 52, 57 (1st Dist. 1973), as the appellate court recognized (*see* A 13 (relying on *Schaffer*)).

Exceptions to the default rule, such as elements akin to affirmative defenses, “are extremely rare.” *Id.* Thus, absent a reason to believe that the legislature intended otherwise, the burden lies with the party seeking relief from an agency’s action. *Id.* at 57-58.

Illinois law follows this default rule, regardless of whether the party initiating the administrative appeal to seek relief from the agency’s action either: (1) first claimed and was denied a benefit or privilege, or (2) initially had a government agency revoke or suspend an existing benefit or privilege. *See, e.g., Arvia v. Madigan*, 209 Ill. 2d 520, 540-41 (2004) (revocation or suspension of state driving privileges); *People v. Orth*, 124 Ill. 2d 326, 337-38 (1988) (same); *Eastman Kodak Co. v. Fair Emp. Pracs. Comm’n*, 86 Ill. 2d 60, 73-75 (1981) (ability to bid on public contracts); *Smoke N Stuff v. City of Chi.*, 2015 IL App (1st) 140936, ¶ 15 (business owner had burden to prove wrongful suspension of city business license); *Slocum v. Bd. of Trs. of State Univs. Ret. Sys.*, 2013 IL App (4th) 130182, ¶ 26 (employee seeking to purchase service credits under Illinois Pension Code had burden to prove sufficient employment after request denied); *Bd. of Educ. of Valley View Cmty. Unit Sch. Dist. No. 365-U v. Ill. State Bd. of Educ.*, 2013 IL App (3d) 120373, ¶ 56 (hearing officer held employee to burden of proof of alleged wrongful termination of employment); *McDonald v. Ill. Dep’t of Hum. Servs.*, 406 Ill. App. 3d 792, 804 (4th Dist. 2010) (Medicaid benefit recipient had burden to prove proper

transfer of assets where agency delayed payment of benefits for alleged improper transfer).

Here, that party is Chaudhary, who initiated the administrative appeal to challenge the Department's overpayment determination. Thus, the default rule puts the burden on her unless the relevant provisions directly assigned it to the Department — which they do not, as all parties and the appellate court agreed. (C 714; A 14, 63). But even if this Court were to look beyond the relevant provisions for indicia of drafter's intent with respect to the assignment of the burden (which, again, the Court need not do under the default rule), an examination of the Code as a whole demonstrates the drafter's intent to assign the burden to benefit recipients like Chaudhary.

When construing an agency's regulations, statutory construction rules apply. *Madigan*, 231 Ill. 2d at 380. A court starts by examining the text of the regulation to determine the drafters' intent. *Id.* To determine the plain meaning, a court considers the regulation in its entirety. *Id.* Unambiguous terms will be given their plain meaning, and no part of the regulation will be rendered superfluous. *Home Star Bank & Fin. Servs. v. Emergency Care & Health Org., Ltd.*, 2014 IL 115526, ¶ 24.

Examination of the applicable Code sections shows that the burden rested with Chaudhary. The Department's overpayment collection process is governed by 89 Ill. Admin. Code § 165.10, *et seq.* Section 165.10 states that the Department must identify and recover SNAP overpayments, which “*shall*” be

collected pursuant to other subparts. 89 Ill. Admin. Code § 165.10(a) (emphasis added). Thus, this case falls within the rule that, where an agency is required to act against an individual and provides a process for the individual to challenge the action, the burden of proof is properly placed on the challenging individual. *See, e.g., Arvia*, 209 Ill. 2d at 540-41 (placing burden of proof on driver contesting license suspension where suspension was required by statute and state provided administrative hearing process to challenge suspension); *Orth*, 124 Ill. 2d at 540-41 (placing burden of proof on driver contesting license suspension where statute required suspension and state provided administrative hearing process to challenge suspension); *Smoke N Stuff*, 2015 IL App (1st) 140936, ¶ 15 (placing burden of proof on business owner contesting city license revocation at administrative hearing to show city inspection and revocation for nonpayment of cigarette taxes was wrong).

That Chaudhary, as an individual challenging the Department's SNAP overpayment determination, carried the burden of proof is confirmed by Code provisions setting forth the appeal process available to such individuals. That process is governed by 89 Ill. Admin. Code § 14.1, *et seq.* Under that section, the appellant (here, Chaudhary): initiates the appeal, 89 Ill. Admin. Code § 14.10; “shall have the opportunity to [p]resent evidence and witnesses” and “[r]efute testimony or other evidence and cross-examine witnesses” as part of an administrative hearing, 89 Ill. Admin. Code § 14.22(a); and may ask the ALJ to issue subpoenas, 89 Ill. Admin. Code § 14.30. Once the appellant starts



that process, the Code does not specify any action that the Department may or must take to gather or present evidence. If the appellant fails to appear at or refuses to proceed with the hearing, then the appeal will be dismissed, 89 Ill. Admin. Code § 14.60(a), and, at that point, the Department shall proceed to collect the overpayment, 89 Ill. Admin. Code § 14.60(c). And if the person has no objection to the agency's action and thus does not appeal at all, then the Department may proceed with collecting the overpayment without a hearing before an ALJ ever being held, 89 Ill. Admin. Code 165.1, *et seq.* The Department may also so proceed if an appeal is dismissed before hearing. 89 Ill. Admin. Code § 14.60.

The Code provisions relating to SNAP overpayment collection procedures, then, are in direct contrast to administrative hearing procedures that explicitly place the burden of proof on the Department, such as those for disqualifying a person from receiving SNAP benefits altogether for an intentional rules violation, *see* 89 Ill. Admin Code § 14.300 *et seq.* In that situation, the Department must initiate the administrative proceeding, 89 Ill. Admin. Code §§ 14.300, 14.310, and bears the burden of proof by clear and convincing evidence, 89 Ill. Admin. Code § 14.340. And if the recipient does not appear at the hearing, the hearing must proceed and the Department must meet its burden of proof. (*Id.*).<sup>3</sup> Similar Code sections also specifically place

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<sup>3</sup> Section 14.60 is also in direct contrast to statutes in which the General Assembly has required a party with the burden of proof to produce evidence in support of its case even if the opposing party does not proceed, such as the

the burden on the agency. *See, e.g.*, 59 Ill. Admin. Code 50.90(d)(2) (abuse, neglect, or financial exploitation by healthcare worker); 77 Ill. Admin. Code 672.600(b) (vendor sanction hearings); 89 Ill. Admin. Code 650.130(g)(3) (disciplining blind vendors).

In this regard, the Department's and the Secretary's position is consistent with the United States' Supreme Court's decision in *Schaffer*. There, the Court explained that placing the burden of proof on an agency assumes that "every [agency action] is invalid until the [agency] demonstrates that it is not." *Schaffer*, 546 U.S. at 59. But the Court rejected this assumption, reasoning that "Congress appears to have presumed instead that, if the [agency's] procedural requirements are respected, [individuals] will prevail when they have legitimate grievances." *Id.* at 60. That reasoning applies with equal force here. Where, as here, the Department follows its prescribed internal rules and the associated administrative hearing process, then it should be presumed that the Department's SNAP overpayment determinations are correct unless and until an individual benefit recipient proves otherwise.

Similarly, the Department's and Secretary's position is consistent with this Court's decision in *Orth*. There, the statutory provisions at issue did not specifically assign the burden of proof. *Orth*, 124 Ill. 2d at 337. Still, the

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provisions of the Illinois Code of Civil Procedure that apply where a plaintiff in a civil lawsuit seeks a default judgment, *see* 735 ILCS 5/2-1301(d) (2020).

Court’s “[c]onsideration of the overall scheme strongly suggest[ed]” that the motorist bore the burden of proof. *Id.* The scheme provided for rescission of a summary driver’s license suspension only after “the motorist takes the positive step of making a written request for a judicial hearing in the circuit court of venue.” *Id.* (internal quotations omitted). The Code in this case effectively did the same thing by requiring a benefit recipient to request an administrative appeal to challenge a SNAP overpayment determination.

Significantly, the Department’s process does not create a situation where a benefit recipient like Chaudhary must make a case based on facts particularly within the Department’s possession. Indeed, Chaudhary was in a much better position than the Department to have information specific to where Ramzan lived, and when. And, in addition to her own evidence, the regulations provided her with pre-hearing protections — production of the Department’s evidence and a pre-hearing meeting with a representative to go over that evidence — to understand the reasons for the Department’s determination and the appeal process. *See* 89 Ill. Admin. Code §§ 14.11, 14.12; (C 502, 506). Similar provisions supported assignment of the burden to the party initiating the administrative proceedings in *Schaffer*. *See* 546 U.S. at 61 (parents initiating challenge to school district’s proposed individual education plan bore burden of proof).

Thus, the relevant Code provisions show that the party initiating the administrative appeal to challenge a SNAP overpayment determination by the

Department — in this case Chaudhary — bears the burden to prove that the determination was wrong. And there is no indication of any intent to place the burden on the Department. Under these circumstances, there is no reason for this Court to depart from the default rule assigning the burden of proof to the party challenging the agency’s action.

**C. The appellate court erred by misapplying the default rule and overlooked binding precedent.**

In assigning the burden of proof to the Department rather than Chaudhary, the appellate court misapplied both the default rule and binding precedent.

**1. Chaudhary attempted to “change the status quo” by initiating proceedings before an administrative tribunal, and thus she bore the burden of proof.**

To start, the appellate court miscast the Department, as opposed to Chaudhary, as the party seeking relief. (A 14-15). In doing so, the appellate court erroneously viewed the Department as “the party who seeks to change the status quo.” (A 15). According to the appellate court, the Department “initiated the proceedings to determine a SNAP overpayment,” and “initiated an overpayment claim.” (A 13-15). But the Department did not need to initiate an action or make a claim in any tribunal to determine if there had been an overpayment. Rather, it affirmatively determined that there had been an overpayment through its required internal procedures, as required by federal law. (C 115-246, 523-24, 530, 538, 558). It then notified Chaudhary of the determination and her option to either (1) choose a repayment method or

(2) challenge the determination in an administrative appeal. (C 111-13, 40-54).

There was no proceeding at that point, and if Chaudhary had chosen repayment there would have been none. But as was her right, she “initiated the proceedings to determine a SNAP overpayment” by opting to appeal. (C 40, 52). And, as explained, if she had not pursued the appeal, or the appeal been dismissed before a hearing, the Department would not have had to prove anything before beginning collection of the overpayment. *See* 89 Ill. Admin. Code §§ 14.60, 165.1 *et seq.* This is consistent with the federal SNAP requirements. 7 C.F.R. § 273.18.

While the appellate court based its decision, in part, on the fact that the ALJ allowed the Department to present its evidence first during the hearing (A 18), that fact is legally irrelevant. An ALJ has discretion to conduct an administrative hearing as he or she sees fit, as long as no party is prejudiced, *Wilson v. Dep’t of Prof. Regul.*, 344 Ill. App. 3d 897, 907 (1st Dist. 2003), but that exercise of discretion in this instance to have the Department proceed first did not alter the assignment of the burden of proof. The applicable Code provisions do not proscribe the order of presentation of evidence at an administrative hearing. Rather, they provide only that the hearing “shall not be bound by technical or procedural rules” and “shall be conducted in a manner best calculated to conform to substantial justice,” 89 Ill. Admin. Code. § 14.23, which, again, is within the ALJ’s discretion, *Wilson*, 344 Ill. App. 3d at 907. This is consistent with federal SNAP regulations that grant broad

authority to a state hearing official to “[r]egulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing.” 7 C.F.R. § 273.15(m)(2)(iv).

The appellate court also erroneously believed that Chaudhary did not know the reason for the Department’s overpayment determination. (A 22-23). The record is clear that Chaudhary received a notice of the overpayment determination. (C 111-13). Then, when she requested an appeal, documents were exchanged between the parties, and Chairez, the Department’s representative, had the required pre-hearing meeting with Chaudhary to discuss the evidence and the Department’s position before the hearing took place. (C 53-54, 111-13, 502).

Indeed, the process followed by the Department here is similar to that in *Szewczyk v. Board of Fire & Police Commissioners*, 2011 IL App (2d) 100321, upon which the appellate court relied. (A 15). In *Szewczyk*, the plaintiff police chief was discharged, and initiated an administrative appeal seeking reinstatement. 2011 IL App (2d) 100321, ¶ 62. Describing *Szewczyk*, the appellate court noted that the Illinois Municipal Code did not entitle the chief “to a hearing where the Village would be required to show cause for his termination or allow him to present a defense,” and he was thus required to file a petition for reinstatement in court and bear the burden of proof. (A 15). But the appellate court’s discussion of *Szewczyk* was flawed. The appellate court appeared to reason that a person (such as the police chief in *Szewczyk* or

Chaudhary) would bear the burden of proof only when the governing law and regulations do not provide for an administrative appeal and the individual must file a lawsuit to challenge the agency's action. Following that logic: (1) if the governing law does not provide for an administrative appeal, the party initiating a lawsuit to challenge the agency's decision would have the burden of proving the agency wrong; but (2) if the law does so provide and is silent on the burden of proof, then the initiation of an appeal would shift the burden of proof to the agency. That cannot be correct. An agency should not bear the burden of proof where: (1) it must — as in this case — take a particular action (A26-27); (2) it provides an administrative appeal process to challenge its decision; and (3) the statutes or regulations do not assign the burden of proof to it.

Finally, the appellate court undertook virtually no analysis of the relevant Code provisions. Its only reference to the Code was to 89 Ill. Admin. Code § 165.10, which concerns the Department's procedures for making a SNAP overpayment determination. (A 14-15). But the appellate court ignored the sections that govern the administrative appeal and hearing processes, 89 Ill. Admin. Code § 14.1 *et seq.*, and thus failed to consider that the Department may collect an overpayment with no prove-up if an appeal does not proceed, as is consistent with the federal SNAP regulations. 7 C.F.R. 273.18. The appellate court's analysis thus did not honor statutory construction principles that require statutes and administrative regulations to be construed as a

whole, and that no provision be rendered superfluous. *See M.A.K. v. Rush-Presbyterian-St. Luke's Med. Ctr.*, 198 Ill. 2d 249, 257 (2001).

**2. Other precedent places the burden of proof on Chaudhary as the party who initiated the administrative appeal.**

As explained, *supra* p. 22-24, precedents of this Court and the Illinois Appellate Court place the burden of proof on the party who initiated the administrative appeal, here Chaudhary. In holding otherwise, the appellate court primarily relied on *Eastman v. Department of Public Aid*, 178 Ill. App. 3d 993 (2d Dist. 1989) (A 16-17), which does not even mention, much less discuss, the burden of proof. Instead, *Eastman* simply requires the Department to lay an evidentiary foundation for business records that it introduces into evidence during an administrative hearing. *See* 178 Ill. App. 3d at 998. That does not translate into assigning the Department the burden of proof for the entire proceeding. Indeed, any evidence that a respondent offers in response to a petitioner's case — regardless of where the initial burden of proof lies — must have an evidentiary foundation.

Instead of relying on *Eastman*, the appellate court should have followed *Smoke N Stuff*, 2015 IL App (1st) 140936, on which the Department relied. (A 16). *Smoke N Stuff* involved an administrative appeal to contest a government entity's initial action against a business, in that case the city's revocation of a business license due to a tax law violation. 2015 IL App (1st) 140936, ¶¶ 16, 24. The court in *Smoke N Stuff* noted that the business, because it initiated



the administrative appeal, bore the burden of proof at the hearing to restore its license. *Id.* at ¶¶ 15-16. *Smoke N Stuff* thus supported the position of the Department and its Secretary that Chaudhary had the burden of proof. The appellate court in this case, however, dismissed *Smoke N Stuff* because “it did not address the burden of proof in any detail” and “provided one sentence stating the general rule that ‘[t]he burden of proof is on the plaintiff in administrative proceedings.’” (A 16). But that is one more sentence than *Eastman* devoted to the issue. And the court in *Smoke N Stuff* concisely stated what the appellate court in this case acknowledged as the “general rule” (*id.*) for good reason — because it has long been the law and the parties in *Smoke N Stuff* did not dispute it. *Smoke N Stuff*, 2015 IL App (1st) 140936, ¶¶ 15-16.

The appellate court also criticized *Smoke N Stuff* for citing *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497 (2006), because *Marconi* involved a situation where the plaintiff police officer took the initial step of applying for pension disability benefits, was denied them by the Board, and then appealed the denial rather than having an overpayment of benefits collected. (A 16). But that is a distinction without a difference. Like Chaudhary and the business in *Smoke N Stuff*, the officer in *Marconi* initiated an administrative proceeding to challenge an adverse agency determination. Thus, contrary to the appellate court’s suggestion, both *Smoke N Stuff* and *Marconi* accurately identified and applied the default rule.

Similarly, the appellate court's attempt to distinguish *Arvia* because the Code provisions at issue there assigned the burden of proof to the individual challenging his license suspension, and the suspension occurred by operation of law rather than government action (A 15-16), is irrelevant. The initial suspension was still done pursuant to a governmental mandate. And the Department's overpayment determination and subsequent action was similarly mandated by the Code. 89 Ill. Admin. Code § 165.10(a). Thus, *Arvia's* reasoning that the burden of proof lies with the party challenging the government's action, absent some indication otherwise in the relevant statute or regulations, should apply here.

In short, there is nothing unique about this case to justify deviating from the default rule that a party who initiates an administrative appeal to challenge an agency's position is the plaintiff in the subsequent hearing, and has the burden of proving the agency wrong. *See, e.g., Marconi*, 225 Ill. 2d at 532-33; *Arvia*, 209 Ill. 2d at 540-41; *Orth*, 124 Ill. 2d at 337-38; *Smoke N Stuff*, 2015 IL App (1st) 140936, ¶ 15; *Slocum*, 2013 IL App (4th) 130182, ¶ 26; *Bd. of Educ.*, 2013 IL App (3d) 120373, ¶¶ 53-59; *McDonald*, 406 Ill. App. 3d at 804. This Court should reaffirm the principle that the party who initiates an administrative appeal to challenge an agency's decision bears the burden of proof unless a statute or regulation expressly provides otherwise.

**D. Placing the burden of proof on Chaudhary did not violate her due process rights because she received a fair hearing before a neutral tribunal.**

Chaudhary argued — for the first time — in her circuit court brief that placing the burden of proof on her at the administrative hearing denied her due process of law. (C 11-12, 710-13). The appellate court did not reach that issue because it determined that the Department had the burden of proof and that the Secretary’s decision was against the manifest weight of the evidence. (A 19). But to the extent that the due process issue becomes relevant in determining that the burden of proof was properly placed on Chaudhary, she was not denied due process.

In the administrative setting, due process does not require the equivalent of a judicial proceeding. *Abrahamson v. Ill. Dep’t of Prof. Regul.*, 153 Ill. 2d 76, 92 (1992). Rather, parties must receive notice and the opportunity to be heard, have the chance to cross-examine adverse witnesses, and receive impartial evidentiary rulings. *Id.* at 95. Chaudhary received all of those protections, consistent with federal and Illinois regulations. The Department made the initial adverse determination that Chaudhary had been overpaid SNAP benefits and provided her with a forum to challenge that determination before a neutral decisionmaker. She had a hearing (C 496), and was advised of her rights and obligations before and during that hearing (C 41, 45, 325-26, 508, 510, 573-89). In *Arvia* and *Orth*, this Court recognized that placing the burden of proof on the individual challenging government action at

an administrative hearing does not violate due process, *see, e.g., Orth*, 124 Ill. 2d at 337-38; *Arvia*, 209 Ill. 2d at 542, and there is no basis for a different result here.

**II. The appellate court also erred by reversing the Secretary's decision because it was not against the manifest weight of the evidence.**

The appellate court also erred in finding that the Secretary's decision was against the manifest weight of the evidence. This is so regardless of which party bore the burden of proof.

**A. The standard of review for this issue is whether the Secretary's decision was against the manifest weight of the evidence.**

The Secretary's decision upholding the Department's overpayment determination was the final administrative decision in this case. *See* 89 Ill. Admin. Code § 14.70(a). That decision was reviewable by the circuit court, 89 Ill. Admin. Code § 14.70(e), through a common law writ of certiorari because no Illinois statute expressly adopts the Administrative Review Law ("ARL"), 735 ILCS 5/3-101, *et seq.* (2020), for final agency decisions about the administration of SNAP benefits, *see Outcom, Inc. v. Ill. Dep't of Transp.*, 233 Ill. 2d 324, 333 (2009) (certiorari available to review final adjudicatory decisions of agency if no other means of review is provided by law).

The nature and extent of judicial review under certiorari is virtually the same as review under the ARL. *Dubin v. Pers. Bd. of City of Chi.*, 128 Ill. 2d 490, 498 (1989). The reviewing court reviews the decision of the

administrative agency rather than that of the circuit court. *Wade v. City of N. Chi. Police Pension Bd.*, 226 Ill. 2d 485, 504 (2007). And the standard of review depends on the issue presented, whether it be one of law, one of fact, or one of law and fact. *City of Belvidere v. Ill. St. Lab. Rel. Bd.*, 181 Ill. 2d 191, 204-05 (1998). The Secretary’s factual findings are “*prima facie* true and correct,” and will not be disturbed unless they are against the manifest weight of the evidence. *Kouzoukas v. Ret. Bd. of Policemen’s Annuity & Benefit Fund of City of Chi.*, 234 Ill. 2d 446, 463 (2009). When the issue is one of law, the *de novo* standard applies. *Id.* Whether a given set of facts meets the applicable legal standard is a mixed question of fact and law, reviewed under the clear error standard. *Cinkus v. Vill. of Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 211 (2008).

The Secretary’s decision here turned on questions of fact — whether Ramzan lived at the White Oak address at the relevant times such that he should have been on Chaudhary’s SNAP account — and so is reviewed under the manifest weight of the evidence standard. *Kouzoukas*, 234 Ill. 2d at 463. Under that standard, if there is any evidence in the record to support the agency’s factual finding, it should be upheld. *Abrahamson*, 153 Ill. 2d at 87-88, 96. The fact that an opposite conclusion is reasonable or that a reviewing court might have ruled differently will not justify reversal. *Id.* at 88.

**B. The Secretary's decision was not against the manifest weight of the evidence because there was evidence in the record that supported the decision.**

The Secretary's decision was not against the manifest weight of the evidence because there was evidence in the record to support the finding that Ramzan lived with Chaudhary at the White Oak address at the relevant time. That evidence included: SNAP payments to Chaudhary and Ramzan on separate accounts at the White Oak address from May 2015 to December 2017 (C 143-80, 186-206); post office verification of the White Oak address as Ramzan's mailing address (C 210-11, 558-59); state records showing both Chaudhary and Ramzan with vehicles registered to the White Oak address (C 212-21, 559-60); Department records showing receipt of benefits for both Chaudhary and Ramzan at the White Oak address (C 237-46, 563-66); registration of Yasmar, Inc. at the White Oak address with Ramzan and Chaudhary as officers filed with the Illinois Secretary of State (C 471-76, 568); property records showing that Ramzan once owned the White Oak property (C 477-83, 569-70, 572-73); and social security records showing the receipt of benefits by Kiran, Ramzan's child from a prior marriage, at the White Oak address (C 484-85, 570, 572). None of those documents showed separate living units at that address.

During the administrative hearing, Chairez authenticated and explained this evidence, as well as records showing how the Department calculated the overpayment amount. (C 275-323, 516-24, 535, 541-43, 558-60, 562-66, 568-70,

572-73). This was more than enough to support the Secretary's finding that Ramzan lived at the White Oak address during the relevant time under the manifest weight of the evidence standard. *See Abrahamson*, 153 Ill. 2d at 87-88, 96.

The evidence presented by Chaudhary did not change that result. Given Chaudhary's history with Ramzan, the ALJ and the Secretary did not believe Chaudhary's testimony that she did not know whether Ramzan had lived at the White Oak address, or that she could be "clueless" and "completely oblivious" to the fact that he used it as his mailing address. (C673). Indeed, the Secretary found Chaudhary's story to be "unlikely" and "highly implausible," and specifically stated that she "lack[ed] credibility." *Id.* Those findings deserve substantial deference on judicial review. *Abrahamson*, 153 Ill. 2d at 87-88, 96; *see also id.* at 88 (agency's credibility determinations must be affirmed if supported by evidence in the record).

Furthermore, Chaudhary produced much of her evidence after the administrative hearing, when she had gained the benefit of hearing the Department's testimony and evidence and the ALJ's comments. Only then did she produce affidavits from Ramzan and others purportedly living at the White Oak address stating that Ramzan did not live there at the relevant time. (C 594-96, 644-46). Contrary to the appellate court's suggestion (A 14), Chaudhary knew the reason for the overpayment determination based on the Department's notice, statement of facts, and her pre-hearing meeting with

Chairez (C 52-54, 111-13, 502). And she was advised upon confirmation of the appeal that she initiated to start gathering evidence to support her challenge. (C 40-41). Yet she waited until the Department made its record and she had assessed the ALJ's comments to gather more evidence. The Secretary was allowed to weigh her post-hearing evidence accordingly.

And just because Chaudhary produced evidence contradicting the Department's, that did not mean that the Secretary had to give Chaudhary's evidence equal or greater weight, as the appellate court suggested. (A 22). Weighing of evidence and resolution of inconsistencies in the evidence rests solely with the trier of fact. *People v. Brown*, 2013 IL 114196, ¶ 48. Thus, it is for the final agency decisionmaker to evaluate the evidence, judge witness credibility, resolve conflicts in the evidence, and draw inferences from the facts. *Morgan v. Dep't of Fin. & Prof. Regul.*, 388 Ill. App. 3d 633, 658 (1st Dist. 2009) (noting that agency's credibility finding entitled to deference despite witness's prior inconsistent statements).

Instead of according the Secretary's factual and credibility findings deference, the circuit court improperly reweighed the evidence. (Sup R 21-22); *see Bd. of Educ. of City of Chi. v. Ill. Educ. Lab. Rel. Bd.*, 2015 IL 118043, ¶ 15 (reviewing court should not reweigh evidence or substitute its judgment for that of agency); *Abrahamson*, 153 Ill. 2d at 87-88, 96 (same). The appellate court repeated that mistake by conducting its own analysis of the evidence and substituting its judgment for the Secretary's.



To begin with, the appellate court relied on Chaudhary's assertion that the Secretary based her decision on evidence from outside the overpayment period. (A 21). But that evidence requires proper context. The Department's investigation, including its search for evidence, naturally took place after the overpayment period ended. (C 60, 521, 523-24). Hence, those records were printed or produced on a date after the overpayment period, but could still reflect Ramzan's activity or status during the overpayment period.

As another example, the appellate court suggested that the White Oak address consisted of more than one living unit such that Ramzan could have occupied one separate from Chaudhary. (A 21-22). But the Secretary would have no reason to know or believe this when neither Chaudhary nor Ramzan designated a separate living unit (*e.g.*, 1433 White Oak Lane, Apt 1) on any document that appeared in the record.

The appellate court also criticized the Secretary for not considering evidence showing Ramzan's association with other addresses during the overpayment period. (A 22-23). Again, it was for the Secretary to resolve conflicts in the evidence. *See Brown*, 2013 IL 114196, ¶ 48; *Morgan*, 388 Ill. App. 3d at 658. Notwithstanding its disagreement with how the Secretary resolved these conflicts (A 22-23), it was not for the appellate court to reweigh that evidence — which it did. *Bd. of Educ. of City of Chi.*, 2015 IL 118043, ¶ 15.

Finally, although the ALJ, who heard Chaudhary testify, determined that she was not credible and the Secretary agreed with that determination (C 673), the appellate court improperly disregarded that finding and made its own credibility finding (A 24). That was contrary to settled precedent as well. *See Kouzoukas*, 234 Ill. 2d at 463; *Abrahamson*, 153 Ill. 2d at 87-88, 96.

In short, the appellate court disregarded settled principles of administrative review when it upheld the reversal of the Secretary's decision. This court should affirm the Secretary's final decision because there was evidence — “an abundance of . . . records” in the Secretary's words (C 673-74) — to support it. Regardless of which party carried the burden of proof, the Secretary's decision was not against the manifest weight of the evidence.

## CONCLUSION

For these reasons, Defendants-Appellants Illinois Department of Human Services and its Secretary request that this court reverse the appellate court's judgment, thereby reversing the circuit court's judgment and affirming the Secretary's final administrative decision.

Respectfully submitted,

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April 6, 2022

**CERTIFICATE OF COMPLIANCE**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the petition under Rule 342(a), is 43 pages.

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## **APPENDIX**

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 No. 2-20-0364  
 Opinion filed September 16, 2021

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IN THE  
 APPELLATE COURT OF ILLINOIS  
 SECOND DISTRICT

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AYESHA CHAUDHARY,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 19-MR-1341
	)	
THE DEPARTMENT OF HUMAN	)	
SERVICES and GRACE B. HOU,	)	
in Her Official Capacity as Secretary of	)	
Human Services,	)	Honorable
	)	Bonnie M. Wheaton,
Defendants-Appellants.	)	Judge, Presiding.

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PRESIDING JUSTICE BRIDGES delivered the judgment of the court, with opinion.  
 Justices McLaren and Hutchinson concurred in the judgment and opinion.

**OPINION**

¶ 1 This appeal arises from the final administrative decision of the Secretary of Human Services, upholding the Illinois Department of Humans Services' (DHS) determination that it overpaid Supplemental Nutrition Assistance Program (SNAP) benefits to Ayesha Chaudhary. Following the final administrative decision upholding the overpayment determination, Chaudhary appealed to the circuit court of Du Page County, which reversed the decision. Defendants, DHS and Secretary Grace B. Hou (Secretary), raise two issues on this appeal: (1) whether the Secretary properly placed the burden of proof at the administrative hearing on Chaudhary to prove that DHS's overpayment determination was wrong and (2) whether the Secretary's decision upholding

the determination was against the manifest weight of the evidence. We affirm the circuit court's reversal of the final administrative decision for the following reasons.

¶ 2

## I. BACKGROUND

¶ 3 Chaudhary came to the United States from Pakistan in 2007 or 2008. She was married to Jon Mohammad Ramzan before coming to the United States, and they have three children together. Ramzan also has a child from a different marriage. In 2012, Chaudhary divorced Ramzan, and in January 2013, she moved to White Oak Lane in West Chicago (the White Oak address or residence). It is undisputed that, under separate accounts, Chaudhary and Ramzan received SNAP benefits from May 2015 through December 2017 (the overpayment period). During the overpayment period, both listed their SNAP benefits mailing address as the White Oak address.

¶ 4 On August 7, 2018, DHS sent Chaudhary a notice of overpayment for \$21,821.00 in SNAP benefits for the overpayment period. That notice stated that the overpayment occurred because (1) she and her husband, Ramzan, received SNAP benefits on separate cases when they were required to be on a case together, and (2) Chaudhary failed to report some of Ramzan's income. Chaudhary sought administrative review of the SNAP overpayment determination.

¶ 5

### A. Administrative Appeal

¶ 6 The administrative law judge (ALJ) heard Chaudhary's appeal on September 30, 2019. At the hearing, Chaudhary was *pro se*, and attorney Ernesto Chairez represented DHS. At the outset, the ALJ told Chaudhary that, as the appellant, she had the burden of proof by a preponderance of the evidence and that "[t]his simply means that you have to prove why you should win and you have to prove it by 51% which is more likely than not." The ALJ continued that DHS customarily presents its case first, "especially with a case like this [where] there's so much information." Therefore, Chaudhary could present evidence and question Chairez after he presented DHS's case.



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Finally, the ALJ told her that she could present argument as she saw fit, but she did not have to, and the ALJ would consider just what DHS presented.

¶ 7 Chairez testified as follows. Chaudhary was the primary person listed on her SNAP account, and he contended that there were six people in her household during the overpayment period, including Ramzan. The only address DHS had for Ramzan was the same White Oak address as for Chaudhary. Chairez believed that Ramzan had a separate overpayment case, but he was also involved in this overpayment case.

¶ 8 Chairez provided an overview of various documents to the ALJ, including a 2-part, approximately 200-page document for the Illinois Employment Services (IES) Underpayment/Overpayment Calculator. He also reviewed DHS's Bureau of Collections' (the BOC) recipient ledger inquiry from August 2, 2019. Chairez stated that the recipient ledger showed Ramzan's unreported income and that, according to the BOC, he moved out of the White Oak residence as of January 13, 2018. Before 2018, the BOC listed six residents living at the White Oak household.

¶ 9 Chaudhary asked to comment, and she explained that she and Ramzan had gotten a divorce in 2012 and that he had been living elsewhere. Ramzan told her that he had been using the White Oak address for mailing purposes. She asserted that her household was "four all the time" and that she wrote to DHS to tell them that her household size was four. Her four household members were herself and her three children, whose father was Ramzan.

¶ 10 Chairez responded that Ramzan should have been included in her household because he listed the White Oak address in connection with his income. Chairez stated that Ramzan had a separate SNAP case that listed the White Oak address where he was the head of household. Ramzan's household included two people: himself and his daughter from another marriage.

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Chairez clarified that Ramzan was not claiming the same household family members as Chaudhary claimed for her household, only that he was using the same address. Therefore, DHS's position was that the two separate households listed at the White Oak address should have been one household with six members.

¶ 11 Chaudhary interjected that Ramzan's daughter was going to the Benjamin School in another school district, which showed that he lived in another town and not at the White Oak residence. Chairez responded that "all of [Ramzan's] documents" listed him as living at the White Oak address despite Chaudhary's claims to the contrary. Chairez proceeded to go through documents concerning Ramzan's income and then Chaudhary's income.

¶ 12 Chairez continued testifying that Ramzan registered multiple vehicles at the White Oak address. In addition, a February 2018 address verification request by the BOC listed Ramzan's address as the White Oak address. For his business, Yasmar, Inc., Ramzan also listed the White Oak address, and Chairez stated that "we know that he's using that [address] for mail purposes." As of a June 2019 filing, Ramzan was the president of Yasmar, and Chaudhary was the corporate secretary.

¶ 13 Chairez then cited a document showing Ramzan's address on Morton Road in Wayne Township (the Morton address). Chairez "[didn't] know what that is." Chaudhary added that it was not his current address but that he had lived there. On an IES summary page, the Morton address was listed as Ramzan's residence address and the White Oak address was listed as his mailing address. Chairez described it as "weird" and asked why Ramzan would use the White Oak address for mailing. Chaudhary responded that he had had trouble receiving mail at the Morton address, and therefore, he used the White Oak address to receive his mail.

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¶ 14 After Chairez concluded his testimony, the ALJ addressed Chaudhary, telling her that Chairez had finished presenting DHS's overpayment information and she now had the opportunity to ask Chairez any questions. The ALJ told her that she had the opportunity to present her argument, but she could also choose to say nothing.

¶ 15 Chaudhary offered that she and Ramzan divorced on April 2, 2012. At the time of the divorce, she was living at an apartment in Glendale Heights. She lived there until December 2012. Through Ramzan's nephew, Mohammed Shakeel, she found out about the White Oak residence. Shakeel managed the property and offered to rent a residence to her. She moved there with her children in January 2013. Other people also lived at the White Oak residence. Chaudhary's testimony was ultimately uncertain about whether Ramzan had previously lived at the White Oak residence, but she was certain that he was not living there when she moved in. She would not have moved in if he were still living there. Chaudhary was listed as secretary to Ramzan's company in 2006, and she had provided accounting services to another person at the corporation.

¶ 16 Chaudhary continued testifying that after she received the overpayment notice, she spoke to Ramzan. He told her that his mail had kept getting lost at his residences, and that was why he had provided the White Oak address as a mailing address. Before the overpayment notice, she was unaware that Ramzan received his mail at the White Oak residence because she did not personally go through the mail at the residence or receive Ramzan's mail. Instead, a man at the White Oak residence received the mail and distributed it—she received her mail from him. The White Oak residence had several floors with people living on different floors, and all were listed under the same address. The man who distributed the mail lived in the basement with another man, and she knew them as Nisakut [*sic*] and Khan. However, she could not recall their full names.

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¶ 17 Chaudhary testified that she never actually lived with Ramzan. She was in her home country, Pakistan, for 34 years, and she did not live with him when she came to the United States. When immigrating to the United States, she first lived on Brendon Drive and then on Gladstone drive, both in Glendale Heights, before moving to the White Oak residence.

¶ 18 The ALJ allowed Chaudhary to have her final say at the hearing. Chaudhary mentioned that she worked only five to six months a year because she worked on income taxes. She asked that DHS reconsider its position because the overpayment determination was a significant amount of money, and she did not lie to them. At the hearing's conclusion, the ALJ left the record open for Chaudhary to submit more evidence.

¶ 19 Chaudhary supplemented the record with several additional documents. She submitted a letter from Ramzan and attached documents regarding proof of his residence. In the letter, he confirmed that they divorced on April 2, 2012, and that he did not live with Chaudhary. He asserted that he did not own the White Oak residence and moved out of the residence on November 12, 2012. He had moved with his daughter to the Morton address, and he enclosed multiple documents listing his residence at the Morton address: a May 2017 medical bill from Northwestern Medicine for his daughter; a proof-of-residency letter for the Benjamin School District from August 13, 2013; his daughter's transcript from Benjamin Middle School, dated June 4, 2019; a scan of his driver's license, issued August 2013 and expiring June 2017; a lease commencing in June 2015; pay stubs from Papa John's Pizza for August 2015; auto insurance cards for a 2001 Honda Accord and a 2001 Lexus Rx300 from October 2015; utility bills from 2015; and more.

¶ 20 Ramzan's letter continued that Shakeel had rented the White Oak residence to Chaudhary after he moved out. He wrote that, at his Morton address, he had not received several documents

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from DHS and had failed to receive his social security letters. Therefore, he changed his mailing address to the White Oak address.

¶ 21 Chaudhary further submitted separate letters from Nizakat Khan and Sher Dill Khan, dated September 30, 2019, and notarized October 2 and 3, 2019, respectively. They each averred that (1) they resided in the basement at the White Oak residence, (2) they knew Chaudhary, and (3) Chaudhary resided in the upper level with her three children and nobody else. She also submitted a letter, dated October 2, 2019, from Shakeel, who wrote that he managed the White Oak residence and that Chaudhary had moved in on January 3, 2013. Finally, she submitted her April 2, 2012, judgment from the circuit court of Du Page County for dissolution of marriage. The record was closed on October 4, 2019, upon receipt of Chaudhary's exhibits.

¶ 22 The ALJ made the following findings of fact by a preponderance of the evidence. First, Chaudhary had received SNAP benefits from at least May 2015 with a total of four persons in her SNAP unit. In addition, she received a notice of overpayment from the BOC because (1) her husband had received SNAP benefits in a separate case when they were required to be in a case together, and (2) she had not reported his income. Also, the ALJ briefly discussed the two witnesses' testimony.

¶ 23 Based on the ALJ's findings, the Secretary issued her final administrative decision as follows. The issue on appeal was whether the BOC's decision to charge Chaudhary with \$21,821.00 in SNAP overpayment was proper. She cited various records supporting that Ramzan was living with Chaudhary: (1) a Secretary of State record from September 2019 listing the White Oak address for Ramzan's corporation (incorporated in 2004) and showing him as president and Chaudhary as secretary; (2) a February 2018 response to a post-office-address-verification request

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that listed Ramzan's last known address as the White Oak address; and (3) Secretary of State records showing several of Ramzan's vehicles registered at the White Oak address.

¶ 24 Based on these records, the Secretary concluded that "it appears more likely than not that [Chaudhary and Ramzan] were residing together during the overpayment period." Because the preponderance of the evidence demonstrated that Ramzan was living in Chaudhary's SNAP unit during the overpayment period, his added income was unreported.

¶ 25 The Secretary next cited Chaudhary's offer into evidence of her judgment for dissolution of marriage. She concluded that the judgment confirmed that she and Ramzan were divorced as of April 2, 2012. However, the Secretary reasoned that "[w]hile they may no longer be married under the law, this alone does not overcome the evidence that [Chaudhary and Ramzan] are members of the same household, and that a SNAP overpayment occurred."

¶ 26 The Secretary then commented on Chaudhary's credibility. She found it highly unlikely that Chaudhary moved into the White Oak residence and did not know that her former husband had previously lived in and owned the residence. The Secretary noted that Ramzan submitted a letter stating that he had lived at the address until some point in 2012. Further, she found it unlikely that Chaudhary's housemates always collected the mail and that she was oblivious to Ramzan using the White Oak address for his mail. Finally, she found incredible Chaudhary's testimony that she and Ramzan never lived together given that Chaudhary had said in a prior written statement to DHS that she and Razman were divorced in April 2012 and "[s]ince then" have not lived together.

¶ 27 In sum, the Secretary found that DHS had provided sufficient documentation and calculations establishing that Ramzan resided at the White Oak residence and that an overpayment

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had occurred. Accordingly, the Secretary upheld DHS's finding of a \$21,821.00 SNAP overpayment for the overpayment period.

¶ 28 B. Circuit Court Proceedings

¶ 29 On December 6, 2019, Chaudhary filed her complaint for review of a final administrative decision by common-law *certiorari*. Chaudhary contended that the administrative determination was erroneous. In her supporting brief, she raised three issues: (1) whether the burden of proof at the hearing belonged to her or DHS, (2) whether DHS violated her due process rights by assigning her the burden of proof and by failing to notify her that she would be required to present a *prima facie* case, and (3) whether she was overpaid SNAP benefits.

¶ 30 The circuit court held a hearing on Chaudhary's complaint on June 4, 2020. It agreed with Chaudhary's argument that DHS bore the burden of proof. The circuit court distinguished a decision denying benefits from a decision to divest benefits from a recipient. The circuit court concluded that DHS would have the burden of proof in seeking to divest benefits. Further, the circuit court did not believe the evidence supported that Ramzan resided at the White Oak address. The circuit court emphasized that (1) many of the documents produced were from outside of the overpayment period, (2) Chaudhary and Ramzan were divorced since 2012, and (3) affidavits showed that Ramzan used the White Oak address only as a mailing address.

¶ 31 Defendants timely appealed.

¶ 32 II. ANALYSIS

¶ 33 Defendants argue that we should reverse the circuit court judgment because the Secretary properly placed the burden of proof at the administrative hearing on Chaudhary and that the evidence supported the Secretary's decision. On appeal, we review the administrative agency's decision, not the decision of the circuit court. *Lombard Public Facilities Corp. v. Department of*

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*Revenue*, 378 Ill. App. 3d 921, 927 (2008). In cases involving administrative review, the proper standard of review depends on whether the question presented is one of fact, one of law, or a mixed question of fact and law. *Beggs v. Board of Education of Murphysboro Community Unit School District No. 186*, 2016 IL 120236, ¶ 50.

¶ 34 On appeal from an administrative decision, we review *de novo* questions of law. *Id.* Whether a party bears the burden of proof is a question of law. *1350 Lake Shore Associates v. Healey*, 223 Ill. 2d 607, 627 (2006). Therefore, we review *de novo* whether the Secretary properly placed the burden of proof on Chaudhary.

¶ 35 An administrative agency's findings and conclusions on questions of fact are considered *prima facie* true and correct, and we will reverse those findings or conclusions only if they are against the manifest weight of the evidence. *Beggs*, 2016 IL 120236, ¶ 50. A factual determination is against the manifest weight of the evidence where the opposite conclusion is clearly evident. *Id.* We review the Secretary's decision upholding the overpayment determination under the manifest-weight-of-the-evidence standard.

¶ 36 Before reaching the merits of the burden-of-proof issue, we address defendants' contention that, by failing to raise them at the administrative hearing, Chaudhary forfeited her arguments in the circuit court challenging the burden of proof and alleging a due process violation. Defendants contend that the ALJ advised Chaudhary at the administrative hearing that she had the burden of proof by a preponderance of the evidence, and she did not object. Chaudhary also did not raise due process concerns at the hearing. Rather, she raised these issues for the first time in her circuit court brief.

¶ 37 We reject defendants' forfeiture argument. Generally, an issue not first raised at an administrative hearing is forfeited. *Merchant v. Regional Board of School Trustees*, 2014 IL App



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(2d) 131277, ¶ 103. However, forfeiture is a limitation on the parties—not on us. *Jill Knowles Enterprises, Inc. v. Dunkin*, 2017 IL App (2d) 160811, ¶ 22. We can overlook forfeiture and address the merits of an issue to obtain a just result or maintain a sound and uniform body of precedent. *Id.* Here, the proper allocation of the burden of proof in the administrative proceeding is an issue of fairness, and addressing it will help ensure consistent application of precedent. In addition, the proper allocation of the burden of proof is relevant to our analysis of whether the Secretary’s decision was against the manifest weight of the evidence. Finally, under the circumstances of this administrative proceeding, it is excessively harsh to have expected Chaudhary, a *pro se* administrative appellant, to object contemporaneously to a procedural error at the administrative hearing. The issue was raised and briefed before the circuit court, after she obtained representation. Accordingly, we will entertain the issue.

¶ 38

#### A. Burden of Proof

¶ 39 Defendant argues that the Secretary properly assigned the burden of proof to Chaudhary at her administrative hearing based on administrative regulations, common law principles, and sound policy reasons. Regarding the applicable administrative regulations, defendants argue that while the regulations do not specify which party bore the burden of proof, they as a whole support the burden being on Chaudhary. They cite section 10 of part 165 of the Illinois Administrative Code (Code) (89 Ill. Adm. Code 165.10 (2002)) concerning overpayments for financial assistance, food stamp benefits, or both. They point to the section’s use of “shall” to emphasize the mandatory nature of recovery of overpayments. See 89 Ill. Adm. Code 165.10(a) (2002) (“If a person currently receives assistance of the type in which the overpayment occurred, the overpayment shall be collected under Subpart B or C, as the case may be, of this Part.”). They argue that the mandatory nature is significant in showing the burden was properly on Chaudhary, analogizing the collection

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of overpayments to cases where the burden was on the person contesting license suspensions and revocations required by law. See *Arvia v. Madigan*, 209 Ill. 2d 520 (2004); *Smoke N Stuff v. City of Chicago*, 2015 IL App (1st) 140936. They point to several other instances where the regulations use the word “shall.” Further, they contend that once DHS notifies a SNAP recipient of an overpayment, that person has the right to appeal the overpayment determination; if an appellant fails to proceed with the hearing, the appeal must be dismissed. 89 Ill. Adm. Code 14.60 (2001).

¶ 40 Defendants next argue that common law principles support placing the burden on Chaudhary because she initiated the administrative proceeding to challenge DHS’s overpayment determination. They argue that cases like *Arvia* and *Smoke N Stuff* demonstrate that the plaintiff who initiates an administrative proceeding bears the burden of proving their case by a preponderance of the evidence, and we should apply that general principle here.

¶ 41 Defendants also argue that placing the burden of proof on the appellant in such proceedings serves important policy goals. They contend that a SNAP recipient might have a financial interest in defeating the overpayment charge and often possesses or controls much of the relevant information, such as the evidence here concerning Ramzan’s residence. Therefore, placing the burden on a recipient incentivizes the production of relevant evidence and clear testimony. They argue further that if DHS had the burden of proof, it would need to expand its prehearing procedures, including more formal discovery.

¶ 42 Lastly, defendants argue that placing the burden of proof on Chaudhary did not violate her procedural due process rights, because DHS provided her with a fair hearing before a neutral tribunal. DHS made its initial determination, provided notice, and allowed Chaudhary to appeal. Defendants contend that simply assigning her the burden of proof did not violate due process in

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light of her opportunity to be heard, question the DHS representative at the hearing, and prove that she was not overpaid.

¶ 43 Chaudhary responds that the Secretary committed reversible error in assigning her the burden of proof. First, she relies on our decision in *Eastman v. Department of Public Aid*, 178 Ill. App. 3d 993 (1989), arguing it implicitly holds that DHS bore the burden of proof in the SNAP overpayment appeal hearing. Next, she argues that DHS should have had the burden at the hearing because it was the party seeking to change the status quo. She acknowledges the general rule, also argued by defendants, that when a statute is silent on the assignment of the burden of proof, the plaintiff ordinarily bears the burden. However, she argues that the ordinary rule is subject to exceptions, such as assigning the burden to the party seeking to change the status quo. See *Schaffer v. Weast*, 546 U.S. 49, 56 (2005). In most cases, that will be the plaintiff, but not always.

¶ 44 Chaudhary next disagrees with defendants that the assignment of the burden of proof hinges on whether agency action is mandatory versus discretionary. She argues that *Smoke N Stuff*, *Arvia*, and the cases that those cases rely upon do not support defendants' position but instead are consistent with the proposition that the party seeking to change the status quo bears the burden of proof.

¶ 45 Chaudhary also offers policy reasons to support her position that DHS should bear the burden. She argues that DHS is responsible for determining whether an overpayment occurred, and it has superior access to records to make that determination. The required investigation before DHS's determination should be enough evidence to establish overpayment. Therefore, it would need only admit this evidence into the record to support its case at a hearing. In addition, she argues that public aid recipients in legal proceedings are disadvantaged due to poverty, disability, age,

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education, or language. On the other hand, an experienced advocate always represents DHS at the hearings.

¶ 46 Lastly, Chaudhary argues that DHS violated her due process rights in several ways: by (1) placing the burden of proof on her, (2) failing to send her notice that she would bear the burden of proof at the hearing, and (3) failing to send her notice that included the correct reason for the alleged overpayment. Regarding the third alleged violation, she argues that the notice she received did not reference Ramzan living at the White Oak residence as a basis for the overpayment. Rather, it said that she and her husband were required to be on the same SNAP case together and that he had unreported income. Therefore, it was logical for Chaudhary to respond to the overpayment notice by submitting only her divorce judgment and be unprepared to rebut DHS's allegation that Ramzan was living at the White Oak residence.

¶ 47 We agree with Chaudhary that the burden of proof was on DHS to establish her SNAP overpayment by a preponderance of the evidence. The parties are correct that the Code is silent about allocating the burden of proof in an appeal from a SNAP overpayment determination. They also are correct that the default rule is that the plaintiff bears the burden of proof in an administrative proceeding. See, e.g., *Kouzoukas v. Retirement Board of Policeman's Annuity & Benefit Fund of the City of Chicago*, 234 Ill. 2d 446, 464 (2009). As we explain below, the default rule applied, but DHS was the plaintiff, not Chaudhary.

¶ 48 Contrary to defendants' argument, DHS was the party that initiated the proceedings to determine a SNAP overpayment. Regarding overpayments of SNAP benefits, under the Code, DHS "initiates action to recover overpayments." 89 Ill. Adm. Code 165.10 (2002). The record is clear that DHS first initiated an overpayment claim, determined overpayment, and then notified Chaudhary of its determination. Furthermore, Chaudhary's administrative hearing was not an

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initiation of a new action. Rather, her hearing was an appeal of DHS's overpayment determination against her, as was her right under the Code. See 89 Ill. Adm. Code 10.280 (2019) (SNAP beneficiary has right to appeal change in amount of SNAP benefits). Consistent with this case posture, DHS never designated Chaudhary as the plaintiff in its overpayment proceedings. The ALJ referred to her as appellant, and the Secretary's order designated her as the appellant in the caption and throughout the disposition.

¶ 49 On the other hand, Chaudhary's argument that the party who seeks to change the status quo should bear the burden of proof is well-taken. See 2 Kenneth S. Broun *et al.*, McCormick on Evidence § 337 (8th ed. 2020) ("The burdens of pleading and proof with regard to most facts have been and should be assigned to the plaintiff *who generally seeks to change the present state of affairs* and who therefore naturally should be expected to bear the risk of failure of proof or persuasion." (Emphasis added.)). We have previously applied this general concept. In *Szewczyk*, we determined that a police chief properly bore the burden of proof to show that the department should hire him back to the police department, reasoning that he initiated the relevant proceeding by filing a petition for reinstatement. *Szewczyk v. Board of Fire & Police Commissioners*, 2011 IL App (2d) 100321, ¶ 62. We noted that, under the Illinois Municipal Code, the police chief was *not* entitled to a hearing where the Village would be required to show cause for his termination or allow him to present a defense. *Id.* In other words, the police chief in *Szewczyk* was the party seeking to change the status quo of being discharged from the police department.

¶ 50 All the primary case law relied upon by the parties is consistent with the idea that, absent a statutory provision to the contrary, the party who brings a claim is the party who bears the burden of proof during the administrative proceedings on that claim. Defendants rely primarily on *Arvia* and *Smoke N Stuff*, but neither advances their arguments. First, *Arvia* is distinguishable because,

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there, the burden of proof at the relevant administrative hearing was provided for by the Code. *Arvia*, 209 Ill. 2d at 542 (citing 92 Ill. Adm. Code 1001.620 (1995)). Even disregarding the regulation assigning the burden of proof, the *Arvia* plaintiff initiated his administrative hearing to contest his driver's license suspension, which was suspended not pursuant to an administrative action initiated by the agency but by operation of law. *Id.* at 522-23 (the plaintiff's license was suspended pursuant to section 11-501.8 of the Illinois Vehicle Code (625 ILCS 5/11-501.8 (West 2000) (commonly referred to as the "zero tolerance law"))).

¶ 51 Turning to *Smoke N Stuff*, that case is not on point. The parties there were not disputing the burden of proof, and the appellate court did not address the burden of proof in any detail. Rather, the *Smoke N Stuff* court provided one sentence stating the general rule that "[t]he burden of proof is on the plaintiff in administrative proceedings." *Smoke N Stuff*, 2015 IL App (1st) 140936, ¶ 15. The court did not identify who was the plaintiff at the administrative hearing. Moreover, the case cited by *Smoke N Stuff* for the burden being on the plaintiff, *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497 (2006), is consistent with our holding. In *Marconi*, the police officer bore the burden of proof to establish his entitlement to a pension because he was the party who applied for disability pension benefits. *Id.* at 536.

¶ 52 Chaudhary relies primarily on *Eastman*, where the plaintiff was appealing an administrative decision determining that she had received a food stamp overpayment. *Eastman*, 178 Ill. App. 3d at 994. There, we held that the Department of Public Aid erred in admitting evidence of the food stamp overpayment because it lacked sufficient foundation. *Id.* at 998. In reversing, we determined that the error was substantial because the unfounded evidence was the only evidence establishing the food stamp overpayment. *Id.* We agree with Chaudhary that *Eastman* is consistent with the burden of proof being on DHS to show a SNAP overpayment. It

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supports the position that DHS must present some reliable evidence establishing an overpayment for the administrative decision to stand.

¶ 53 As to defendants’ argument that the mandatory language of the Code supported the burden being on Chaudhary, we find the argument inapposite. As we have just discussed, the relevant question was not whether DHS had discretion to bring an action for overpayment; it was whether DHS initiated the action—which it did.

¶ 54 We also find defendants’ policy arguments unavailing. SNAP recipients already have obvious financial incentives to contest an overpayment determination without bearing the burden of proof. In addition, our holding does not preclude shifting burdens of production, especially where the SNAP recipient is in sole possession of relevant information.<sup>1</sup> On the other hand, Chaudhary’s policy arguments for placing the burden on DHS have merit. SNAP recipients are likely to be disadvantaged before DHS’s involvement due to poverty, disability, lack of education, and more. Furthermore, we do not believe DHS would have to expand its prehearing procedures to meet its burden of proof. Under current procedures, DHS must first make an overpayment

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<sup>1</sup> We note that the term “burden of proof” can be elusive (see *Heiser v. Chastain*, 6 Ill. App. 3d 552, 558 (1972)), and it has historically encompassed two concepts: the burden of persuasion and the burden of production (*In re Marriage of Levites*, 2021 IL App (2d) 200552, ¶ 57). The burden of production is generally understood as the burden of presenting sufficient evidence to establish a fact or *prima facie* claim. *In re Marriage of Levites*, 2021 IL App (2d) 200552, ¶ 59; *Schuttler v. Rurak*, 225 Ill. App. 3d 678, 684 (1992). In holding that DHS bore the burden of proof, we do not imply that a SNAP recipient may never bear a burden of production on their administrative appeal, but rather assure that the burden of persuasion remains with DHS throughout the appeal.

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determination before there can be any appeal. Thus, at the appeal hearing, it need not necessarily do more than admit the evidence from its overpayment determination.

¶ 55 Thus, the general rule controls in this case: a plaintiff bears the burden of proof, and DHS is the plaintiff because it initiated an action against Chaudhary to recover its overpayment. In other words, DHS is properly the party that brought the claim or sought to change the status quo.

¶ 56 Having determined that the burden of proof lay with DHS, we next examine whether reversible error occurred. To be sure, the ALJ's comments at the administrative appeal were erroneous. Chaudhary did not have the burden to prove that, as the ALJ put it, she should win by 51%, which is more likely than not. However, it is unclear whether the burden was allocated to Chaudhary in substance or assigned only in form through the ALJ's threshold comments. We note that the proceedings were inconsistent with the purported allocation of the burden of proof to Chaudhary. The ALJ conducted the hearing by having DHS present its case for overpayment first. She instructed Chaudhary that she had the option thereafter to question Chairez and present her argument, but that she did not have any obligation to do either. In fact, the ALJ said that if Chaudhary did not present anything, she would simply consider what DHS presented. Such a proceeding was consistent with DHS having the burden of proof, not Chaudhary, as the party with the burden would have to present at least some evidence at the hearing to meet its burden. See *Eastman*, 178 Ill. App. 3d at 998. As to the final administrative decision, it does not mention the allocation of the burden of proof but instead simply concludes that "the preponderance of the evidence demonstrates that [Ramzan] was living in the SNAP unit and that therefore, any income he added was not reported."



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¶ 57 Nevertheless, we need not rest our disposition on whether a misallocation of the burden of proof resulted in reversible error. As discussed *infra*, we determine that the Secretary's decision was against the manifest weight of the evidence.

¶ 58 Lastly, we need not address the raised due process concerns. While we have determined that the burden of proof was with DHS, we do not determine whether the misallocation itself resulted in reversible error. Therefore, we cannot say if due process was violated. Further, our determination that the burden of proof lay with DHS moots the issue of whether DHS should have sent Chaudhary notice that she bore the burden of proof at the hearing. And finally, to the extent that DHS's notice should have included Ramzan's alleged residence at the White Oak address as a basis for its overpayment determination, the ALJ cured that error by leaving the record open and allowing Chaudhary to supplement the record on that issue. Leaving the record open provided Chaudhary a chance to respond, thus providing her a fair hearing on her administrative appeal. See *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 824 (2009) (administrative proceedings require due process, but due process is a flexible concept and requires only such procedural protections as justice and the particular situation demand).

¶ 59 B. Secretary's Decision

¶ 60 In light of our determination that DHS bore the burden of proof, we turn to defendants' argument that the final administrative hearing was not against the manifest weight of the evidence. They argue that the evidence showed that Ramzan lived with Chaudhary at the White Oak residence and that, therefore, the overpayment determination was correct. In support, they cite to a variety of evidence from the hearing, including that (1) Ramzan's and Chaudhary's SNAP accounts listed the White Oak address; (2) a post office verification showed Ramzan's mailing address as the White Oak address; (3) Ramzan registered vehicles at the White Oak address; (4) his

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company, Yasmar, Inc., was registered at the White Oak address; and (5) property records showed he once owned the White Oak residence sometime between 2006 and 2010. They also contend that the Secretary had the role of resolving conflicts in the evidence. In doing so, she found Chaudhary incredible, and they argue we should defer to her determination.

¶ 61 Defendants also take issue with Chaudhary producing much of her evidence following the hearing, while the record was still open and only “after she gained the benefit of knowing the Department’s testimony and the ALJ’s comments.” They claim that she had notice of the reason for the overpayment before the hearing. Finally, they argue that the Secretary did not have to give equal or greater weight to the evidence Chaudhary produced following the hearing.

¶ 62 Chaudhary responds that the Secretary’s decision was unsupported by competent evidence and must be set aside. She argues that much of the evidence that the ALJ relied on should have been excluded as immaterial or irrelevant because it purported to reference where Ramzan lived outside of the overpayment period. For instance, the post office address verification was from 2018 and therefore did not support that he lived at the White Oak address from 2015 to 2017. She further argues that the Secretary’s credibility determination against her was an abuse of discretion, being based largely on minor discrepancies over immaterial issues. She contends that the opposite conclusion was clearly evident, citing her supplemental evidence that Ramzan did not live at the White Oak residence. The supplemental evidence that listed his Morton address included his driver’s license, leases, bills, paychecks, and more.

¶ 63 We agree with Chaudhary that the Secretary’s final administrative decision upholding the SNAP overpayment determination was against the manifest weight of the evidence. DHS’s basis for the determination was that Chaudhary and Ramzan were supposed to be included in the same SNAP household but were not. Therefore, DHS bore the burden of proving that Chaudhary and

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Ramzan had to be included in the same SNAP unit or household. As we explain, the opposite conclusion was clearly evident.

¶ 64 A “SNAP household” or “SNAP unit” is defined generally as any of the following: (1) an individual living alone, (2) an individual living with others but who customarily purchases food and prepare meals for home consumption separate from others, or (3) a group of individuals who live together and customarily purchase food and prepare meals together or who are otherwise required to qualify for SNAP as a household or unit. 89 Ill. Adm. Code 10.120 (2013). The Code provides several instances in which separate household status shall not be granted, including for spouses of household members and for parents and their children under age 21. 89 Ill. Adm. Code 121.70(b) (1997). It is undisputed that Chaudhary and Ramzan were divorced during the overpayment period, and the Secretary did not base her decision on them being married. Instead, the sole basis was the determination that Ramzan lived at the White Oak residence. Because he was the father to Chaudhary’s three children, he could not have held a separate household status if he lived at the White Oak residence. 89 Ill. Adm. Code 121.70(b)(2) (1997).

¶ 65 The evidence that the Secretary relied on in reaching her decision was largely from outside the overpayment period. To wit, the post office verification of Ramzan’s last known address was from 2018; the secretary of state record for Yasmar, Inc., was from 2019; and the property records for Ramzan’s ownership of the White Oak residence were from 2006 to 2010. As to the vehicles Ramzan registered at the White Oak address, Chairez identified three vehicles at the hearing: a 2016 Honda, a 2007 Toyota, and a 2007 Honda. However, he did not provide a year for the first two registrations and provided 2018 as the renewal year of the last.

¶ 66 Moreover, while DHS’s evidence purported to show that Ramzan resided at the White Oak address, it could not establish in which White Oak unit he lived. The record clearly established

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that the White Oak address had multiple floors with different people living on different floors. To the extent that a mailing address establishes residence, Ramzan's mailing address could just as easily have shown that he lived on a separate floor from Chaudhary at the White Oak residence. Thus, the documentary evidence of Ramzan's mailing address alone was insufficient to make a *prima facie* case that he lived in the same unit as Chaudhary.

¶ 67 The Secretary did not consider whether Ramzan lived at the Morton address, despite the Morton address coming up several times during Chairez's testimony. At the hearing, after Chairez testified to the vehicles that Ramzan registered at the White Oak address, he turned to page 110 of DHS's document packet. He read from a 2018 printout description of Ramzan that listed the Morton address. He remarked, "I don't know what that is." Chaudhary explained that it was Ramzan's Morton address. Chairez continued reviewing the documents, and around page 124, he reached an IES summary page. He remarked: "Now this is what's weird. Mailing address is [the White Oak address], okay, residing address is [the Morton address]. Why would he use a mailing address [at the White Oak address]?" Chaudhary responded that Ramzan had not received his mail at the Morton address, because he was renting only a room there, and so he used the White Oak address for mailing purposes.

¶ 68 What is more, the Secretary gave scarcely any consideration in her written decision to Chaudhary's evidence submitted following the appeal hearing. We see no reason why the Secretary should not have considered this evidence. Thus, we reject defendants' argument that it somehow was entitled to less weight because it was submitted after Chaudhary benefited from hearing DHS's evidence and arguments. Contrary to their contention, before her appeal hearing, she did not know the ultimate reason for the overpayment. The overpayment notice never stated that she and Ramzan were required to be included in the same household based on him residing at

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the White Oak residence.<sup>2</sup> Furthermore, DHS bore the burden of proof. Therefore, it was fair and proper for the ALJ to allow Chaudhary to respond to DHS's evidence and arguments by supplementing the record after the hearing.

¶ 69 The supplemental evidence Chaudhary submitted was relevant and material to the issue of Ramzan's residence. She provided a letter from Ramzan, which corroborated her testimony at the hearing, including that he had changed his mailing address to the White Oak address after not receiving important mail at his Morton address. The only reference the Secretary made to Ramzan's letter—and, indeed, her only reference to any of Chaudhary's supplemental record—was to his statement that he had moved out of the White Oak address in November 2012. However, she did not address whether Ramzan's statement tended to show that he did not live at the White Oak residence during the overpayment period. Instead, she cited it only to impugn Chaudhary's credibility, comparing Ramzan's statement with Chaudhary's uncertain testimony about whether Ramzan had previously lived at the White Oak address.

¶ 70 Numerous documents listing his residence at the Morton address during the overpayment period were attached to Ramzan's letter. Those documents included medical bills, residential lease documents, a scan of his driver's license, and correspondence with his daughter's school. See *supra*

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<sup>2</sup> By itself, evidence of Chaudhary and Ramzan residing together would not preclude separate SNAP unit statuses. See 89 Ill. Adm. Code 121.70(a)(2) (1997) (defining a SNAP household as an individual who lives with others but does not customarily purchase food and prepare meals with them). Chaudhary and Ramzan would have been precluded from claiming separate SNAP unit statuses if they were residing together *with their children*. 89 Ill. Adm. Code 121.70(b)(2) (1997).

¶ 19. Chaudhary also included notarized letters from the men who lived in the basement at the White Oak address, attesting that they knew her and she lived with only her three children.

¶ 71 We acknowledge that determinations of credibility and the Secretary's ultimate decision are due considerable deference.<sup>3</sup> Nevertheless, the failure to discuss the substance of any of Chaudhary's supplemental evidence in reaching a final decision was unreasonable. Her supplemental evidence was precisely the type of evidence DHS should welcome in assessing whether an overpayment occurred based on the residence of SNAP beneficiaries. In addition, DHS's evidence did not show that Ramzan consistently used the White Oak address, let alone resided there, during the overpayment period. Much of DHS's evidence was from outside the overpayment period, and the Secretary's final decision ignored evidence from the hearing wherein Ramzan listed the Morton address. Accordingly, the opposite conclusion that Ramzan did not reside at the White Oak residence was clearly evident.

¶ 72 III. CONCLUSION

¶ 73 For the reasons stated, we affirm the judgment of the circuit court of Du Page County reversing the Secretary's final administrative decision.

¶ 74 Circuit court judgment affirmed.

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<sup>3</sup> In making her findings of fact, the ALJ did not also make credibility determinations for the Secretary to adopt. Regardless of the propriety of the Secretary making her own credibility determinations, her decision upholding the overpayment was against the manifest weight of the evidence.

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**No. 2-20-0364**

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**Cite as:** *Chaudhary v. Department of Human Services*, 2021 IL App (2d) 200364

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**Decision Under Review:** Appeal from the Circuit Court of Du Page County, No. 19-MR-1341; the Hon. Bonnie M. Wheaton, Judge, presiding.

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**Attorneys  
for  
Appellant:** Kwame Raoul, Attorney General, of Chicago (Jane Elinor Notz, Solicitor General, and David E. Neumeister, Assistant Attorney General, of counsel), for appellants.

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**Attorneys  
for  
Appellee:** Patricia Nelson and Sarah Megan, of Prairie State Legal Services, Inc., of West Chicago, for appellee.

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¶ 75

STATE OF ILLINOIS

UNITED STATES OF AMERICA

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

AYESHA CHAUDHARY

-VS-

2019MR001341  
CASE NUMBERILLINOIS DEPARTMENT OF HUMAN  
SERVICES**FILED**

20 Jun 04 PM 01: 26

*Chris Kachunbas*  
CLERK OF THE  
18TH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS**ORDER**

This matter coming to be heard for hearing on Plaintiff's Petition for Review of Administrative Agency Decision by Common Law Certiorari; all parties appearing by counsel, and the court having heard argument,

**HEREBY FINDS:**

DHS improperly placed the burden of proof on Ayesha Chaudhary.

DHS bears the burden of proof when DHS is claiming a SNAP overpayment.

**IT IS THEREFORE ORDERED:**

The Administrative Decision by DHS dated November , 5, 2019 upholding a \$21,821.00 overpayment against Ayesha Chaudhary is hereby reversed for the reasons stated on the record.

This Order is final and appealable.

Submitted by: PATRICIA NELSON  
Attorney Firm: PRAIRIE STATE LEGAL SERVICES - WEST CHICAGO  
DuPage Attorney Number: 67545  
Attorney for: AYESHA CHAUDHARY  
Address: 31 W 001 E NORTH AVE, STE 200  
City/State/Zip: WEST CHICAGO, IL, 60185  
Phone number: 630-690-2130  
Email address : pnelson@pslegal.org

Entered: *Chris Kachunbas*

JUDGE BONNIE M WHEATON

Validation ID : DP-06042020-0126-56427

Date: 06/04/2020





NOV 05 2019

BUREAU OF  
ASSISTANCE HEARINGS

JB Pritzker, Governor

Illinois Department of Human Services

Grace B. Hou, Secretary

Ayesha Chaudhary  
1433 White Oak LA  
West Chicago, IL 60185

APPEAL: 1900369332

CASE: 305206243

Dear Ayesha Chaudhary:

The Illinois Department of Human Services has reviewed your appeal, considered and adopted the Findings of Fact of the Hearing Officer, and issued the Department's Final Administrative Decision, a copy of which is attached hereto. This decision is reviewable only through the Circuit Courts of the State of Illinois. The time the Circuit Court will allow for filing for such review may be as short as 35 days from the date of this letter which is the date that it was deposited in the United States mail.

The final result of your hearing, in Spanish, is at the end of this decision. If you wish, the Department will translate those parts of this decision which are not in Spanish. If you so wish, check the box and bring this appeal decision to your local office.

☐ I want this hearing decision translated.

If your appeal involves both SNAP and public assistance issues, the following pertains: According to the law, you should have received the attached Final Administrative Decision and, if the decision was in your favor, are entitled to full implementation of it, no later than 90 days after the Department received your Notice of Appeal and request for a hearing.

If your appeal involves SNAP but not public assistance, the following pertains to your SNAP issues: According to the law, you should have received the attached Final Administrative Decision no later than 60 days after the Department received your Notice of Appeal and request for a fair hearing. Also, if the attached decision is in your favor, you are entitled by law to full implementation of it within 10 days after you have received it.

Sincerely,

GRACE B. HOU  
SECRETARY

GBH/cs  
Attachment

cc:

Ernesto Chairez, DuPage County FCRC, Naperville, IL, 60563-8576





JB Pritzker, Governor

Grace B. Hou, Secretary

Ayesha Chaudhary  
1433 White Oak LA  
West Chicago, IL 60185

APPEAL: 1900369332

CASE: 305206243

Estimada Ayesha Chaudhary:

El Departamento de Servicios Humanos de Illinois ha revisado su apelación, ha considerado y adoptado la Conclusiones de los Hechos del Oficial de Audiencias, y ha rendido la Decisión Administrativa Final, cuya copia se incluye. La decisión solamente puede ser reexaminada por medio de los Tribunales del Distrito Judicial del Estado de Illinois. El período de tiempo que el Tribunal de Distrito Judicial permitirá para solicitar dicha revisión puede ser 35 días como mínimo, a partir de la fecha de esta carta.

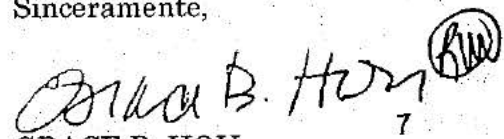
El resultado final de su audiencia se encuentra en español al final de la presente decisión. Si usted lo desea, el Departamento traducirá aquellas partes de la decisión que no están en español. Si lo desea, marque el siguiente encasillado y lleve esta decisión a su oficina local.

☐ Yo deseo una traducción de esta decisión.

Si su apelación es sobre ambos, beneficios del Programa Asistencia Para Nutrición Suplementaria (SNAP), antes llamado estampillas de comida, y asuntos de asistencia pública, lo siguiente aplica: De acuerdo con la ley, usted debería haber recibido la Decisión Administrativa Final que le incluimos aquí y, si la decisión fue a su favor, tiene derecho a la implementación completa de la decisión, a más tardar a los 90 días después de que el Departamento haya recibido su Notificación de Apelación y su petición para una audiencia o vista imparcial.

Si su apelación es sobre beneficios SNAP, antes llamado estampillas de comida, y no de asistencia pública, aplica lo siguiente referente a los beneficios (SNAP): De acuerdo con la ley, usted debía haber recibido la Decisión Administrativa Final que le incluimos aquí a más tardar los 60 días después que el Departamento haya recibido su Notificación de Apelación y su petición para una audiencia o vista imparcial. También, si la decisión fue a su favor, usted tiene derecho a su implementación completa dentro de los 10 días después de haberla recibido.

Sinceramente,

  
GRACE B. HOU  
SECRETARY

GBH/cs  
Attachment



IN THE ADMINISTRATIVE PROCEEDINGS OF THE  
ILLINOIS DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF  
AYESHA CHAUDHARY,  
APPELLANT.

Appeal: 1900369332  
Case: 305206243

PROCEDURAL HISTORY

Administrative Law Judge Claudia Silva heard this appeal at the Illinois Department of Human Services (the Department) Bureau of Hearings (BOH), on Monday, September 30, 2019, via telephonic conference by and between the BOH office in Chicago, and the DuPage County FCRC Family Community Resource Center (FCRC).

The hearing previously convened on September 9, 2019 and was continued on the motion of Appellant. The hearing was delayed 25 days on the motion of Appellant. The Administrative Law Judge left the record open until October 4, 2019 for 4 days, to allow Appellant to submit affidavits admitted at hearing. The record was closed on Friday, October 04, 2019, upon receipt of the exhibits.

Appellant, Ayesha Chaudhary, was present. Ernesto Chairez, Financial Recoveries Coordinator was the Witness for the Department. Appellant and the Department Witness participated from the DuPage County FCRC, via telephone.

ISSUE

Whether the Bureau of Collections' (BOC) August 7, 2019 decision to charge Appellant with a \$21,821.00 Supplemental Nutrition Assistance Program (SNAP) overpayment for the period from May 2015 through December 2017, was proper.

DISPOSITION

The decision to charge Appellant with a \$21,821.00 SNAP overpayment is upheld.

FINDINGS OF FACT

The Administrative Law Judge found the following facts, by a preponderance of the evidence:

- A. Appellant, born Wednesday, [REDACTED] received SNAP benefits since at least May 2015.



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- B. Appellant received SNAP benefits from at least May 2015. There was a total of 4 people in the assistance unit.
- C. On August 7, 2019, the BOC mailed a Notice of Overpayment, Form IL444-2404X, to Appellant. This form advised Appellant that she had received a \$21,821.00 SNAP overpayment for the period from May 2015 to December 2017.
- D. The Notice of Overpayment listed that the reason the overpayment occurred was because Appellant and her husband, Adult A, received SNAP benefits on separate cases when they were required to be on a case together, and also Appellant did not report Adult A's income from social security and Workplace A.
- E. On Wednesday, August 14, 2019, Appellant filed an appeal, via Telephone, requesting a fair hearing, and appealing the BOC's August 7, 2019 decision.

#### DISCUSSION OF EVIDENCE

The Department Witness testified in summary to the following:

On August 7, 2019, Appellant was issued an overpayment notice for a program violation. The overpayment covered the period of May 2015 through December 2017 in the amount of \$21,821.00. The overpayment occurred due to the income (Workplace A and social security) from Adult A—Appellant's husband and Minor A. Neither Adult A nor Minor A were included on Appellant's SNAP household. However, the Department believes they were both part of Appellant's household. Adult A had a separate SNAP case where he was receiving benefits as well. The address listed for Adult A's SNAP case is the same address belonging to Appellant—Address A. Adult A is also using Address A as it relates to Corporation A, for receiving mail according to the post office verification, and for registration of his vehicles.

Appellant testified in summary to the following:

Appellant arrived from Pakistan to the United States in 2007 or 2008. While Appellant and Adult A have children together, they never actually lived together. Appellant's first child with Appellant was planned, the last two were not. Appellant divorced Adult A in April of 2012. Adult A's family member helped Appellant find her current residence, Address A, where she has lived since January 2013. Appellant did not know that Adult A once resided at Address A. Appellant has no idea when, if ever, was the last time Adult A lived at Address A (Appellant's current residential address). Appellant is not sure who the owner is of Address A. Appellant only knows that Adult A's family member is the property manager. Appellant did not know that Adult A was



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using Address A as his mailing address. Appellant does not personally review the mail. There are two men who live in the basement of Address A in a separate living quarter. Appellant knows their first names, but not their last names. One of these men is the one who collects all the mail. The man distributes the mail and he only gives Appellant mail that is addressed to her. Appellant had no idea that Adult A was using Address A and had it listed for Company A. Appellant knew that Adult A had added her name to Corporation A in 2006, but Appellant had no idea that her name continued to be associated with the business. Appellant relies on the SNAP program. To earn extra money, during tax season, Appellant works filing income taxes for individuals.

The Department submitted the following exhibits, which were admitted to the record:

- Group Exhibit 1.

Appellant submitted the following exhibits, which were admitted to the record:

- Group Exhibit 1 (including additional records submitted before the record closed).

/s/ Claudia Silva  
Administrative Law Judge

### FINAL ADMINISTRATIVE DECISION

With respect to the initiation of an appeal, the Illinois Administrative Code (Title 89; Social Services, Chapter IV: Department of Human Services, Subchapter a: General Program Provisions, Part 14 Practice in Administrative Hearings) Section 14.10 provides as follows, in relevant part:

Section 14.10 Initiation of Appeal

\*\*\*\*

- e) An appeal may be filed by individuals who apply for or receive financial assistance, medical assistance, or food stamps, or by their authorized representatives. Authorized representatives must provide a written, signed authorization from the individual designating them as the individual's representative.

- f) An appeal must be filed within the following time frames:

\*\*\*\*

- 2) For a food stamp issue, the appeal must be filed within 90 days after the Department's action to notify the client;

\*\*\*\*

In this case, the Department sent the notice of action on August 7, 2019, and Appellant filed her appeal on Wednesday, August 14, 2019. Therefore, BOH has jurisdiction over this appeal.

The applicable evidentiary rules are found in 89 Ill. Adm. Code 14.23 which states:



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The hearing shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, but shall be conducted in a manner best calculated to conform to substantial justice.

The eligibility and allotment of SNAP benefits is determined pursuant to standards established by the United States Department of Agriculture (USDA) using the Federal Poverty Level (FPL), and is implemented pursuant to the Illinois Public Aid Code [305 ILCS 5], Illinois Administrative Code [89 Ill. Adm. Code 121, *et. seq.*] and the Department's Policy Manual (PM).

The following PM sections were relied on in this decision:

PM 18-04-00: Changes in the SNAP Unit

Except for Mid-Point Reporting Units, SNAP units must report the following changes within 10 calendar days of the date they learn about the change. For income-related changes, consider the date the first payment is received (as a result of the change) as the date the client learned about the change.

- When they get, change, or lose a job.
- When monthly earned income changes by more than \$100.
- When the source of unearned income changes, or the amount changes by more than \$50. The client does not have to report changes in any cash benefit from the Department.
- Change in SNAP unit size.
- Change of address and new shelter costs. Provide the client with the opportunity to register to vote when a change of address is reported in person (see PM 22-12-00).
- Obtaining a licensed vehicle.
- When total cash on hand, stocks, bonds, and money in a bank or savings account reach or exceed a total of \$2000.
- When the order to pay child support changes or ends, for SNAP units that receive a deduction for child support payments.

Applicants are to report all changes at the eligibility interview. A change that happens after the eligibility interview and before the notice of decision must be reported within 10 calendar days after the date of the notice.

**Mid-Point Reporting (MPR) units are only required to:**

- report when their gross income exceeds the SNAP Gross Monthly Income Standard for the unit's size.
- report changes related to the questions on the interim Mid-Point Report form,
- comply with the New Hire Requirements.

For income-related changes, consider the date the first payment is received (as a result of the change) as the date the client learned about the change.

PM 19-07-06: Changes Reported During the Approval Period (SNAP)

- A SNAP unit in Mid-Point Reporting status must:
  - report when their income exceeds their Gross Income Standard. They must report the change by the 10th day of the calendar month after the calendar month that income exceeded the Gross Income limit. **For example**, gross income exceeded the limit for 08/16 the unit must report the change by 09/10/16.



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- report changes when completing their Mid-Point Report form (PM 19-07-07).
- comply with New Hire requirements
- When the unit reports a change, review the effect of the change on the unit's eligibility and benefit amount. For income-related changes, consider the date the first payment is received (as a result of the change) as the date the client learned about the change.
- If the income belongs to a new member, the unit must report if the income of all those who are in the unit exceeds the Gross Income limit for the unit size that the unit was originally notified.
- When the number in the SNAP unit changes, the Redetermination Fact Sheet is centrally sent telling the unit its new Gross Income Standard for reporting changes of income for SNAP.

**NOTE:** Mid-Point Reporting units must comply with New Hire requirements (PM 22-14-02).

**Act on a reported change as follows:**

- Change results in a decrease or ineligibility (PM 18-04-10).
  - Change results in an increase in benefits not due to a new unit members (PM 18-04-08).
- NOTE:** For TANF cash benefits, when the ending of employment is reported (PM 10-02-04-c).
- Change due to adding a new unit member (PM 18-04-07).

See PM 19-07-07 for reporting changes on the Mid-Point Report form and the Mid-Point Reporting process.

**Note:** If a reported change makes a case exempt from Mid-Point Reporting, remove the case from Mid-Point Reporting status at the next REDE.

**PM 23-02-00: OVERPAYMENT (Cash, SNAP)**

When a customer gets more benefits than he or she qualifies for, there is an overpayment of benefits. The error may be the Department's fault or the customer's fault. Report the overpayment when the error is found, no matter whose fault it is.

**Do not report medical benefits as an overpayment.** HFS does not seek repayment for overpaid medical benefits. Recalculating an NH/SLF credit or adjusting an unmet spenddown amount on an active medical case is not considered a report of overpayment.

**PM 23-02-02: SNAP Overpayment**

SNAP overpayments happen when there are unreported changes in:

- new or increased wages
- new or increased unearned income
- who lives in the home
- new or increased assets
- Mid-Point Reporting units, when the client fails to report when gross income goes over the Gross Income Standard.

Overpayments may also happen when the SNAP unit was not eligible at intake, where something was incorrectly reported, or where agency action is not taken.

There is not an overpayment:

- If an Mid-Point Reporting unit, during its approval period, fails to report a change of income that is less than the unit's Gross Income Standard.



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- For any month that there was not enough time to send a 10-day notice on the change.
- For cases not in Mid-Point Reporting status, when gross monthly earned income changes by less than \$100, or unearned income changes by less than \$50.
- For any SNAP unit that has one of the following unreported changes:
  - allowable medical expenses; or
  - rent or utilities changed and the SNAP unit has not moved; or
  - decrease in day care costs.

**NOTE:** These changes are not overpayments because the SNAP unit does not have to report the change.

- When an ineligible noncitizen received benefits as an eligible noncitizen while waiting for proof of citizenship/BCIS status from the SAVE secondary system.
- For failing to get a signature on a form.
- For incorrectly completing an authorization form that did not affect the SNAP amount.
- When the wrong Family Community Resource Center issued SNAP to a case.

There are 3 types of SNAP overpayments:

- Intentional Program Violation (IPV),
- Agency Error (AE), or
- Inadvertent Household Error (IHE).

DHS acts to get repayment for all 3 types of errors. The method used to recover the overpayment depends on the type of error

#### PM 23-03-03: Figuring a SNAP Overpayment

The monthly SNAP overpayment amount is the difference between what the SNAP unit received and the correct benefit amount. Figure the total overpayment by adding the amounts from each month of the overpayment period.

Use actual income and expenses from the correct budget and payment month to figure the monthly overpayment. Always use the fiscal month that was used to figure the original benefits.

When figuring the monthly overpayment amount, use:

- the amount of estimated income that was budgeted on a case if that income was reported accurately and budgeted; and
- the actual amount of any income that was not reported.

Figure the correct benefit amount for each month of the overpayment period. If a case has been both underpaid and overpaid over a period of time, file the overpayment and underpayment separately. The difference between the 2 amounts will be figured centrally.

If the income belongs to a new member, the unit must report if the income of all those who are in the unit exceeds the Gross Income limit for the unit size that the unit was originally notified.

**For cases not in Mid-Point Reporting status,** determine eligibility and the correct benefit amount for the first payment month the change would have been effective if it had been timely reported (within 10 calendar days of the date the first payment is received for income-related changes) and a timely notice could have been sent. Also allow another 10 days for the time needed to send a timely notice.



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**Mid-Point Reporting Units**

For units in Mid-Point Reporting, during the 12-month approval period, the unit is required to:

- report when their income exceeds the unit's Gross Income Standard;
- complete the interim Mid-Point Report (Form 2890) in the 6th month and report all changes related to the questions on the form;
- comply with the New Hire requirements.

The change must be reported by the 10th day of the calendar month following the calendar month that income exceeded the Gross Income limit. The overpayment begins the first regular roll month after the month that the unit was required to report the change. For example, gross income exceeded the limit for 03/17; the overpayment would start effective 05/17.

For changes that should have been reported at REDE, determine eligibility and the correct benefit amount for the first payment month the change would have been effective if it had been reported at the REDE.

**PM 04-05-00: Who to Include in the SNAP Unit**

The SNAP unit is one person or a group of people who usually buy and prepare their food together.

TANF policy and SNAP policy differ about who must be included in a case. For TANF policy see PM 04-01-00.

**PM 04-05-02: The SNAP Unit**

A SNAP unit can be:

- a person of any age who lives alone; or
- a person who lives with others, but usually buys and prepares their food separately; or
- a group of people who live together and who usually buy and prepare food together. However, a person who meets elderly disabled status and their spouse, may be a separate unit even though their food is bought and prepared in common with the other people they live with.

**PM 04-05-03: People Required to Be in the SNAP Unit**

The following people living together must be included in the same SNAP unit:

- Spouses.
- Any person under age 18 and under the parental control of an adult unit member who is not their parent, even if the person providing parental control eats separately.
- A parent and their child who is under age 22.

If parents and their children under age 22 living in the same dwelling are claiming to be living separately, only grant separate SNAP unit status if the living quarters are totally separate with no shared living space.

The living quarters are considered separate even if there is a shared entrance (e.g., a hallway or stairway).

**PM 04-05-06: Non-SNAP Unit Members**

A non-SNAP unit member is a person who lives with the SNAP unit, but is not included in the unit. A non-SNAP unit member's income and assets do not affect the eligibility of the unit they live with.



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non-SNAP unit members include but are not limited to:

- A **roomer**, a person that lives with a family and pays for their own lodging, but not their meals.
- A **boarder**, a person that pays a reasonable monthly amount for lodging and meals. See PM 05-02-01 for what is a reasonable amount. If a boarder is not paying a reasonable amount, the person must be included in the SNAP unit.
- A **live-in-attendant**, a person that lives with the unit to provide medical, housekeeping, child care, or other similar personal services.
- A **student** of higher education who does not meet the criteria (see PM 03-04-03-b).
- A **separate unit member**, a person who shares living space with the SNAP unit but who is not in the SNAP unit because they do not usually buy and prepare their food together.

### ANALYSIS

The issue on appeal is whether the FCRC's/Bureau of Collections' (BOC) August 7, 2019 decision to charge Appellant with a \$21,821.00 Supplemental Nutrition Assistance Program (SNAP) overpayment for the period from May 2015 through December 2017, was proper.

Appellant argued that she has never lived with Appellant and that she has no idea what connection, if any, Appellant has to Address A. Since her housemates are the only ones who collect the mail, Appellant was unaware that Adult A was using Address A to receive mail. Further, Appellant and Adult A divorced in 2012.

The Department Witness stated the Department's position as follows, Adult A is Appellant's husband. Adult A and Appellant reside together at Address A. Appellant failed to notify the Department that Adult A and Minor A were living with Appellant at Address A. As a result, there was Adult A's income, by way of Workplace A and social security, that were not factored into Appellant's SNAP case. Also, Adult A and Minor A had their own SNAP case (where they listed Address A as well). The undeclared income and the additional SNAP case led to the overpayment in question.

The Department submitted numerous records to demonstrate that Appellant and Adult A are both residing at Address A. A record dated September 10, 2019, from the Illinois Office of the Secretary of State for Corporation A, denotes that a corporation where Adult A is listed as the President and Appellant is listed as the Secretary, was incorporated on July 15, 2004. Residence A is listed as the corporation address and as the address for both Appellant and Adult A. The Department also submitted an Address Verification Request to the U.S. Postmaster. On February 13, 2018, the post office verified that Adult A's last known address is Residence A. Finally, the Department submitted various records from the Illinois Office of the Secretary of State which denote that Adult A had several vehicles registered at Residence A. Reviewing all of the above, it appears more likely than not that Appellant and Adult A were residing together during the overpayment period.



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The above evidence provided by the Department suggests that Appellant qualified as a person to be included in the SNAP unit under PM 04-05-02—The SNAP Unit. In this case, the preponderance of the evidence demonstrates that Adult A was living in the SNAP unit and that therefore, any income he added was not reported. PM 23-03-03—Figuring a SNAP Overpayment, delineates how overpayments are determined. Via testimony and documents the Department presented evidence of how the overpayment was calculated and the amount of the SNAP overpayment.

The notice of overpayment sent to Appellant states that Appellant and her “husband” received SNAP benefits in separate cases and Appellant had undeclared income from her husband. Appellant offered into evidence a Judgment For Dissolution of Marriage, confirming that Appellant and Adult A were divorced as of April 2, 2012 in Case No. 12 D 306 (Circuit Court Of The Eighteenth Judicial Circuit, DuPage County, Illinois). While they may no longer be married under the law, this alone does not overcome the evidence that Appellant and Adult A are members of the same household, and that a SNAP overpayment occurred.

Next, a review of Appellant’s credibility is warranted. Appellant testified that she moved to Address A in 2013. Appellant testified that she had no idea if Adult A had ever lived at Residence A or had any prior or current connection to Address A. Appellant maintained that a family friend helped her find a place to live Address A. Compare this testimony with the letter that Appellant submitted from Adult A. In the letter, Adult A purports that he lived at Address A until 2012. The Department submitted property records which show that at one point Adult A owned Address A. It is highly implausible that Appellant would move into Address A and not know that Adult A (her ex-husband) once owned and lived at that very same address.

Also, Appellant testified that she had housemates but was unable to even identify their last names at the hearing. Appellant also stated that these same housemates oversaw collection of all the mail. Thus, Appellant was clueless that Adult A was using and receiving mail at Residence A. Again, it is unlikely that someone else is collecting the mail each and everyday and that Appellant is completely oblivious that Adult A is using Residence A for mail.

Next, Appellant testified that through all her years of marriage to Adult A, they never resided together. Appellant’s assertion at the hearing contradicted what she wrote in her statement, submitted as part of the record, in anticipation of the hearing. Her statement, in part, read as follows: “I and [Adult (A)] were divorced on April 2, 2012. *Since then* we are not living together” (emphasis added). At hearing Appellant offered that since she moved to the United States in 2007/2008, they never resided together. However, her written statement asserts that ever since the divorce they stopped residing together. For all of the above reasons, Appellant’s lacks credibility.

The Department submitted income documents and calculations and an abundance of state/government records to show that Adult A was residing at Address A and that an overpayment occurred. Therefore, the BOC’s decision to charge Appellant with an



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overpayment is upheld.

CONCLUSION

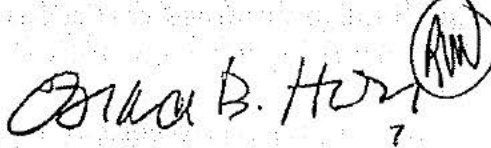
Accordingly, the Department's August 7, 2019 decision to charge Appellant with a \$21,821.00 SNAP overpayment for the period from May 2015 to December 2017, is upheld.

**IT IS DIRECTED THAT:**

The Department's August 7, 2019 decision, that Appellant received an overpayment of \$21,821.00 in SNAP benefits, be upheld.

**SE ORDENA QUE:**

La decisión del departamento de 7 de Agosto del 2019, que el apelante recibió un sobrepago de \$21,821.00 en beneficios de SNAP, se confirma.

  
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GRACE B. HOU  
SECRETARY

2-20-0364



No. 2-20-0364

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APPELLATE COURT 2ND DISTRICT

IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND JUDICIAL DISTRICT

AYESHA CHAUDHARY,

Plaintiff-Appellee,

V.

ILLINOIS DEPARTMENT OF  
HUMAN SERVICES; and GRACE  
B. HOU, in her official capacity  
as Secretary of the Illinois  
Department of Human Services,

Defendants-Appellants.

) Appeal from the Circuit Court of  
) the Eighteenth Judicial Circuit,  
) DuPage County, Illinois

) No. 19 MR 1341

) The Honorable  
) BONNIE M. WHEATON,  
) Judge Presiding.

## BRIEF AND APPENDIX OF DEFENDANTS-APPELLANTS

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**CERTIFICATE OF COMPLIANCE**

**CERTIFICATE OF FILING AND SERVICE**

### **NATURE OF THE ACTION**

The Illinois Department of Human Services discovered that it had overpaid Ayesha Chaudhary \$21,821 in Supplemental Nutrition Assistance Program (SNAP) benefits because she and her former husband received benefits on separate accounts at the same home address, even though SNAP rules required them to have one account. After investigating, the Department sent Chaudhary an overpayment determination notice for that amount, and she filed an administrative appeal. After a hearing, the Department's Secretary issued a final administrative decision upholding the determination. Chaudhary thereafter filed an action in the circuit court for judicial review of that decision through a common law writ of certiorari. The circuit court reversed the decision on the basis that the Department's administrative law judge ("ALJ") improperly placed the burden of proof on Chaudhary during the administrative hearing. The Department appealed. No questions are raised on the pleadings.

## ISSUES PRESENTED FOR REVIEW

1. Whether, assuming that Chaudhary preserved this point, the Secretary correctly placed the burden of proof on her during the administrative hearing to prove by a preponderance of the evidence that the Department's SNAP overpayment determination was wrong.

2. Whether the Secretary's decision upholding the SNAP overpayment determination was not against the manifest weight of the evidence where it was supported by evidence that Chaudhary and her ex-husband lived at the same address and that the overpayment amount was correct.

## JURISDICTION

This court has jurisdiction over this appeal under Illinois Supreme Court Rule 301. The circuit court entered an order reversing the Secretary's final administrative decision on June 4, 2020. (C 754).<sup>1</sup> The Department and the Secretary filed their timely notice of appeal on June 30, 2020 (C 755-58), within 30 days of the circuit court's judgment, *see* Ill. Sup. Ct. R. 303(a)(1).

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<sup>1</sup> The record on appeal consists of one common law volume, cited as "C \_," and one volume of report of proceedings, cited as "Sup R \_\_\_\_."

**PROVISIONS INVOLVED**

The following relevant statutory and regulatory provisions are reproduced in the appendix to this brief:

305 ILCS 5/12-4.4 (2018)  
89 Ill. Admin. Code § 14.1  
89 Ill. Admin. Code § 14.10  
89 Ill. Admin Code § 14.22  
89 Ill. Admin. Code § 14.23  
89 Ill. Admin Code § 14.30  
89 Ill. Admin Code § 14.60  
89 Ill. Admin. Code § 165.10  
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89 Ill. Admin. Code § 165.42  
89 Ill. Admin. Code § 165.44

## STATEMENT OF FACTS

Chaudhary came to the United States from Pakistan in 2007 or 2008. (C 586-87). She was legally married to Jon Mohammad Ramzan at that time, and he is the father of her three children. (C 586). They divorced in 2012. (C 573-74). In January 2013, she and her children moved to 1433 White Oak Lane in West Chicago, Illinois (“1433”). (C 574). From at least May 2015, she and her children received SNAP benefits at that address. (C 17, 93-96). Beginning in May 2015, Ramzan and his child from a different marriage also received SNAP benefits at 1433 under a separate account. (C 17, 105-10, 527-28, 535). Both Chaudhary and Ramzan received SNAP benefits at 1433 under separate accounts from May 2015 through December 2017. (C 61).

### **The Department’s overpayment of SNAP benefits**

Under the SNAP rules, recipients living at the same address all must be on one account, with their income sources considered jointly and reported to the Department. (C 60-61). The Department discovered that Chaudhary and Ramzan broke those rules by receiving benefits on separate accounts at 1433 and not reporting some of Ramzan’s income, resulting in an overpayment to Chaudhary of \$21,821. (*Id.*). She was charged with the overpayment of benefits because she was the first, and hence the primary, account holder at 1433. (C 530-31).

The Department sent Chaudhary an overpayment determination notice explaining how the overpayment occurred, itemizing each payment making up

the \$21,821, and stating that she was liable for repayment. (C 111-13). She administratively appealed the determination (C 40, 52), and then received from the Department: an appeal confirmation letter detailing the appeals process (C 40-43); a Hearing Scheduled Letter advising her about the hearing procedures, including how to submit and review evidence before the hearing, and her right to representation (C 44-52); a Statement of Facts summarizing the reasons for the overpayment determination (C 52-54); and a copy of the Department's file documenting the overpayment (C 52, 56-246, 327-459). Together those documents explained the reasons for the overpayment charge, the calculations documenting the charge, and the process for contesting the charge. (C 40-54, 56-246, 327-459).

Before the administrative hearing, Chaudhary sent a letter to the Department explaining her relationship with Ramzan (C 461), a notice of change in social security payments for one of her children (C 462-66), a judgment for dissolution of her marriage to Ramzan (C 467-69), and a name-change petition (C 470).

### **The Department's administrative hearing**

An ALJ for the Department held an administrative hearing in Chaudhary's appeal. (C 496). Ernesto Chairez, who represented the Department during the hearing, held the required pre-appeal review with Chaudhary to discuss the documents that each side had submitted. (C 502, 506). And the ALJ reviewed the documents before the hearing. (C 496, 500).

Chaudhary appeared during the hearing on her own behalf. (C 500-01). No other witnesses testified. (C 501-02). Before testimony began, the ALJ advised Chaudhary that she had the burden of proving by a preponderance of the evidence that the Department's determination was wrong and explained that concept. (C 510-11). Chaudhary made no objection at this time. (*Id.*).

### **The Department's evidence of overpayment**

At the hearing, the Department presented the following evidence.

Chaudhary was receiving SNAP benefits in May 2015 as the primary recipient on her household account at 1433. (C 523-24). Under SNAP rules, all persons living at the same address must be on a single account. (C 523-24, 530-31).

Chaudhary's account had four people: herself and her three children, Faraz, Wajeha, and Miriam. (C 524).

Ramzan is the father to Chaudhary's three children. (C 586). In May 2014, he began receiving state medical benefits and listing 1433 as his home address. (C 535). In May 2015, he opened his own separate SNAP account as the primary recipient, also at 1433. (C 527). Kiran Ramzan, his daughter from another marriage, was also on those accounts. (C 527-28, 535). His SNAP account disclosed two income sources: Ozark Pizza Company and Kiran's social security payments. (C 60, 484-85, 530-31, 534-35). As a result, as of May 2015, there were two separate SNAP accounts at 1433 and Ramzan had different children on each one. (C 527, 535).



According to SNAP rules, Ramzan and Kiran should have been added to Chaudhary's account with their income disclosed and factored into her benefit amount. (C 524, 530-31). And it was Chaudhary who should have reported the addition of Ramzan, Kiran, and their income because she was the first, and thus the primary, account holder at 1433. (C 530-31).

In December 2017, Ramzan stopped receiving SNAP benefits at 1433 when he changed his mailing address. (C 60, 521). That address change alerted the Department to the fact that he had been receiving benefits on his own account at 1433, in violation of SNAP rules, since May 2015. (C 60, 523-24). The separate payments to Chaudhary's account (four recipients) and Ramzan's account (two recipients), cumulatively, were more than would have been paid if all six recipients had properly been on one account. (*Id.*). Thus, the payments from May 2015 through December 2017 caused overpayments to Chaudhary as the primary account holder at 1433. (C 523-24).

When the Department discovered the issue in December 2017, it sent an overpayment referral to its Bureau of Collections. (C 114, 538). The Bureau of Collections further investigated and found more evidence of an overpayment (C 115-246, 530, 538, 558), which included:

- records of telephone interviews of Chaudhary conducted by the Department in May 2015 (C 126-34) and December 2015 (C 135-42), in which she reported that her only household members were herself, Faraz, Wajeha, and Miriam (C 132, 141, 535, 541-43);
- SNAP payments to Chaudhary on her account at 1433 during the relevant time period (C 143-62, 186-98), and to Ramzan at 1433 during the same time period (C 163-80, 199-206);

- the West Chicago Post Office's verification from February 2018 that Ramzan was receiving mail at 1433 at the relevant times (C 210-11, 558-59);
- vehicle records showing both Chaudhary and Ramzan with vehicles registered to 1433 (C 212-21, 559-60);
- Ramzan's income from Ozark Pizza Company during the relevant period (C 227-34, 562);
- internal Department records showing activity for both Chaudhary and Ramzan at 1433 (C 237-46, 563-66);
- Illinois Secretary of State records showing a company, Yasmar, Inc., registered to Ramzan at 1433 listing Ramzan as president and Chaudhary as secretary (C 471-76, 568);
- property records showing that Ramzan and his former wife, Shannon, once owned the 1433 property (C 477-83, 569-70, 572-73);
- social security records showing Kiran's receipt of benefits at 1433 (C 484-85, 570, 572);
- Department overpayment calculator reports that documented each individual overpayment, and on which Chairez circled the relevant recipients and figures (C 275-305, 516-18); and
- Department ledger inquiries that showed overpayments by amount and individual, and upon which Chairez made notes for ease of explanation (C 306-23, 518-24).

Chairez authenticated each document and explained them during the hearing. (C 516-24, 535, 541-43, 558-60, 562-66, 568-70, 572-73).

### **Chaudhary's evidence**

Chaudhary presented the following evidence during the hearing. After Chaudhary and Ramzan divorced in 2012, she lived in Glendale Heights, Illinois with her three children. (C 573, 577). In January 2013, they moved to

1433. (C 574). She testified that Ramzan once lived at 1433 and moved out after his second wife died (*id.*), but also testified that she had no idea whether Ramzan had lived there (C 575). When the ALJ tried to clarify this point, Chaudhary gave several different responses, including:

- “Maybe yeah, yeah. I don’t know.” (*id.*);
- “This whole time where Jon was living, I don’t know at the time, I don’t know at the time, yeah.” (C 576); and
- “He was not living there. He told me he was not living there. But he said that he was living there before, I don’t know. But at the time I moved in he was not there.” (*id.*).

Ramzan added Chaudhary’s name to Yasmar, Inc.’s business records as the secretary in 2006. (C 577). He transferred the business to another person who lived in Pakistan, and for whom Chaudhary performed accounting services. (*Id.*). She was surprised that the business records had not been updated. (*Id.*).

After receiving the overpayment determination notice, Chaudhary learned that Ramzan used 1433 as his mailing address because his mail got lost when he lived elsewhere. (C 577-78). Until then, she had no idea that Ramzan received mail at 1433, as she did not look through the mail. (C 578-79). Instead, a person who lived in a basement apartment at 1433 would sort through all the mail. (C 578-79). “A couple guys” lived in the basement apartment, one named “Nisakut [phonetic]” and the other named Kahn; she did not know their last names. (C 580). One of them would give Chaudhary her mail and she did not know what he did with Ramzan’s mail. (C579). She

said: “[W]hatever (is Ramzan’s) maybe they have been giving it to you since I [inadudible 00:17:21] yeah.” (*Id.*). She “didn’t have any idea that the mailing address is going to bring [her] here like this.” (C 580).

At the close of the evidence, Chaudhary offered to submit additional documents, besides the ones that she submitted before the hearing, to show that Ramzan lived elsewhere, and the ALJ agreed to hold the record open for several days. (C 589). Within that additional time, Chaudhary submitted: Ramzan’s e-mail and affidavit dated after the hearing stating that he did not live at 1433, describing their residence history, and attaching documents showing a different home address (C 595-643); affidavits from Nizakat Khan, Sher Dil Khan, and Mohammad Shakeel dated after the hearing stating that she lived at 1433 with only her children (C 644-46); and her lease for 1433 (C 647-58).

### **The ALJ’s findings**

After the hearing, the ALJ issued a decision (C 665-67), making factual findings by a preponderance of the evidence. Specifically, the ALJ found that the Department charged Chaudhary with an overpayment of \$21,821 from May 2015 through December 2017, because: she and Ramzan received SNAP benefits on separate accounts when they were required to be on a single account together as part of the same household living at the same address; and she did not report Ramzan’s work and social security income. (C 665-66).

In addition, the ALJ found that the overpayment occurred because Ramzan's income and Kiran's social security payments were not included on Chaudhary's SNAP account, but should have been because Ramzan also had an active account at the same address. (C 666). The post office verified 1433 as his mailing address, and he used it for registration of a corporation and his vehicles. (*Id.*). Thus, the ALJ found that Ramzan was part of Chaudhary's household. (*Id.*). In summarizing Chaudhary's evidence, the ALJ recounted her family history with Ramzan, and noted her testimony that she was unaware that Ramzan had once lived at 1433, that he received his mail there, and that he registered a business there with her as an officer. (C 666-67).

### **The Secretary's decision**

The Secretary thereafter issued a final administrative decision upholding the Department's overpayment determination (C 663-74), and adopted the ALJ's findings (C 666, 673). The Secretary concluded that because a preponderance of the evidence showed that Ramzan lived at 1433 at the relevant times, the overpayment determination was correct. (C 665-67, 672-74).

The Secretary summarized (C 666-67) and analyzed (C 672-74) the relevant evidence. She relied on the documents from the Department's investigation showing 1433 as Ramzan's address — Secretary of State records listing Ramzan and Chaudhary as officers of Yasmar, Inc., post office address verification, and state vehicle registration records — to find that it was more

likely than not that both lived there during the overpayment period. (*Id.*). As a result, Ramzan should have been included on Chaudhary's account and his income reported. (C 673). The Secretary found that Chairez's testimony and the Department's documents showing the overpayment calculation sufficiently verified the \$21,821 charge. (*Id.*).

The Secretary also found that Chaudhary's testimony was not credible (*id.*), noting that: "[i]t is highly implausible" that she did not know that Ramzan once owned and lived at 1433 (*id.*); "it is highly unlikely" that others collected the mail every day and that she was "clueless" or "completely oblivious" to the fact that Ramzan got his mail there (*id.*); and her testimony that she and Ramzan never lived together during their marriage contradicted her written statement that they had not lived together "since" their divorce (*id.*). For those reasons, the Secretary stressed that Chaudhary "lack[ed] credibility." (*Id.*).

Hence, in reliance on the Department's documents, calculations, and "an abundance" of records linking Ramzan to 1433, the Secretary upheld the overpayment determination. (C 673-74).

### **The circuit court proceedings**

Chaudhary filed a complaint in the circuit court against the Department and its Secretary, seeking review of the Secretary's final administrative decision via a common law writ of certiorari. (C 11-12). In the complaint, Chaudhary did not claim that the burden of proof was improperly placed on

her during the administrative hearing or that she was denied due process. (*See id.*). As the answer to the complaint, the Department and its Secretary filed the administrative record. (C 36-39).

Chaudhary's brief in support of her complaint summarized the evidence from the administrative hearing, and raised the burden of proof and due process issues for the first time. (C 710-13). The Department and its Secretary filed a brief in support of the final administrative decision (C 726), summarizing the evidence from the hearing and asserting that: the decision was not against the manifest weight of the evidence (C 731-32); the Secretary found that Chaudhary was not a credible witness (C 733-35); Chaudhary forfeited the burden of proof and due process issues (C 739); she correctly had the burden of proof during the hearing (C 735-37); and she received procedural due process (C 737-39).

The circuit court held a hearing during which Chaudhary argued that the Department should have had the burden of proof at the administrative hearing and did not meet it, and she was thus deprived of due process. (Sup R 4, 6-8). The Department and its Secretary countered that the burden of proof was assigned correctly during the hearing, Chaudhary received due process, she forfeited the burden of proof and due process issues, and there was evidence supporting the final administrative decision and so it was not against the manifest weight of the evidence. (Sup R 9-18).

The circuit court reversed the Secretary's final administrative decision, reasoning that the ALJ incorrectly placed the burden of proof on Chaudhary, the Department bore the burden of proving a SNAP overpayment (C 754), and the Department did not produce enough evidence to sustain its burden of proof that Ramzan lived at 1433 (Sup R 20-22).

The Department and its Secretary appealed. (C 755-58).



## ARGUMENT

### I. Standard of review

The Secretary's decision upholding the overpayment determination issued by the Department to Chaudhary was the final administrative decision in this case. *See* 89 Ill. Admin. Code § 14.70(a). That decision is reviewable by the circuit court, 89 Ill. Admin. Code § 14.70(e), through a common law writ of certiorari because no Illinois statute expressly adopts the Administrative Review Law ("ARL"), 735 ILCS 5/3-101, *et seq.* (2018), for final agency decisions about the administration of SNAP benefits, *Outcom, Inc. v. Ill. Dep't of Transp.*, 233 Ill. 2d 324, 333 (2009) (certiorari available to review final agency decisions if no other means of review is provided by law).

The nature and extent of judicial review under certiorari is virtually the same as review under the ARL. *King's Health Spa, Inc. v. Vill. of Downers Grove*, 2014 IL App (2d) 130825, ¶ 35. In both, issues or defenses not raised before the agency generally will not be considered for the first time on administrative review. *Carpetland U.S.A., Inc. v. Ill. Dep't of Emp. Sec.*, 201 Ill. 2d 351, 396-97 (2002). On appeal, this court reviews the Secretary's final administrative decision, not the circuit court's order. *Outcom*, 233 Ill. 2d at 337.

The standard applied by this court in reviewing the Secretary's decision depends on the issue presented. *Sudzus v. Dep't of Emp't Sec.*, 393 Ill. App. 3d 814, 819 (1st Dist. 2009). The Secretary's factual findings are "*prima facie*

true and correct,” and will not be disturbed unless they are against the manifest weight of the evidence. *Williams v. Ill. Dep’t of Human Servs. Div. of Rehabilitation Servs.*, 2019 IL App (1st) 181517, ¶ 21. When the issue is one of law, the *de novo* standard applies. *Kouzoukas v. Ret. Bd. of Policemen’s Annuity & Benefit Fund of City of Chi.*, 234 Ill. 2d 446, 463 (2009). Whether a given set of facts meets the applicable legal standard is a mixed question of fact and law, reviewed under the largely deferential clear error standard. *Cinkus v. Vill. of Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 211 (2008). The Secretary’s determination on a mixed question is clearly erroneous only if the court is left with a “definite and firm conviction that a mistake has been made.” *Kouzoukas*, 234 Ill. 2d at 464. The mere fact that an opposite conclusion would be reasonable or that the reviewing court may have decided the case differently in the first instance does not justify reversing the Secretary’s determination. *Vill. of Buffalo Grove v. Bd. of Trustees of Buffalo Grove Firefighters’ Pension Fund*, 2020 IL App (2d) 190171, ¶ 38.

Upon review, this court should rule that the Secretary applied the correct burden of proof in rendering the final administrative decision, and that the decision was not against the manifest weight of the evidence.

**II. The Secretary correctly assigned the burden of proof to Chaudhary at the administrative hearing to prove by a preponderance of the evidence that the SNAP overpayment determination was wrong.**

Although, as indicated, this court reviews the Secretary's final administrative decision rather than the decision of the circuit court, *see Outcom*, 233 Ill. 2d at 337, the circuit court ruled that the Secretary improperly placed the burden of proof on Chaudhary in her decision. Before reviewing the Secretary's decision on the merits, this court should resolve this threshold question that the circuit court injected into this case, either based on forfeiture or on the merits.

A question about which party bears the burden of proof in a proceeding is one of law that is reviewed *de novo*. *1350 Lake Shore Assoc. v. Healey*, 223 Ill. 2d 607, 627 (2006). As explained below, assuming that Chaudhary preserved the issue, the Secretary properly assigned to her the burden of proving by a preponderance of the evidence that Ramzan did not live with her at 1433, such that the Department's overpayment determination was wrong. As the party who appealed the determination, Chaudhary was required to prove the facts necessary to obtain the relief that she sought.

**A. Chaudhary forfeited any argument that she did not have the burden of proof at the administrative hearing because she did not raise that issue in that proceeding.**

Chaudhary forfeited any argument that she did not have the burden of proof at the administrative hearing by not raising the issue in that proceeding. Issues or defenses not placed before the administrative agency generally will not be considered for the first time on certiorari review. *See Texaco-Cities Serv. Pipeline Co. v. McGraw*, 182 Ill. 2d 262, 278 (1998).

At the administrative hearing, the ALJ advised Chaudhary that she had the burden of proof by a preponderance of the evidence. (C 510). Chaudhary never objected. (C 511-93). She also did not raise the point in the complaint that she filed in the circuit court seeking judicial review of the Secretary's decision. (See C 11-12). Instead, she raised the issue for the first time in her opening brief before the circuit court (C 713), and the Department's response brief asserted forfeiture (C 739).

Although the circuit court overlooked the forfeiture, this court should not. *See, e.g., Keeling v. Bd. of Trs. of Forest Park Police Pension Fund*, 2017 IL App (1st) 170804, ¶¶ 1, 45 (imposing forfeiture of claimant's due process argument in reversing circuit court's decision, which had overturned Board's denial of claimant's benefits on other grounds.) This court should deem the burden of proof issue forfeited and uphold the Secretary's decision on the merits.

**B. Forfeiture aside, the assignment of the burden of proof to Chaudhary at the administrative hearing was correct under the Department's regulations and common law, and for important policy reasons.**

If this court considers the burden of proof issue, it should uphold the Secretary's assignment of the burden to Chaudhary. The Secretary was correct based on the Department's administrative regulations and common law principles, as well as for important policy reasons. With the proper burden of proof in place, the circuit court should have upheld Secretary's decision.

**1. The Department's regulations assigned the burden of proof to Chaudhary, and the Secretary applied the regulations correctly.**

The federal SNAP system authorizes state programs to help low-income households have a more nutritious diet by increasing food-buying power. 7 U.S.C. § 2011 (2018). The Department administers Illinois' program. 305 ILCS 5/12-4.4 (2018). Administration includes recovering the overpayment of benefits (89 Ill. Admin. Code § 165.10, *et seq.*), and a means to resolve contested overpayment charges (89 Ill. Admin. Code §§ 14.1, *et seq.*).

The statutes governing SNAP benefits do not specify which party – the recipient of benefits or the Department – has the burden of proof when the recipient decides to challenge the Department's charge of an overpayment. But as explained below, the Department's corresponding administrative regulations, when considered as a whole, put the burden on Chaudhary as the party who triggered the administrative appeal, and the ALJ correctly applied the regulations in this case.

Administrative regulations have the force and effect of law. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 38. When construing an agency's regulations, statutory construction rules apply. *Portman v. Dep't of Human Servs.*, 393 Ill. App. 3d 1084, 1088-89 (2d Dist. 2009). A court starts by examining the text of the regulation to determine the drafters' intent. *Id.* Unless specifically defined, unambiguous terms will be given their plain meaning, and no part of the regulation will be rendered superfluous. *Id.* If the text of the regulation does not expressly state which party bears the burden of proof during an administrative hearing, the drafter's intent may be discerned from the context as a whole. *See, e.g., People v. Orth*, 124 Ill. 2d 326, 337-38 (1988) (assigning burden of proof to motorist challenging state's suspension of driver's license where statute provided for rescinding suspension only where motorist requested hearing).

Such is the case here. The applicable Illinois Administrative Code ("Code") provisions, like the governing statutes, do not expressly state that a SNAP recipient challenging an overpayment determination has the burden of proof that the determination was wrong. But an examination of their text as a whole shows that the burden indeed rests there.

The Department's overpayment collection process is governed by 89 Ill. Admin. Code §§ 165.10, *et seq.* Section 165.10 states that the Department initiates actions to recover overpayments, which "*shall*" be collected pursuant to other subparts. 89 Ill. Admin. Code § 165.10(a) (emphasis added). The

mandatory nature of the collection process, clear from the use of “shall,” is significant. Where an agency is required to act against an individual and provides a process for the individual to challenge the action, the burden of proof is properly on the challenging individual. *See, e.g., Arvia v. Madigan*, 209 Ill. 2d 520, 540-41 (2004) (placing burden of proof on driver contesting license suspension where suspension was required by statute and state provided administrative hearing process to challenge suspension); *Smoke N Stuff v. City of Chi.*, 2015 IL App (1st) 140936, ¶ 15 (placing burden of proof on business owner contesting city license revocation at administrative hearing to show city inspection and revocation for nonpayment of cigarette taxes was wrong).

Subsequent Code sections confirm that the Department’s duty to collect the overpayment of benefits is mandatory. The Department: “*shall* determine the amount of . . . overpayment” for specific months (89 Ill. Admin. Code § 165.20 (emphasis added)); “*shall* establish one of the following types of” overpayment claims (89 Ill. Admin. Code § 165.30 (emphasis added)); “*will* establish a claim to collect an overpayment” (89 Ill. Admin. Code § 165.42(a) (emphasis added)); and “*shall* collect” overpayments (89 Ill. Admin. Code § 165.44 (emphasis added)). As with drivers’ license suspensions in *Arvia*, the SNAP regulations *require* the Department to collect overpayments. This makes sense, for individuals who are not eligible for benefits under the program’s rules should not receive them.

And once the Department notifies a recipient of SNAP benefits that an overpayment was discovered and that it will start collection of the amount at issue, the Code allows the individual to contest the Department's charge. That process is governed by 89 Ill. Admin. Code § 14.1, *et seq.* ("Assistance Appeal"). Under that section, the appellant (here, Chaudhary): initiates the appeal (89 Ill. Admin. Code § 14.10); "shall have the opportunity to [p]resent evidence and witnesses" and "[r]efute testimony or other evidence and cross-examine witnesses" as part of an administrative hearing (89 Ill. Admin. Code § 14.22(a)); and may ask the ALJ to issue subpoenas (89 Ill. Admin. Code § 14.30). If the appellant fails to appear at or refuses to proceed with the hearing, then the appeal will be dismissed (89 Ill. Admin. Code § 14.60(a)), and the Department shall proceed with its collection of the overpayment (89 Ill. Admin. Code § 14.60(c)). As with the suspension rescission process in *Orth*, the individual challenging the government action must start the appeals process. If the person has no objection to the action, then the action may proceed without a hearing before an ALJ.

The language detailing the appeals process is significant to the burden of proof issue. As noted, the individual may request subpoenas (89 Ill. Admin. Code § 14.30), and present and refute testimony or evidence (89 Ill. Admin. Code § 14.22(a)). But once she starts the appeal process, the Code does not specify any particular action that the Department may or must take to gather or present evidence. Most notably, section 14.60 requires dismissal of the



appeal and mandatory collection of the overpayment if the individual does not proceed with the hearing. 89 Ill. Admin. Code § 14.60. Significant by its absence from section 14.60 is any requirement that, if the appeal is dismissed, the Department take any other action to prove the charge before starting its collection.

These provisions, taken together, indicate that the challenging individual – in this case, Chaudhary – has the burden to prove that the Department’s determination that there was an overpayment of SNAP benefits was wrong.

Furthermore, that placement of the burden of proof serves important policy goals, which include protecting the integrity, solvency, and efficiency of the SNAP system and hearing process. This court may consider those goals because in construing administrative regulations, it may consider the reasons for and necessity of the regulations, including “the evils sought to be remedied and the purpose to be achieved.” *Majid v. Ret. Bd. of Policemen’s Annuity & Benefit Fund of the City of Chi.*, 2015 IL App (1st) 123182, ¶ 16 (quotations omitted).

The Code furthers those goals by allowing the Department to recover benefits that should not have been paid — whether due to mistake, or fraud and abuse — in an orderly way. As this case illustrates, the Department first identifies, investigates, and verifies a potential overpayment, and only after completing that process sends an overpayment determination notice to the

recipient. (C 111-14). If, like Chaudhary, the recipient challenges the determination by initiating an appeal, the Department provides a Statement of Facts stating the reasons for the charge and its file materials supporting the charge. (C 52-55). The challenging recipient must also provide the Department with all of the evidence to be used in contesting the charge. (C 41, 44). If there is no appeal, the determination stands and the Department starts the collection process.

The recipient may have a financial interest in defeating the charge, and often possesses or controls much of the relevant information (*e.g.*, the circumstances surrounding Ramzan's residence). With the burden to prove facts necessary to defeat the charge (*i.e.*, where Ramzan lived at the relevant times), the recipient has the incentive to produce all relevant evidence and provide clear and credible testimony to sustain that burden. If the burden were on the Department, however, the recipient would lose those incentives. In fact, the recipient would benefit by saddling the Department with unclear testimony and producing scant evidence that would hinder it in meeting the burden. Chaudhary's cryptic testimony during the hearing before the ALJ in this case is a prime example. (C 575-76).

If laden with the burden of proof, the Department would have to adjust and likely expand its pre-hearing procedures. That could include more formal discovery, such as depositions and document production requests, and allowing for the impeachment of adverse witnesses. The Department already must

produce its own records in admissible form, as it did in this case. (*See supra*, pp 7-8). And the hearing itself would become more like a civil trial — for which its less formal processes (*e.g.*, not being bound by formal rules of evidence (89 Ill. Admin. Code § 14.23)), were not designed or intended.

For these reasons, the circuit court should not have reversed the Secretary's final administrative decision on this basis, particularly given that Chaudhary forfeited the burden of proof issue.

**2. Common law principles also support placing the burden of proof on Chaudhary because she initiated the administrative proceeding to challenge the Department's determination.**

Chaudhary argued in her opening brief in the circuit court that, under common law principles, the burden of proving an overpayment of SNAP benefits would be placed on the Department. (C 713-16). She was wrong.

As explained, the Code, read in its entire context, placed the burden on Chaudhary to prove that the Department's determination that an overpayment of benefits was made was incorrect. (*See supra* pp. 19-23). But assuming that the Code was completely silent such that common law principles may become relevant, the burden still would rest with the challenging individual – even when the government initiates the action that is being challenged. *See, e.g., Arvia*, 209 Ill. 2d at 541-42 (placing burden of proof on driver contesting license suspension at administrative hearing to show he refused alcohol test or test did not disclose presence of alcohol); *Smoke N Stuff*, 2015 IL App (1st) 140936, ¶¶ 16, 24 (placing burden of proof on business owner

contesting city license revocation at administrative hearing to show city inspection and revocation for nonpayment of cigarette taxes was wrong).

Cases like *Arvia* and *Smoke N Stuff* illustrate the long-standing principle that the plaintiff who initiates an administrative proceeding bears the burden of proving her case by a preponderance of the evidence. *Smoke N Stuff*, 2015 IL App (1st) 140836, ¶ 16. There is no basis on which to stray from that principle here.

Nevertheless, Chaudhary argued in the circuit court that this court's decision in *Eastman v. Dep't of Pub. Aid*, 178 Ill. App. 3d 993 (2d Dist. 1989), placed the burden on the Department to prove that its overpayment determination was correct. (C 715). But *Eastman* did no such thing. It does not even contain the phrase "burden of proof." Rather, that case requires the Department to lay an evidentiary foundation for business records that it introduces at an administrative hearing. *See Eastman*, 178 Ill. App. 3d at 998. That does not translate into assigning it the burden of proof. Indeed, any evidence that a defendant offers in response to a plaintiff's case — where the initial burden of proof lies — must have an evidentiary foundation. Implying an intent to place the burden of proof on the defendant (*i.e.*, the Department) just because evidence produced in its own defense must be authenticated would reverse one of the basic concepts of civil proceedings. Rather than look to *Eastman* to answer the burden of proof issue here, this court should look to

cases like *Arvia* and *Smoke N Stuff*, to the extent that common law principles even come into play.

**C. Placing the burden of proof on Chaudhary did not violate her procedural due process rights.**

Placing the burden of proof on Chaudhary in the administrative hearing also did not violate her procedural due process rights. She received notice and a fair hearing before a neutral tribunal.

**1. Chaudhary forfeited any claim that bearing the burden of proof violated her due process rights because she did not raise that issue at the administrative hearing.**

Chaudhary forfeited any claim that bearing the burden of proof violated her due process rights because she failed to raise that issue at the administrative hearing.

A party forfeits administrative review of issues not placed before the administrative agency, including issues of constitutional due process. *See, e.g., Keeling*, 2017 IL App (1st) 170804, ¶ 45; *Texaco-Cities*, 182 Ill. 2d at 278.

Constitutional due process challenges should be made on the record before the administrative tribunal, because administrative review is confined to the proof offered before the agency. *Id.* at 278-79. That practice avoids piecemeal litigation and allows opposing parties a full opportunity to present evidence to refute the due process challenge. *Id.*

Chaudhary first asserted the due process violation in her brief in the circuit court in support of her complaint for certiorari review. (C 713, 716).

She did not raise the claim in her complaint (C 11-12), or her motion to stay enforcement of the Department's decision (C 680-89).

The court deemed a due process claim to be forfeited based on similar facts in *Keeling*. See 2017 IL App (1st) 170804, ¶ 45 (deeming due process challenge to Pension Fund Board's denial of disability pension forfeited where claimant did not obtain ruling on due process argument in administrative hearing before seeking administrative review); see also *Texaco-Cities*, 182 Ill. 2d at 278 (Supreme Court declined to consider due process claim not presented to administrative agency). Chaudhary's due process challenge should meet the same fate.

**2. Chaudhary received due process because the Department provided her with a fair hearing before a neutral tribunal.**

If this court considers the procedural due process challenge, it should find no violation. Chaudhary received notice and a fair hearing in a neutral administrative proceeding, so assigning her the burden of proof in challenging the Department's determination did not deprive her of due process.

A claimed denial of procedural due process during an administrative hearing is reviewed *de novo* by this court. *Majid*, 2105 IL App (1st) 123182, at ¶ 32. Procedural due process imposes constraints on governmental decisions that deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment to the United States Constitution. *Mathews v. Eldridge*, 424 U.S. 319, 332

(1976). “An administrative proceeding is governed by the fundamental principles and requirements of due process of law.” *Abrahamson v. Ill. Dep’t of Prof’l Regulation*, 153 Ill. 2d 76, 92 (1992) (quotations omitted). But due process is a flexible concept requiring only those procedural protections that fundamental principles of justice and the particular situation demand. *Id.*

A court considers three factors in deciding whether procedural due process is required and satisfied in an administrative proceeding: (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of that interest through the procedures at issue; and (3) the government’s interest, including the function involved and the fiscal and administrative burdens that providing due process entail. *See Mathews*, 424 U.S. at 335 (discussing due process requirements in proceeding to assess existence of continuing disability for purposes of receiving social security benefits).

Chaudhary cited *Mathews* in the circuit court to argue not only that she was entitled to due process — which is not disputed — but that she was denied it by the placement of the burden of proof on her. (C 716-19). But she stretched *Mathews* too far. That case did not discuss the burden of proof, and the Department’s administrative hearing procedures provided the required due process regardless of who bore that burden.

In the administrative setting, due process does not require the equivalent of a judicial proceeding. *Abrahamson*, 153 Ill. 2d at 92. A trial

before a fair administrative tribunal meets due process requirements. *Arvia*, 209 Ill. 2d at 540. State administrators “are assumed to be [individuals] of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances.” *Id.* at 541. Parties must have the opportunity to be heard, the chance to cross-examine adverse witnesses, and impartial evidentiary rulings. *Majid*, 2015 IL App (1st) 132182, ¶ 34 (quotations omitted). And a party claiming a due process violation must show prejudice as a result of the proceeding. *Id.*

Placing the burden of proof in an administrative proceeding on the person challenging the government’s initial action does not violate due process. *See, e.g., Orth*, 124 Ill. 2d at 337-38 (placing burden of proof on driver challenging license suspension for driving under influence of alcohol did not violate due process); *Arvia*, 209 Ill. 2d at 542 (placing burden of proof on minor driver challenging suspension of driving privileges for violation of state’s “zero tolerance” law after positive alcohol test or refusing alcohol testing did not violate due process); *Majid*, 2015 IL App (1st) 132182, ¶¶ 35-40 (placing burden of proof on ex-police officer challenging government’s revocation of disability benefits after felony conviction did not violate due process).

The due process analysis turns on whether the government provides notice and a proper forum for an individual’s administrative challenge. *Arvia*. at 540. The Department did so here. As in *Arvia* (suspended driving privileges), *Orth* (driver’s license suspension), and *Majid* (revoking disability



benefits), the government made the initial adverse determination (overpayment of SNAP benefits) and provided for a challenge in an administrative hearing before a neutral decisionmaker. Chaudhary had that hearing (C 496), and was advised of her rights and obligations before and during that process: to appeal the Department's initial determination in a neutral tribunal (C 325-26); to present evidence in her own behalf (C 41, 510, 573-89); to be represented by counsel or another representative (C 41, 45); to review the Department's evidence before the hearing (C 45); to question the Department about its evidence (C 508, 510); and to prove her claim that she was not overpaid by a preponderance of the evidence (C 510).

Similar procedures provided due process in *Arvia*, *Orth*, and *Majid* — where the challenging individual bore the burden of proof — and so do here. Although Chaudhary bore the burden of proof, the Department provided her with all required due process protections. This court should reject her claimed due process violation, which was forfeited in any event.

### **III. The Secretary's final administrative decision upholding the overpayment determination was not against the manifest weight of the evidence.**

With the burden of proof issue properly resolved, either based on forfeiture or on the merits, this court should rule that the Secretary's final administrative decision upholding the overpayment charge was not against the manifest weight of the evidence. The decision was supported by evidence that

Ramzan lived with Chaudhary at 1433, and that the overpayment amount was correct.

As noted, where an administrative agency's decision turns on a question of fact, it is reviewed under the manifest weight of the evidence standard. *See Vill. of Buffalo Grove*, 2020 IL App (2d) 190171, ¶ 38. If evidence in the record supports the agency's decision, it is not against the manifest weight of the evidence and should be upheld. *Id.*; *Abrahamson*, 153 Ill. 2d at 87-88, 96.

Under this standard, the Secretary's decision should be affirmed because it turned on a question of fact (*i.e.*, whether Chaudhary and Ramzan lived together at 1433) and was supported by evidence of record. The Department gathered evidence to support the charge through its Bureau of Collections (C 114, 538), which performed a thorough investigation and unearthed significant and credible evidence that Ramzan lived at 1433 at the relevant times.

That evidence included: SNAP payments to Chaudhary and Ramzan on separate accounts at 1433 from May 2015, to December 2017 (C 143-80, 186-206); post office verification of 1433 as Ramzan's mailing address (C 210-11, 558-59); state records showing both Chaudhary and Ramzan with vehicles registered to 1433 (C 212-21, 559-60); Department records showing activity for both Chaudhary and Ramzan at 1433 (C 237-46, 563-66); registration of Yasmar, Inc. at 1433 with Ramzan and Chaudhary as officers (C 471-76, 568); property records showing that Ramzan once owned the 1433 property (C 477-

83, 569-70, 572-73); and social security records showing Kiran's receipt of benefits at 1433 (C 484-85, 570, 572).

During the administrative hearing, Chairez authenticated and explained all of that evidence, as well as records documenting the Department's careful calculation of the overpayment amount. (C 275-323, 516-24, 535, 541-43, 558-60, 562-66, 568-70, 572-73). That alone was more than enough to support the Secretary's decision.

Chaudhary's conflicting evidence about Ramzan's residence did not change that result. The Secretary's role as the final decisionmaker included resolving conflicts in the evidence, and she did so in the Department's favor. Part of that role involved assessing a witness's credibility, and — as she was entitled to do — finding that Chaudhary was not credible. (C 673). Given Chaudhary's history with Ramzan, the Secretary did not believe that Chaudhary could not know if he had ever lived at 1433, and could be “clueless” and “completely oblivious” to the fact that he used it as his mailing address. (*Id.* ). The Secretary's decision found Chaudhary's story to be “unlikely” and “highly implausible,” and specifically stated that she “lack[ed] credibility.” *Id.* Those findings deserve deference on judicial review. *Vill. of Buffalo Grove*, 2020 IL App (2d) 190171, ¶ 38.

Further, Chaudhary produced much of her evidence after the hearing, after she gained the benefit of knowing the Department's testimony and the ALJ's comments. Only then did she produce affidavits from Ramzan and

others purportedly living at 1433 stating that Ramzan did not live there at the relevant times. (C 594-96, 644-46). Chaudhary already knew the reason for the overpayment charge based on the Department's overpayment determination notice, statement of facts, and her pre-hearing meeting with Chairez. (C 52-54, 111-13, 502). And she was advised upon confirmation of her appeal to start gathering evidence to support her challenge to the charge. (C 40-41). Yet she waited until the Department made its record and she had assessed the ALJ's comments to unearth more evidence. That timing also colored her credibility, and the Secretary was entitled to weigh her post-hearing evidence accordingly.

And just because Chaudhary produced evidence contradicting the Department's did not mean that the Secretary had to give it equal or greater weight. The final agency decisionmaker evaluates all of the evidence, judges witnesses' credibility, and resolves conflicting evidence and draws inferences from the facts. *Morgan v. Dep't of Fin. & Prof's Regulation*, 388 Ill. App. 3d 633, 658 (1st Dist. 2009) (noting that agency's credibility finding entitled to deference despite witness's prior inconsistent statements). The Secretary may reject as much or as little of a witness's testimony as he or she pleases, and a reviewing court will not reevaluate those decisions. *Id.*

Instead, the circuit court flipped the burden of proof to the Department (C 754), and then reweighed the evidence to find that the Department did not meet that burden (Sup R 21-22). That was the wrong way to review an

administrative agency's final decision. *See Vill. of Buffalo Grove*, 2020 IL App (2d) 190171, ¶ 38 (reviewing court does not reweigh evidence or substitute its judgment for agency's).

This court should properly review the Secretary's final decision and affirm it because it was supported by the evidence. *Id.* In that respect, placement of the burden of proof should not change the outcome. No matter where the burden rested, the evidence was the same. And the Department's evidence of the overpayment of SNAP benefits was substantial. It gathered evidence to support the determination, shared it with Chaudhary before the hearing, and authenticated and explained it in detail during the hearing. The Secretary then properly gave the Department's evidence more weight than Chaudhary's — effectively finding it more likely than not that Ramzan lived with her at 1433 at the relevant times. No matter who had the burden of proof, the Secretary's decision was not against the manifest weight of the evidence.

## CONCLUSION

For these reasons, Defendants-Appellants Illinois Department of Human Services and its Secretary request that this court reverse the circuit court's judgment, thereby affirming the Secretary's final administrative decision.

Respectfully submitted,

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Attorney General  
State of Illinois

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Solicitor General

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Attorneys for Defendants-Appellants

December 2, 2020



No. 2-20-0364

IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND JUDICIAL DISTRICT

E-FILED

Transaction ID: 2-20-0364  
File Date: 7/8/2020 10:39 AM  
Jeffrey H. Kaplan, Clerk of the Court  
APPELLATE COURT 2ND DISTRICT

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<p>AYESHA CHAUDHARY,</p> <p style="padding-left: 100px;">Plaintiff-Appellee,</p> <p style="padding-left: 100px;">v.</p> <p>ILLINOIS DEPARTMENT OF HUMAN SERVICES; GRACE B. HUE, in her official capacity as Secretary of the Illinois Department of Human Services,</p> <p style="padding-left: 100px;">Defendants-Appellants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Appeal from the Circuit Court of the</p> <p>Eighteenth Judicial Circuit,</p> <p>DuPage County, Illinois</p> <p>No. 19 MR 1341</p> <p>The Honorable</p> <p>BONNIE M. WHEATON,</p> <p>Judge Presiding.</p>
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**NOTICE OF FILING NOTICE OF APPEAL**

On June 30, 2020, Defendants-Appellants Illinois Department of Human Services and Grace B. Hue, in her official capacity as Secretary of the Illinois Department of Human Services, filed a Notice of Appeal with the Clerk of the Circuit Court of DuPage County, Illinois, a copy of which is attached and served on you.

Respectfully submitted,

**KWAME RAOUL**  
Attorney General  
State of Illinois

By: /s/ David E. Neumeister  
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**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on July 8, 2020, I electronically filed the foregoing Notice of Filing Notice of Appeal with the Clerk of the Circuit Court for the Illinois Appellate Court, Second Judicial District, by using the Odyssey eFileIL system.

I further certify that the other participant in this appeal, named below, is a registered service contact on the Odyssey eFileIL system, and thus will be served via that system. As a courtesy, that participant also was served via the e-mail address of record listed below.

Patricia Nelson  
pnelson@pslegal.org

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ David E. Neumeister  
DAVID E. NEUMEISTER  
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APPEAL TO THE APPELLATE COURT OF ILLINOIS  
SECOND JUDICIAL DISTRICT

FROM THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS

---

AYESHA CHAUDHARY,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	
	)	
ILLINOIS DEPARTMENT OF	)	No. 2019MR001341
HUMAN SERVICES; GRACE	)	
B. HOU, in her official capacity	)	
as Secretary of the Illinois	)	
Department of Human Services,	)	The Honorable
	)	BONNIE M. WHEATON,
Defendants-Appellants.	)	Judge Presiding.

---

**NOTICE OF APPEAL**

PLEASE TAKE NOTICE that Defendants-Appellants Illinois Department of Human Services and its Secretary, by their attorney, KWAME RAOUL, Attorney General of the State of Illinois, hereby appeal to the Appellate Court of Illinois, Second Judicial District, from the order entered by the Honorable Judge Bonnie M. Wheaton of the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois on June 4, 2020, reversing the final administrative decision issued by the Department's Secretary on November 5, 2019, which upheld the decision of the Department's Bureau of Collections to charge Plaintiff-Appellee Ayesha Chaudhary with an overpayment of \$21,821 in Supplemental Nutrition Assistance Program benefits. A copy of the circuit court's June 4, 2020 order is attached hereto.

By this appeal, Defendants-Appellants Illinois Department of Human Services and its Secretary respectfully request that the appellate court reverse and vacate the circuit court's order of June 4, 2020, reinstate the final administrative decision, and grant any other appropriate relief.

Respectfully submitted,

KWAME RAOUL  
Attorney General  
State of Illinois

By: /s/ Nadine J. Wichern  
NADINE J. WICHERN  
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June 30, 2020

STATE OF ILLINOIS

UNITED STATES OF AMERICA

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

AYESHA CHAUDHARY

-VS-

2019MR001341  
CASE NUMBERILLINOIS DEPARTMENT OF HUMAN  
SERVICES**FILED**

20 Jun 04 PM 01: 26

*Chris Kachunbas*  
CLERK OF THE  
18TH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS**ORDER**

This matter coming to be heard for hearing on Plaintiff's Petition for Review of Administrative Agency Decision by Common Law Certiorari; all parties appearing by counsel, and the court having heard argument,

**HEREBY FINDS:**

DHS improperly placed the burden of proof on Ayesha Chaudhary.

DHS bears the burden of proof when DHS is claiming a SNAP overpayment.

**IT IS THEREFORE ORDERED:**

The Administrative Decision by DHS dated November , 5, 2019 upholding a \$21,821.00 overpayment against Ayesha Chaudhary is hereby reversed for the reasons stated on the record.

This Order is final and appealable.

Submitted by: PATRICIA NELSON  
Attorney Firm: PRAIRIE STATE LEGAL SERVICES - WEST CHICAGO  
DuPage Attorney Number: 67545  
Attorney for: AYESHA CHAUDHARY  
Address: 31 W 001 E NORTH AVE, STE 200  
City/State/Zip: WEST CHICAGO, IL, 60185  
Phone number: 630-690-2130  
Email address : pnelson@pslegal.org

Entered:

JUDGE BONNIE M WHEATON

Validation ID : DP-06042020-0126-56427

Date: 06/04/2020

**CERTIFICATE OF FILING AND SERVICE**

I certify that on June 30, 2020, I electronically filed the foregoing Notice of Appeal with the Clerk of the Court for the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois by using the Odyssey eFileIL system.

I further certify that the other participant in this appeal, named below, is a registered service contact on the Odyssey eFileIL system, and thus will be served via that system. As a courtesy, that participant also was served via the e-mail address of record listed below.

Patricia Nelson  
pnelson@pslegal.org

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Nadine J. Wichern  
NADINE J. WICHERN  
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E-FILED  
9/30/2021 7:15 AM  
Carolyn Taft Grosboll  
SUPREME COURT CLERK

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF ILLINOIS

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<p>AYESHA CHAUDHARY,</p> <p style="padding-left: 100px;">Plaintiff-Respondent,</p> <p style="padding-left: 100px;">v.</p> <p>ILLINOIS DEPARTMENT OF HUMAN SERVICES; and GRACE B. HOU, in her official capacity as Secretary of the Illinois Department of Human Services,</p> <p style="padding-left: 100px;">Defendants-Petitioners.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Petition for Leave to Appeal from</p> <p>the Appellate Court of Illinois,</p> <p>Second Judicial District,</p> <p>No. 2-20-0364,</p> <p>There Heard on Appeal from the</p> <p>Circuit Court of the Eighteenth</p> <p>Judicial Circuit, DuPage County,</p> <p>Illinois, No. 19 MR 1341,</p> <p>The Honorable</p> <p>BONNIE M. WHEATON,</p> <p>Judge Presiding.</p>
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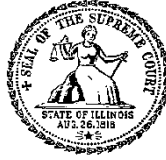
**MOTION FOR EXTENSION OF TIME TO FILE  
PETITION FOR LEAVE TO APPEAL**

Defendants-Petitioners Illinois Department of Human Services and its Secretary, Grace B. Hou, by their attorney, Kwame Raoul, Attorney General of the State of Illinois, move this court for an extension of time to file their petition for leave to appeal from October 21, 2021, to and including November 25, 2021. The following verification by certification is attached in support of this motion.

Respectfully submitted,

KWAME RAOUL  
Attorney General  
State of Illinois

BY: /s/ David E. Neumeister  
DAVID E. NEUMEISTER  
Assistant Attorney General  
100 West Randolph Street  
12th Floor  
Chicago, Illinois 60601



# SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING  
200 East Capitol Avenue  
SPRINGFIELD, ILLINOIS 62701-1721

CAROLYN TAFT GROSBOLL  
Clerk of the Court

(217) 782-2035  
TDD: (217) 524-8132

October 06, 2021

FIRST DISTRICT OFFICE  
160 North LaSalle Street, 20th Floor  
Chicago, IL 60601-3103  
(312) 793-1332  
TDD: (312) 793-6185

David E. Neumeister  
Office of the Illinois Attorney General  
100 West Randolph Street, 12th Floor  
Chicago, IL 60601

In re: Chaudhary v. The Department of Human Services  
127712

Today the following order was entered in the captioned case:

Motion by Petitioners for an extension of time for filing a Petition for Leave to Appeal to and including November 25, 2021. Allowed.

Order entered by Justice Michael J. Burke.

Very truly yours,

A handwritten signature in cursive script that reads "Carolyn Taft Grosboll".

Clerk of the Supreme Court

cc: Appellate Court, Second District  
Attorney General of Illinois - Civil Division  
Patricia M. Nelson

No. 127712

IN THE  
SUPREME COURT OF ILLINOIS

---

<p>AYESHA CHAUDHARY,</p> <p style="text-align: center;">Plaintiff-Respondent,</p> <p style="text-align: center;">v.</p> <p>ILLINOIS DEPARTMENT OF HUMAN SERVICES; and GRACE B. HOU, in her official capacity as Secretary of the Illinois Department of Human Services,</p> <p style="text-align: center;">Defendants-Petitioners.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Petition for Leave to Appeal from the Appellate Court of Illinois, Second Judicial District, No. 2-20-0364,</p> <p>There Heard on Appeal from the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, No. 19 MR 1341,</p> <p>The Honorable BONNIE M. WHEATON, Judge Presiding.</p>
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**PETITION FOR LEAVE TO APPEAL**

**KWAME RAOUL**

Attorney General  
State of Illinois

**JANE ELINOR NOTZ**

Solicitor General

**DAVID E. NEUMEISTER**

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Attorneys for Defendants-Petitioners

E-FILED  
11/23/2021 8:03 AM  
Carolyn Taft Grosboll  
SUPREME COURT CLERK





## SUPREME COURT OF ILLINOIS

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January 26, 2022

In re: Ayesha Chaudhary, Appellee, v. The Department of Human  
Services et al., etc., Appellants. Appeal, Appellate Court, Second  
District.  
127712

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above  
entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which  
must be filed.

Very truly yours,

A handwritten signature in cursive script that reads "Cynthia A. Grant".

Clerk of the Supreme Court

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**CERTIFICATE OF FILING AND SERVICE**

I certify that on April 6, 2022, I electronically filed the foregoing **Brief and Appendix of Defendants-Appellants** with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system.

I further certify that the other participant in this appeal, named below, is a registered service contact on the Odyssey eFileIL system, and thus will be served via the Odyssey EFileIL system.

Patricia Nelson  
pnelson@pslegal.org

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ David E. Neumeister  
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