No. 127712

IN THE
SUPREME COURT OF ILLINOIS

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

Defendant-Appellant.

On Appeal from the Second District Appellate Court, No. 2-20-0364
There heard on appeal from the Circuit Court of DuPage County, No. 19 MR 1341
The Honorable Bonnie M. Wheaton, Judge Presiding

BRIEF AND ARGUMENT OF PLAINTIFF-APPELLEE

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ORAL ARGUMENT REQUESTED

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ISSUES PRESENTED FOR REVIEW

1. Whether the appellate court correctly decided that the burden of proof belongs to the Department when seeking to impose a SNAP overpayment.

2. Whether the Secretary's final administrative decision was against the manifest weight of the evidence because it was unsupported by any competent evidence, and an opposite conclusion was clearly evident.

ADDITIONAL STATEMENT OF FACTS

Ayesha Chaudhary ("Ms. Chaudhary") and her ex-husband, Mohammed Jon Ramzan ("Mr. Ramzan"), each received SNAP benefits through the Illinois Department of Human Services ("the Department") between May 2015 and December 2017 ("the overpayment period") under separate accounts. (C 93-96, 109-110, 659) Ms. Chaudhary received benefits for herself and three children she has with Mr. Ramzan. (C 535, 586) Mr. Ramzan separately received benefits for himself and his daughter from a previous marriage. (C 527-528, 535)

Ms. Chaudhary and her three children lived at 1433 White Oak Ln., West Chicago, IL ("White Oak") throughout the overpayment period, and listed White Oak as their residence with the Department. (C 455, 500, 535, 574-75, 585, 595) Mr. Ramzan and his daughter lived at 2N579 Morton Rd., IL ("Morton Rd."), but used the White Oak address for mail because of issues receiving mail at Morton Rd. (C 207, 222-223, 450, 523, 576-79, 583, 595-642) Some documents, such as Mr. Ramzan's driver's license and utility bills show the Morton Rd. address as being in Wayne Township, while others, such as Mr. Ramzan's lease and documents from his daughter's school reflect the Morton Rd. address as being in West Chicago. (C 604, 605, 610, 615, 616, 632)

Mr. Ramzan informed the Department that he was using White Oak as his mailing address, but that he lived at Morton Rd. The Department's records reflect that Mr. Ramzan lived at Morton Rd. but used White Oak as a mailing address. (C 237, 450) The Department sent at least some of its correspondence to Mr. Ramzan's at Morton Rd. (C 207)

On August 7, 2019, the Department sent Ms. Chaudhary a Notice of Overpayment alleging she was overpaid $21,821.00 in SNAP benefits because she and her "husband" received benefits on different cases and his income was not reported. (C 112)

Ms. Chaudhary timely filed an appeal of the overpayment notice and the matter was set for administrative hearing on September 9, 2019. (C 40, 44, 509) On September 9, 2019, Ernesto Chairez ("Mr. Chairez") (Exec I, Financial Recoveries Coordinator, 13 year employee of the Department) conducted a pre-appeal review with Ms. Chaudhary. (C 496, 502-507, 550) He did not testify to what exactly was discussed at the pre-appeal review, and he did not yet have all of the Department's documentary evidence during the pre-appeal review. (C 502-507) At the pre-appeal review, Ms. Chaudhary submitted a letter to Mr. Chairez, stating, "...I think he might be using that address as mailing address (sic). Which I am not aware of. He does not live with us" (C 461), as well as a copy of her divorce decree showing she and Mr. Ramzan divorced April 2, 2012. (C 467, 504)

The hearing was then postponed so that Mr. Chairez could submit Ms. Chaudhary's letter and divorce decree to the Department's Bureau of Collections ("Bureau"). (C 504) The Bureau then identified additional documents purporting to show that Mr. Ramzan lived at White Oak during the overpayment period, including documents regarding Mr. Ramzan's tax business, purported car registration documents, and property records for

White Oak. (C 503-04) Those additional documents from the Bureau were then given to Ms. Chaudhary on the morning of the rescheduled hearing, September 30, 2019. (C 505)

At the hearing, Mr. Chairez testified for the Department, and then Ms. Chaudhary testified on her own behalf. The Administrative Law Judge ("ALJ") informed Ms. Chaudhary that she had the burden of proof because she was the appellant, but that the Department would proceed with its evidence first. (C 510-11) Ms. Chaudhary testified that she had lived in Pakistan for 34 years, married Mr. Ramzan there and had a child, and then moved to the United States in 2007 or 2008. (C 586, 588, 659) She and Mr. Ramzan had three children together, but they never lived together, despite being married. (C 586, 588, 592) They divorced in 2012. (C 659-62)

Ms. Chaudhary testified that Mr. Ramzan's nephew, Mohammed Shakeel, who managed the White Oak rental property, offered to rent a unit in White Oak to Ms. Chaudhary and her children. (C 575-76, 595, 646) In January, 2013, Ms. Chaudhary and the three children moved there, where they occupied the upstairs unit of the home and two other tenants occupied the basement apartment.(C 574-75, 585, 595, 644-54) Ms. Chaudhary did not know exactly where Mr. Ramzan lived and when, but she knew he did not live at White Oak when she moved in. She testified several times that he did not reside there when she moved in, or any time after. (C 574-577, 585) In his affidavit, Mr. Ramzan stated that he moved from the White Oak address in November 2012 after his then wife (not Ms. Chaudhary) died, and he and his daughter moved to Morton Rd. (C 595) He used White Oak as a mailing address because he was having problems receiving mail from the Department or the Social Security Administration at Morton Rd. (C 523, 564, 595)

Ms. Chaudhary was unaware that Mr. Ramzan was using White Oak for mailing purposes, and only found out about the arrangement when she confronted him after receiving the Department's Notice of Overpayment. (C 461, 523, 595) Ms. Chaudhary testified that one of the tenants from the basement apartment at White Oak collected all of the mail for the building and distributed it to each tenant. (C 579) Both tenants of the basement apartment submitted affidavits attesting to the fact that Ms. Chaudhary lived in the upstairs unit with her three children and nobody else. (C 644-45)

Mr. Chairez testified as to how the Department calculated the amount of the alleged overpayment (C 516 - 522), and to documents that purported to show Mr. Ramzan lived at White Oak between May 2015 and December 2017: a Post Office verification showing that Mr. Ramzan received mail at White Oak in 2018, documents purporting to show Mr. Ramzan had two vehicles registered at White Oak in 2018, and documents related to Mr. Ramzan's tax business, Yasmar, Inc. (C 556-61)

The Department's evidence also included evidence that Mr. Ramzan used the Morton Rd. address, including a copy of Mr. Ramzan's driver's license. On its face, the license was valid during the overpayment period, and showed the Morton Rd. address. (C 222, 561) There were also several documents, which Mr. Chairez could not identify, listing Mr. Ramzan's address as Morton Rd. (C 219, 223, 224, 559, 561) In addition, the Department's evidence included an internal Department record reflecting Mr. Ramzan's residence at Morton Rd. and his mailing address at White Oak. (C 237) When Mr. Chairez discovered this document in the Department's evidence, he testified, "It's an IES summary page, and it shows the address. Now this is what's weird. Mailing address is White Oak White Oak Lane, okay, residing address is 2N579 Morton Road, West Chicago." (C 563)

At the close of the hearing, Ms. Chaudhary requested to submit additional evidence, and she was given three days to do so. (C 591) She timely submitted evidence of Mr. Ramzan's residence at Morton Rd., which included Mr. Ramzan's affidavit, a lease, rent receipts, utility bills, paystubs, medical bills, correspondence from his daughter's school, and more. (C 594-642)

On November 5, 2019, the Secretary upheld the Department's overpayment determination, stating, "[t]he Department submitted numerous records to demonstrate that Appellant [Ms. Chaudhary] and Adult A [Mr. Ramzan] are both residing at Address A [White Oak]." The decision goes on to list the following three pieces of evidence submitted by the Department: a purported record from the Secretary of State reflecting registration of Mr. Ramzan's corporation; a record indicating that mail for Mr. Ramzan was delivered to White Oak; and records allegedly reflecting that Mr. Ramzan had vehicles registered at White Oak. (C 210, 215, 217, 220-21, 471-72, 672) The decision then follows, "Reviewing all of the above, it appears more likely than not that Appellant [Ms. Chaudhary] and Adult A [Mr. Ramzan] were residing together during the overpayment period." The decision does not refer to the Morton Rd. address. (C 672)

The administrative law judge who conducted the hearing made no credibility determination but the Secretary, who was not present at the hearing, found that a credibility determination of Ms. Chaudhary was warranted. (C 673) The Secretary did not believe that Ms. Chaudhary would move into White Oak not knowing whether Mr. Ramzan had ever lived there. She concluded that it was unlikely that Ms. Chaudhary did not know that Mr. Ramzan received his mail there, and that Ms. Chaudhary contradicted herself as to whether she and Mr. Ramzan had ever lived together during their marriage. (C 674)

The decision concluded by finding that the Department had submitted an "abundance of state/government records" to show that Mr. Ramzan was residing at White Oak. (C 674) Therefore, the overpayment determination was upheld. Other than mentioning Ms. Chaudhary's exhibits were received, the decision does not address any of the evidence she submitted, except to use one detail mentioned in her letter to discredit her testimony.

Ms. Chaudhary filed a complaint for review *by certiorari* with the circuit court. The court reversed the Secretary's decision. It found that the that the burden of proof belonged to the Department where the Department is attempting to divest a recipient of benefits, rather than denying an application. The court ruled that the Department failed to meet its burden. (C 754, Sup. R. 20-22)

The Department appealed. (C 755-758) The appellate court held that the burden of proof belonged to the Department, and that the Secretary's decision was against the manifest weight of the evidence. *Chaudhary v. Dep't of Human Services*, 2021 IL App (2d) 200364 (2022). The Department filed a timely Petition for Leave to Appeal, which this Court granted on January 26, 2022.

ARGUMENT

The Department unilaterally determined that Ms. Chaudhary received a $21,812 overpayment. It used its extensive resources and knowledge to investigate and develop the evidence it claims supports the overpayment. Nonetheless, it argues that the SNAP recipient should bear the burden to disprove its own claim. In doing so, it departs from precedent and the well-established default rule that the party seeking to impose change should bear the burden of proof to support it.

Fundamentally, as the appellate court determined, this is an issue of fairness. *Chaudhary* at ¶37. It is unfair to impose the burden of disproving the Department's determination on the SNAP recipient. The Department has superior resources and expertise compared to the general SNAP population, who by the nature of the program are likely elderly, those with disabilities, and have limited education, resources, access to representation, and limited English proficiency. Should the Department's determination be wrong, the SNAP recipient would be unfairly unable to purchase a minimally adequate supply of food.

Compounding the unfairness in this case, Ms. Chaudhary did not receive most of the Department's evidence until the morning of the hearing, and the Department failed to notify Ms. Chaudhary that she would bear the burden of proof until the hearing was underway. Once underway, the Department's only witness was unfamiliar with its evidence and could not authenticate it. The ALJ followed suit by ignoring the Department's own evidence that clearly showed the Department knew that Mr. Ramzan used Ms. Chaudhary's address only for mail. As a final unfair act, the Secretary completely disregarded each and every piece of Ms. Chaudhary's evidence, and found her testimony not credible despite not having heard her testify. The final administrative decision is against the manifest weight of the evidence.

I. THE APPELLATE COURT PROPERLY ALLOCATED THE BURDEN OF PROOF TO THE DEPARTMENT, AS THE PARTY SEEKING TO CHANGE THE *STATUS QUO*.

The parties agree that the issue of allocation of the burden of proof is one of law, and that therefore the standard of review is *de novo*. (Ap. Br. 20)

A. When not dictated by statute or regulation, the default rule is that the party seeking to change the *status quo* bears the burden of proof.

Relying on *McCormick on Evidence* § 337 (8th ed. 2020), the appellate court properly adhered to the default rule that the party seeking to change the *status quo* bears the burden of proof. *Chaudhary* at ¶ 47, 55. That rule holds true regardless of whether the party seeking to change the *status quo* is designated as the plaintiff (*Marconi v. Chicago Heights Police Pension Bd*., 225 Ill. 2d 497, 536 (2006)), moving party (*Scott v. Dep't of Commerce & Cmty. Affairs*, 84 Ill. 2d 42, 53 (1981)), complainant (*Martin v. Thompson*, 195 Ill.App.3d 43, 48(1st Dist. 1990)), or initiator (*Chaudhary* at ¶ 47).

The default rule is not, as the Department asserts, that the burden always belongs to the party who filed the appeal in an administrative proceeding. (Ap. Br. 24, 32, 34) Illinois courts have never adopted such a blanket rule. This oversimplification of the rule ignores the fact that the party designated as the plaintiff, or the party who files the appeal, is not always the party seeking to change the *status quo*. The U.S. Supreme Court acknowledges this distinction in *Schaffer ex rel. Schaffer v. Weast.* "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." 546 U.S. 49, 56 (2005) (emphasis added). Sometimes, the party who files the appeal is the party seeking to change the *status quo*, but not always.

B. Consistent with the default rule, this Court has previously ruled that the applicant bears the burden when appealing a denial of benefits, but the agency bears the burden when seeking to divest benefits.

The Department maintains that the party challenging an agency determination always bears the burden of proof, and that all Illinois case law follows that rule, regardless

of whether the agency is denying the application for a benefit or seeking to divest a recipient of benefit. (Ap. Br. at 22) This is simply not true. Case law clearly distinguishes between a party who appeals a benefit denial on application, and a party who appeals an agency determination to divest a benefit the party already receives.

This Court previously ruled in *Marconi v. Chicago Heights Police Pension Bd.*, that when an applicant appeals the denial of their application for benefits, the appellant bears the burden of proof. 225 Ill. 2d. at 536. This Court has also previously ruled in *Scott v. Dep't of Commerce & Cmty. Affairs*, that when the appellant is challenging an agency determination to divest a benefit and does not divest the benefit prior to the expiration of appeal rights, the burden of proof belongs to the agency. 84 Ill. 2d at 53. (*infra* at 12-14)

Clearly, this Court has not applied a blanket rule allocating the burden of proof to all appellants in administrative appeals. In *Petrovic v. Dep't of Employment Sec.*, 2016 IL 11856, *as modified on denial of rehearing* (May 23, 2016), this Court allocated the burden of proof to the employer, not the appellant. The applicant in *Petrovic* met the initial eligibility criteria for unemployment insurance, but the employer protested that the employee was disqualified from receiving benefits due to misconduct. The state agency then made a determination that the applicant was disqualified, and applicant appealed. The Court did not place the burden on the appellant, even though the appellant filed the appeal and was the party challenging an agency determination. The Court determined that while appellants seeking unemployment insurance have the burden of proof in establishing their initial eligibility for benefits, an employer has the burden of prove for a disqualification due to misconduct. *Id*. at ¶ 28. “While it is true that a claimant bears the burden of establishing her initial eligibility for unemployment insurance benefits …, this does not

mean that an employee must prove the absence of a disqualifying event." *Id*. (internal citations omitted). Similarly, a SNAP recipient, having been previously approved and awarded SNAP benefits, should not have to prove the absence of an overpayment.

1. *Marconi* holds only that the applicant bears the burden of proof in the appeal of a denial of an application for benefits.

Marconi v. Chicago Heights Police Pension Bd. is cited for the simplified proposition that "the plaintiff bears the burden of proof in an administrative proceeding." 255 Ill. 2d 497 (2006); *Smoke N Stuff v. City of Chicago*, 2015 IL App (1st) 140936, ¶ 15; *Slocum v. Bd. of Trustees of State Universities Ret. Sys.*, 2013 IL App (4th) 130182, ¶ *26*. However, *Marconi* only addresses an appeal from a denial of an application for benefits, not an appeal from an agency decision seeking to divest an existing benefit. This Court stated specifically in *Marconi*, "*As the applicant* for disability pension benefits, plaintiff had the burden of proof to establish his entitlement to either a duty-related or nonduty disability pension." 225 Ill. 2d at 536 (emphasis added). *See also Kouzoukas v. Ret. Bd. of Policemen's Annuity & Benefit Fund of City of Chicago*, 234 Ill. 2d 446 (2009) and *Iwanski v. Streamwood Police Pension Bd.*, 232 Ill.App.3d 180 (1992) (both which recite the oversimplified version of the default rule, but the facts reveal that the burden is allocated to the appellant who was denied a benefit, as opposed to being divested of an existing benefit).

2. *Marconi* stems from a case that did not hold that the appellant always bears the burden of proof in an administrative hearing.

A close look at *Marconi's* predecessors reveals that the simplified proposition that the appellant always bears the burden when challenging an agency determination, is not supported by the case law. All of the cases cited by *Marconi* and its predecessors relate back to one case that did not actually hold as a matter of common law that the individual

challenging the agency decision always has the burden of proof, *Chicago Motor Bus Co. v. Chicago Stage Co.*, 287 Ill. 320 (1919). When the *Chicago Motor Bus* Court stated that "...the burden of proof upon all the issues raised by the appeal is upon the person or corporation appealing," it did so in the context of the burden of proof established by the statute governing those administrative proceedings, Section 68 of the Public Utilities Act (Hurd's Rev. St. 1917, c. 111a). *Id*. at 325. The Court was not establishing a general rule of common law that the party challenging the administrative decision always bears the burden of proof.

Therefore, although *Chicago Motor Bus's* progeny, including *Marconi*, state without qualification or analysis that the burden is on the appellant in an administrative proceeding, the origination of that proposition is faulty and should not be followed when it is clear from examining the full body of case law that there is a distinction between appealing a denial of benefits and an agency seeking to divest benefits when the statute is silent on the allocation.

3. *Scott* holds that the agency bears the burden of proof when seeking to divest a benefit, even though the benefit recipient filed the appeal.

On the other hand, this Court in *Scott v. Dep't of Com. & Cmty. Affairs* assigned the burden of proof to the agency when the agency was the party attempting to divest an existing benefit. In *Scott*, the agency determined that Mr. Scott, who was a commissioner for the Housing Authority, had committed malfeasance and should be removed from his position. Mr. Scott appealed, but the agency did not remove Mr. Scott from his position prior to the hearing. 84 Ill. 2d at 46. Therefore, at the appeal hearing, Mr. Scott still retained his position as a commissioner, and the agency was seeking to divest him of that position.

This Court ruled that the agency bore the burden of proof, despite the fact that Mr. Scott was the party that filed the appeal. *Id*. at 53. Although this Court's reasoning did not rest on an analysis of which party sought to change the *status quo*, the premise still holds true: when the agency is seeking to divest an existing benefit, the agency is the party attempting to change the *status quo* and therefore the party who bears the burden of proof.

The reasoning relied on in *Scott* is equally applicable to this case. This Court reasoned in *Scott* that because the hearing was subject to the Illinois Administrative Procedures Act, which includes a right to cross-examination, it is the agency's duty to present evidence to be cross-examined, and the initial burden was on the agency to present a *prima facie* case. *Id*. The right to cross examination is also included in the SNAP regulations. 7 C.F.R. § 273.15(p)(5). While it is true that the SNAP regulations do not require the agency to strictly follow the rules of evidence as was required of the agency in *Scott*, the regulations do require that the hearing "...shall be conducted in a manner best calculated to conform to substantial justice." 89 Ill. Admin. Code §14.23. Substantial justice cannot be met by requiring public aid recipients, without representation and without the experience, resources or access to evidence as the State, to prove they were not overpaid. (*infra* at 21-25)

4. Which party is seeking to change the *status quo* depends on whether the appellant was receiving the benefit prior to the agency determination.

This Court has previously defined *status quo* as "the last, actual, peaceable, uncontested status which preceded the pending controversy." *Postma v. Jack Brown Buick, Inc*., 157 Ill. 2d 391, 397 (1993). In an administrative appeal, this definition can play out in three different ways, depending on whether the appeal is challenging the denial of a benefit application; the agency made a determination to divest a benefit and divested the

benefit immediately, prior to the expiration of appeal rights; or the agency made a determination to divest a benefit but did not divest the benefit prior to the appeal. The controversy begins with the agency determination, and the *status quo* is the status immediately preceding.

When an agency denies an applicant benefits, such as in *Marconi*, the last peaceable, uncontested status prior to the determination is that the applicant was not receiving benefits. By appealing, the applicant is attempting to obtain benefits. Therefore, it is the applicant, or appellant, who is seeking to change the *status quo* and bears the burden of proof.

When an agency makes a determination to divest a benefit but does not divest that benefit before the expiration of the recipient's appeal rights, such as in *Scott*, the last uncontested status is the recipient receiving the benefit even though the recipient files the appeal. Therefore, it is the agency who is seeking to change the *status quo* and bears the burden.

When an agency makes a determination to divest a benefit and actually divests that benefit prior to the expiration of appeal rights, such as in the cases the Department relies on, *Arvia v. Madigan,* 209 Ill. 2d 520 (2004) and *People v. Orth,* 124 Ill. 2d 326 (1988), then the last uncontested status prior to the notice of determination is the benefit already having been divested. In both *Arvia* and *Orth*, the agency suspended the appellants' drivers licenses prior to the appeal as required by the applicable statutes. 209 Ill. 2d at 523, 124 Ill. 2d at 330. In *Orth,* the applicable statute required the driver to file a petition for restitution since the driver's license was immediately suspended based on the driver's blood alcohol level. *Id*. Therefore, when the agency made its determination, the appellants were seeking

to change the *status quo* by seeking to have their licenses reinstated. Accordingly, the appellants bore the burden.

5. The appellate court properly concluded that the Department was the party seeking to change the *status quo*.

The Department argues that the appellate court erred in determining the Department was the party attempting to change the *status quo* because the Department did not need to file a proceeding before a tribunal in order to initiate an overpayment claim. (Ap. Br at 28) While that is true, the Department did not divest Ms. Chaudhary of her benefits by collecting the alleged overpayment prior to the expiration of her appeal rights.

The pending controversy began when the Department issued its notice of overpayment to Ms. Chaudhary. The last uncontested status preceding the controversy was Ms. Chaudhary's receipt of her full SNAP benefit without recoupment of a portion of her benefits towards collection of the overpayment. *See* 89 Ill. Admin. Code § 165.44 (allowing the Department to recoup overpaid benefits from current benefits and other methods). Even though Ms. Chaudhary was the party who filed the appeal, the Department was the party seeking to establish the overpayment, allowing it to recoup benefits. The Department was seeking to change the *status quo* from Ms. Chaudhary's full receipt of benefits to reduced benefits. Therefore, the Department bears the burden of proof.

6. Illinois cases adhere to the default rule regardless of whether the decisions specifically articulate that the allocation of the burden of proof depends on which party seeks to change the *status quo*.

The default rule, that the burden of proof belongs to the party seeking to change the *status quo*, holds true in every case cited by either party and the appellate court, whether or not those cases specifically articulated the default rule in their decisions.

The following cases all examined appeals from a denial of an application for benefits or an application for an increase in benefits, and conclude that the appellant bears the burden of proof: *Marconi v. Chicago Heights Police Pension Bd.*, 225 Ill. 2d 497 (2006); *Iwanski v. Streamwood Police Pension Bd.*, 232 Ill.App.3d 180 (1992); *McDonald v. Illinois Dep't of Human Services*, 406 Ill. App. 3d 792 (4th Dist. 2010); *English v. Vill. of Northfield*, 172 Ill. App. 3d 344 (1st Dist. 1988); *Slocum v. Bd. of Trustees of State Universities Ret. Sys.*, 2013 IL App (4th) 130182.

The following cases all examine appeals from an agency determination to divest an existing benefit where the agency did not divest the benefit prior to the appeal, and conclude that the agency bears the burden of proof: *Scott v. Dep't of Commerce & Cmty. Affairs*, 84 Ill. 2d 42 (1981); *Martin v. Thompson*, 195 Ill. App. 3d 43 (1st Dist. 1990); *Fitch/Larocca Associates, Inc. v. Skinner*, 106 Ill. App. 3d 522 (1st Dist. 1982).

The following cases all examine appeals from an agency determination to divest an existing benefit where the agency divested the benefit prior to the appeal, and all conclude that the appellant bears the burden of proof: *People v. Orth*, 124 Ill. 2d 326 (1988); *Fender v. Sch. Dist. No. 25, Arlington Heights, Cook Cnty., Ill.*, 37 Ill. App. 3d 736 (1st Dist. 1976); *Bd. of Educ. of Valley View Cmty. Unit Sch. Dist. 365-U v. Illinois State Bd. of Educ.*, 2013 IL App (3d) 120373; *Miller v. Hill*, 337 Ill. App. 3d 210 (3d Dist. 2003); *Szewczyk v. Bd. of Fire & Police Com'rs of Vill. of Richmond*, 381 Ill. App. 3d 159 (2d Dist. 2008).

The only case that appears to (but upon closer inspection does not) stray from the default rule is *Smoke N Stuff v. City of Chicago*, 2015 IL App (1st) 140936, which the Department urges this Court to follow. (Ap. Br. at 32) In that case, it appears that the burden was allocated to the appellant, Smoke N Stuff, even though the agency was the party

seeking to change the *status quo*, because the agency made a determination to divest Smoke N Stuff of its business license but did not do so prior to the appeal.

In its analysis, the *Smoke N Stuff* Court cited *Marconi* for the oversimplified proposition that "The burden of proof is on the plaintiff in administrative proceedings." *Smoke N Stuff* at ¶ 15. The Court then assigned the burden of proof to Smoke N Stuff. *Id*.

However, it was unnecessary for the *Smoke N Stuff* Court to rely on and misapply the oversimplified proposition from *Marconi*, that Smoke N Stuff bore the burden simply because it was the party that filed the appeal. In actuality, the burden in *Smoke N Stuff* was already assigned by the local ordinance. The applicable Municipal Code states, "(i) No violation may be established except upon proof by a preponderance of the evidence; provided, however, that a violation notice, or a copy thereof, issued and signed in accordance with 2-14-074 shall be *prima facie* evidence of the correctness of the facts specified therein." City of Chicago Municipal Code § 2-14-076. By specifying that the notice constitutes a *prima facie* case, the code clearly implies the burden is on the party challenging the allegations in the notice. Therefore, since the burden was already assigned by code, there was no need for *Smoke N Stuff* to rely on and misapply *Marconi*. Accordingly, *Smoke N Stuff* is not instructive in determining the allocation of the burden in this case.

C. The appellate court properly relied on the precedent established by the implicit holding in *Eastman v. Department of Public Aid*.

This Court has never ruled specifically on the burden of proof allocation in a SNAP overpayment case. The Second District however, in a soundly reasoned decision, has already implicitly ruled that the burden belongs to the Department.

In *Eastman*, the benefit recipient was appealing an administrative decision determining that she had been overpaid food stamps. The court held that the agency erred in admitting evidence of the overpayment because it lacked sufficient foundation. *Eastman v. Dep't of Pub. Aid*, 178 Ill. App. 3d 993, 998 (2d Dist. 1989). In reversing, the court determined that the error was substantial because the unfounded evidence was the only evidence establishing the overpayment. *Id.* If the agency did not bear the burden of establishing the overpayment, then the *Eastman* court would not have reversed: improperly admitting the only evidence of the overpayment would have been harmless, not substantial error.

Here, the appellate court properly acknowledged that the holding in *Eastman* is consistent with the agency bearing the burden of proof when alleging a SNAP overpayment. Regardless of whether the *Eastman* decision explicitly discussed or analyzed the allocation of the burden, it is undeniable that the holding's underlying premise is that the burden of proof belongs to the Department. The premise implicit in a holding is as authoritative as the holding itself. *Cates v. Cates*, 156 Ill. 2d 76, 80 (1993).

D. Nothing in the regulations implies that Ms. Chaudhary should bear the burden.

The Department argues that the SNAP regulations imply that the drafters intended the burden be assigned to Ms. Chaudhary. (Ap. Br. at 21-28) However, nothing about the regulatory mandate that the Department assess and collect valid overpayments implies an intent that the recipient bear the burden when challenging an overpayment decision, nor does the fact that the Department would be able to act on its determination if the recipient did not appeal.

1. The regulations imply that the burden of proof is allocated based on whether agency action is permitted prior to the appeal.

The Department argues that because the regulations require the Department to assess and collect valid overpayments, the burden of proof is implicitly on Ms. Chaudhary. (Ap. Br. at 21) However, it is not whether regulations mandate action by the agency that determines where the burden lies, but rather whether the regulations allow agency action prior to the expiration of appeal rights that determines which party is seeking to change the *status quo*.

In attempting to make its argument, the Department offers a misstatement of the general default rule: "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." (Ap. Br. at 24) In support of that misstated rule, they summarize the holdings in *Arvia v. Madigan* and *People v. Orth*, suggesting that the bases for those holdings hinged on the fact that the statute mandated some agency action while also providing a means to challenge that action.

The Department fails to recognize that the statute in *Arvia* and *Orth* mandated the agency to act on its determination immediately, prior to the expiration of any appeal rights by Arvia or Orth. Here, although the regulations mandate the Department to assess and collect valid overpayments, they do not authorize the Department to take any action on the overpayment determination prior to the expiration of Ms. Chaudhary's appeal rights.

Where burden of proof is not explicitly assigned, the assignment of the burden of proof does not hinge on whether the regulations mandate an agency action; it hinges on whether the regulations permit the agency to act on its determination prior to the expiration of appeal rights That is what determines whether the agency or the appellant is the party is seeking to change the *status quo*.

2. The regulations permit the Department to proceed to collection without further proof if no appeal is filed for efficient administration.

That the regulations permit the Department to act on its overpayment determination without further proof if no appeal is filed, does not imply that the recipient bears the burden should the recipient choose to appeal. *See Petrovic v. Dep't of Employment Sec.*, 2016 IL 11856 (disqualification for unemployment benefits would have taken effect if there was no appeal, without any further evidence from IDES or the employer). The Department's authority to collect an overpayment when no appeal is filed is most logically explained by the pursuit of administrative efficiency. In order to be reimbursed by the Federal Government for costs in administering the SNAP program, the Department must ensure that those costs are "...necessary and reasonable for proper and efficient administration of the Program." 7 C.F.R. § 277, App. A. ,§(c)(1)(A). It would be an inefficient use of dollars and other resources to mandate that the Department formally present its proof of overpayment when the recipient does not contest the determination.

3. Procedural protections do not support a presumption that the Department's determination should be considered correct until proven otherwise.

The Department urges this Court to adopt the presumption followed by the U.S. Supreme Court in *Schaffer ex rel. Schaffer v. Weast, 546 U.S. 49 (2005)*. (Ap. Br. at 26) The *Schaffer* Court concluded that Congress must have intended that when procedural rules are followed, it should be presumed that the agency determination is correct until proven otherwise. As a first matter, *Schaffer* involved parents who were seeking to change the *status quo* and modify their child's educational placement. Moreover, the procedures set forth in the Individuals With Disabilities Act ("IDEA"), dealt with in *Schaffer*, are different from the procedures set forth in the SNAP regulations in several important ways.

First, under IDEA the parents are afforded large measures of participation throughout that administrative process. "The core of the statute…is the cooperative process that it establishes between parents and schools." *Id.* at 53. Parents are part of the child's Individual Education Program ("IEP") team. They have the right to examine school records, to be notified of any changes in their child's IEP, to have their child evaluated by an independent professional, and they must consent to their child's evaluation and any changes in their IEP. *Id*.

There is no such opportunity for participation and engagement by a SNAP recipient when the Department determines there is an overpayment. The appeal process is the first opportunity to discuss the alleged overpayment with the Department and to evaluate its evidence. The closest procedural protection afforded by SNAP regulations to those in the IDEA is the requirement of a pre-hearing review meeting. However, this case is the perfect example of what little protection that actually affords. Mr. Chairez conducted a pre-hearing review with Ms. Chaudhary where she logically, based on the Department's Notice of Overpayment referring to Mr. Ramzan as her husband, offered evidence of her divorce. (C 112, 467, 502-507) It was not until after that pre-hearing review that the Department did a further investigation and produced the additional evidence it alleges proves Mr. Ramzan's residence. (C503-504) However, Ms. Chaudhary did not have access to those documents prior to the morning of the hearing. (C 505)

Second, IDEA requires school districts to give detailed reasons behind disputed actions, details about the other options rejected by the IEP team, and a description of all evaluations, reports, and other factors that the school used in coming to its decision. 20 U.S.C.A. § 1415. In addition, school districts are required to pay for parents' own

independent experts if they disagree with an evaluation obtained by the school. 34 C.F.R. § 300.502

It is clear in this case that the Department will proceed with its case despite the lack of such detail. For example, the notice of overpayment sent to Ms. Chaudhary did not even reference the correct basis of the alleged overpayment, that the Department alleged Mr. Ramzan lived with her despite the fact they were divorced. (C 112) Even at the hearing, Mr. Chairez was not familiar with the Department's own documentary evidence. (C 559, 561, 563) He was unable to identify some of it and did not know how it was obtained, much less be able to explain it in detail to Ms. Chaudhary.

The third, and the most important, procedural protection afforded by the IDEA in contrast to SNAP regulations, is IDEA provides that parents may recover attorney's fees if they prevail at hearing. Not only does this give parents access to attorney representation, it encourages school districts to settle cases favorably when they are not confident they will prevail. A SNAP overpayment appellant does not share either of those advantages.

The *Schaffer* Court held that it was fair to place the burden on the appellant in an IDEA hearing because IDEA affords appellants such comprehensive procedural protections. *Id*. at 50. That same rationale leads to the opposite result in public assistance cases because public assistance appellants enjoy none of the advantages afforded to IDEA appellants.

E. Due process requires the Department to bear the burden of proof to withdraw SNAP benefits.

Which party bears the burden when the Department is claiming an overpayment is an issue of fairness that invokes Ms. Chaudhary's due process rights. Fairness is also a

factor this court should consider when allocating a burden of proof not dictated by statute. *See McCormick on Evid.* § 337, 31A C.J.S. Evidence § 190.

The Department does not dispute that Ms. Chaudhary is entitled to due process. (Ap. Br. at 35). The question thus becomes what process is due. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). In *Mathews v. Eldridge,* the Supreme Court identified three factors to be considered in determining the process due: (1) the private interest affected by the action; (2) the risk of an erroneous deprivation of the interest through the procedures used; and (3) the government's interest, "including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. 319, 335. *See also People v. Orth,* 124 Ill. 2d at 335 ("The procedural safeguards mandated by due process in a particular case vary, depending upon" the *Mathews* factors).

The Department does not evaluate the *Mathews* factors, and instead assert simply that Ms. Chaudhary had all the process due because she was afforded a hearing before a neutral tribunal. (Ap. Br. at 35) Balancing the *Mathews* factors, however, shows that the Department should shoulder the burden of proof.

In *Bliek v. Palmer*, the court analyzed the *Mathews* factors to assess the process due to SNAP recipients charged with overpayments. 916 F. Supp. 1475 (N.D. Iowa 1996), *aff'd*, 102 F.3d 1472 (8th Cir. 1997). Recipients there claimed the agency violated due process by failing to notify them of a right to request compromise or adjustment of the claimed overpayment amount. In addressing the *Mathews* factors, the court first found that the private interest at stake in the case could not be more significant. Food is a necessity of life and the SNAP program ensures only a minimally adequate supply of food for low-income

households. "The food stamp program considers the recipient's income, allowable deductions, and the household composition to calculate the precise amount of benefits a household needs in order to purchase a *minimally adequate* supply of food." 916 F. Supp. at 1488 (emphasis added). The court found that an alleged overpayment is adverse to the household's interest, because reduction in food stamps for the recoupment of an overpayment "can result in a household receiving fewer food stamps than has been determined to be minimally adequate." *Id*. at 1488–89. Significantly, the court noted that beyond the interest of the individual household, society as a whole and government itself all have an interest in low-income households' receipt of assistance needed to avoid hunger and desperate circumstances. *Id*. at 1489.

Second, *Bliek* held that the risk of erroneous deprivation is high in SNAP cases. *Id.* at 1490. The SNAP program has many, complex rules. *See* 7 C.F.R. Part 273, 89 Ill. Admin. Code Part 121, and the Department's "Cash, SNAP and Medical Manual."[1] In SNAP overpayment cases, eligibility calculations are actually done twice for every month the Department claims an overpayment. Overpayments are calculated by comparing the amount of benefits the recipient actually received, with the amount of benefits the Department alleges the recipient should have received. 7 C.F.R. § 273.18(c); 89 Ill. Admin. Code § 165.40. Each benefit amount is calculated based on the recipient's countable income and allowable deductions. 89 Ill. Admin. Code §§ 121.63, 121.64. In the case of an alleged overpayment, the calculations for each month are done twice: once to determine

[1] DHS Cash, SNAP, and Medical Manual, https://www.dhs.state.il.us/page.aspx?item=4107

the amount that was received, and once to determine the amount that should have been received. The risk of an erroneous deprivation doubles.

Beyond this consideration, one need only review the record in this case to grasp how high the risk of error is in these cases. The record includes the Department's nearly incomprehensible records, difficult for even experienced advocates to decipher. (C 269-459) It is not safe to assume that SNAP calculations are done automatically by a reliable computer system, thereby decreasing the risk of error. (C 97-96) Mr. Chairez testified that he used handwritten notes from the Bureau of Collections to calculate the total income for the family and the income standard in order to compute the amount of the overpayment. (C 518-19) He offered no testimony that would indicate that the computer systems that were used were reliable. Moreover, his testimony is difficult to follow, replete with insider jargon and acronyms that he never explains. (C 513- 573)

The nature of the SNAP recipient population is also important to consider. In *Goldberg v. Kelly*, the Supreme Court stated that the "opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard." 397 U.S. at 269. The Illinois SNAP recipient population is diverse; about one third are low-income adults who are elderly or disabled and about two thirds of recipients are low-income adults and families with children.[2] Recipients lack the sophisticated expertise in the rules, requirements, terminology, forms and practices needed to detect the Department's errors. Recipients necessarily have very limited resources and varying levels of education and experience. *See Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 15, n.15 (1978)

[2] Center on Budget Policy and Priorities, *Fact Sheet on Illinois SNAP*, April 25, 2022, https://www.cbpp.org/sites/default/files/atoms/files/snap_factsheet_illinois.pdf

(noting that due process analysis requires realistic consideration of the abilities of the population involved).

By contrast, Department staff like Mr. Chairez know the rules and procedures. Mr. Chairez's title is "Executive I," and he is a 13 year employee of the Department. (C 496, 550) Mr. Chairez was admittedly familiar with the appeals process, being able to describe what he "usually" did in these circumstances. (C 501)

Unlike SNAP recipients, the Department has the authority and ability to amass evidence from many sources. "The party with greater expertise and access to relevant information should bear the evidentiary burdens of production of evidence and persuasion." (31A C.J.S. Evidence § 190) Because the Department is responsible for determining that an overpayment has occurred, it obviously has superior access to the records it used to make this determination, as well a myriad of other resources that the recipients do not have.

For example, as a condition of eligibility, a SNAP recipient must give the Department broad access to the recipient's financial and other personal information. 7 C.F.R. § 273.2. 89 Ill. Admin. Code § 117.90 allows for State IRS matches. 89 Ill. Admin. Code § 117.92 requires fingerprinting as a condition of eligibility. 89 Ill. Admin. Code § 117.91 allows the Department to make periodic New Hire Matches to discover unreported income. The Department has the ability, the authority, and the access to statewide employment records and tax information, and the ability to cross-check the information in those systems that the SNAP recipient does not have. The Department has the staff and resources to access these critical records, and is in a superior position relative to low-income recipients to possess and control the relevant information.

The Department is familiar with and applies the SNAP formulas and rules to determine an overpayment. It is the only party with assured access to the benefit calculations that gave rise to the overpayment allegation and the only entity that could explain the overpayment calculation. Appellants like Ms. Chaudhary may request a subpoena for these calculations – which is clearly not readily decipherable to a lay person – but the rules do not address the subpoena process and the issuance is discretionary, leaving appellants in an uncertain position. 89 Ill. Admin. Code § 14.30.

For Ms. Chaudhary, there is no reason to conclude that evidence showing Mr. Ramzan lived elsewhere was any more within her possession or control than the Department's. In fact, the only documentary evidence she had in her possession was her divorce decree and a document showing she was the only parent listed on her child's school documents. (C 594, 643-63) All of the other evidence that she produced she had to obtain from other sources: Mr. Ramzan, the renters in the downstairs apartment, and the property manager. (C 594) Ms. Chaudhary was in the fortunate position to have a relationship with Mr. Ramzan such that she could ask him to look for documents from four and five years ago and he did it. It is not a fair or logical to presume that would be the case between all divorced parents. The Department, however, will always have the evidence it obtained in its investigation to support its allegation of an overpayment. Bearing the burden of proof would only require that the Department produce and authenticate that evidence at hearing if the recipient appeals.

In addition, the Department need not worry that it bearing the burden would disincentive SNAP recipients from coming forward with evidence that was actually in their possession. Recipients already have the duty to produce all relevant evidence, or they risk

the presumption that any missing evidence was unfavorable to them. "This court has previously held that when evidence of a particular fact that is necessary to be proved rests peculiarly within the knowledge of one of the parties, that party has a duty to come forward with that evidence, and if he doesn't the presumption is raised that if the evidence was produced it would be unfavorable to him." *Shumak v. Shumak*, 30 Ill. App. 3d 188, 191 (2d Dist. 1975). Therefore, there is no danger that a SNAP recipient would lose her incentive to produce evidence that is under her control, even if this Court holds that the Department bears the burden of proof.

Cases that address the burden of proof in Social Security overpayments are instructive here. Like SNAP, recipients of federal benefits from the Social Security Administration are always in a vulnerable position. They are elderly, disabled and/or poor. In these cases, circuit courts have unanimously held that the Social Security Commissioner bears the burden of proving the fact and amount of the overpayment. *See Wilkening v. Barnhart*, No. 02 C 9096, 2004 WL 1005718 at *5 (N.D. Ill. Apr. 26, 2004, aff'd, 139 Fed. Appx. 715 (7th Cir. 2005)) (noting all circuit courts that have addressed the issue "agree that the Commissioner must bear the burden of proving the existence of an overpayment and its amount"). As the *Wilkening* court opined, "[i]t makes little sense to allow the Commissioner to allege that [the claimant] has received overpayments and then force [the claimant] to prove the negative. After all, the Commissioner, after discovering an alleged overpayment, is in the best position to demonstrate the amount of that overpayment." *Id.* *See also McCarthy v. Apfel*, 221 F.3d 1119, 1124-25 (9th Cir. 2000) and *Newton v. Apfel*, No. 99-35759, 2000 WL 1411173, at *1 (9th Cir. Sep. 26, 2000).

In addition, the Department will be more likely to perform its investigations and benefit calculations thoroughly and accurately if it knows it will have to prove the results if an appeal is filed. Similarly, with regard to results of breathalyzer tests, the court in *Orth* noted, "Their validity depends, in great measure, upon the maintenance and calibration of the machines and the training of their personnel. And while one might argue about the degree of this risk, it cannot be denied that placing the burden of proof upon the State would reduce it very significantly. State law enforcement personnel are hardly likely to be lax in their breathalyzer procedures if they know that they will have to prove the results or face the rescission of a summary suspension. This factor, therefore, favors placing the burden of proof upon the State." *People v. Orth*, 124 Ill. 2d at 226.

Analysis of this second *Mathews* factor also requires realistic appraisal of the Department's stance. It contends that it should not have the burden to show that it is more likely than not that a SNAP recipient like Ms. Chaudhary was overpaid SNAP benefits. Its concern must be that it does not have enough evidence to substantiate its overpayment claims. As the Seventh Circuit found in a case involving reduction and termination of medical benefits for the aged, blind and disabled, "government agencies do make mistakes. Yet there is a human tendency, even among those who are more experienced and knowledgeable in the ways of bureaucracies than the aged, blind, and disabled persons before us in this case, to assume that an action taken by a government agency in a pecuniary transaction is correct." *Vargas v. Trainor*, 508 F.2d 485, 490 (7th Cir. 1974). If the Department does not have adequate proof to support its claims at a hearing, it does not have a proper basis to initiate the overpayment claim. The risk of erroneous deprivation is just too high.

With regard to the third *Mathews* factor, the *Bliek* court also found that the government's interest in failing to give notice of the right to seek compromise or adjustment was minimal at best. 916 F.Supp. at 1490. So too in this case, requiring the Department to shoulder the burden of proof of a SNAP overpayment requires no additional effort. Before the Department sends the recipients the notice of overpayment, it has already assembled the evidence it believes establishes the overpayment. Holding that the Department has the burden of proof requires no change in its procedure. As the ALJ explained to Ms. Chaudhary in this case, "usually the way we proceed forward in these cases, I will ask the Department… to present their case first, especially with a case like this. There's so much information." (C 510)

In summary, given the significant interest of SNAP recipients at stake, the high risk of error, and the minimal extra obligation on the Department to offer adequate proof to support its claim, the appropriate conclusion is that due process requires that the Department shoulder the burden of proof when seeking to impose a SNAP overpayment.

F. Failure to notify Ms. Chaudhary that she bore the burden of proof before the hearing violated due process.

The Department did not advise Ms. Chaudhary in advance of the hearing that she would bear the burden of proof to prove that she did not receive a SNAP overpayment. The burden of proof is not mentioned in any of the Department's notices to Ms. Chaudhary that described the appeal process, nor in any rules or publically available policies. (C 41, 44-45, 50) Allocation of the burden of proof is an important issue. Indeed, the Department considers this burden of proof issue to be of such critical importance that it has sought leave to appeal from this Court over the issue.

Adding this information to the notices the Department sent to Ms. Chaudhary prior to the hearing, including the description of the hearing, would impose little administrative burden and at most is an administrative inconvenience. *Mathews* at 348 To the extent that changing or adding language to a standard notice could be considered an administrative burden, an administrative burden is "not overriding in the welfare context." *Goldberg v. Kelly*, 397 U.S. at 266; *Bliek*, 916 F.Supp. at 1490. Applying the same *Mathews* factors, failing to notify Ms. Chaudhary of this important obligation prior to the hearing is a fundamentally unfair procedure in violation of due process. *See Orth* at 338 (requiring that the motorist in that case be put on notice that he was required to present a *prima facie* case). It is too late to give that notice after the hearing has begun, or even at the start of the hearing.

G. The appellate court properly exercised its discretion by deciding the issues presented and rejecting the argument that Ms. Chaudhary had forfeited her arguments.

Ms. Chaudhary was unrepresented at the administrative hearing and did not object when the ALJ informed her that she bore the burden of proof. Ms. Chaudhary first raised her objection to the burden of proof allocation, as well as due process arguments, in her brief before the circuit court after obtaining representation.

The appellate court properly noted that forfeiture is a limitation on the parties, not on the court, and concluded that hearing the merits of the burden of proof and due process issues was important as a matter of fairness, and as a necessity to maintain a uniform body of precedent. "[I]t has long been recognized that the waiver rule may be relaxed in order to maintain a uniform body of precedent or where the interests of justice so require (internal citations omitted)." *Lopez v. Dart*, 2018 IL App (1st) 170733, ¶ 39. As discussed, the regulations are silent on the allocation of the burden of proof, and this Court has never

explicitly ruled on that issue as it relates to SNAP. In addition, it was proper for the appellate court to consider the issues because they are of public importance and are likely to reoccur. *See Miller v. Pollution Control Bd.*, 267 Ill. App. 3d 160, 170 (4th Dist. 1994); *E & E Hauling, Inc. v. Pollution Control Bd.*, 107 Ill. 2d 33, 39 (1985).

Ms. Chaudhary did raise the issues before the circuit court and they were briefed extensively by both parties through counsel. (C 710-22, 726-40; Sup R 4-23) One purpose of the waiver rule is to prevent surprise to the opponent. *Ramirez v. Chicago Bd. of Election Comm'rs*, 2020 IL App (1st) 200240, ¶ 38. The appellate court's consideration of the issues did not surprise the Department or deprive it of any opportunity to contest it. The Department had already argued the issue in the circuit court.

The appellate court also appropriately took note of Ms. Chaudhary's *pro se* status, and the excessive harshness of requiring a *pro se* party to object contemporaneously to a procedural error. *See Jackson v. City of Chicago*, 2012 IL App (1st) 111044, ¶ 22 (giving consideration to a party's *pro se* status regarding procedural rules). As noted above, the Department has no rule, policy or notice that would alert *pro se* appellants like Ms. Chaudhary to the issue.

II. THE SECRETARY'S FINDING WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND AN OPPOSITE CONCLUSION WAS CLEARLY EVIDENT: MR. RAMZAN USED WHITE OAK ONLY AS A MAILING ADDRESS.

In addition to wrongly and unfairly placing the burden of proof on Ms. Chaudhary without notice, the Secretary completely ignored every piece of evidence Ms. Chaudhary submitted and, without having heard her testify, discredited her testimony based on minor discrepancies. Instead, the Secretary relied solely on evidence the Department submitted, which was all from outside the overpayment period and unauthenticated. To compound

those errors, the Secretary ignored the Department's own evidence showing that Mr. Ramzan did not live with Ms. Chaudhary but only used her address for mail.

A. The appellate court properly identified the relevant issue was whether Mr. Ramzan actually lived at White Oak with Ms. Chaudhary and their children.

The amount of SNAP benefits allotted to any recipient is based on how many individuals are included in their "household." A SNAP household can be an individual, or a group of people living together. 89 Ill. Adm. Code § 10.120. Parents who live with their children, must be counted in the same SNAP household as their children. 89 Ill. Adm. Code § 121.70(b). It is undisputed that Mr. Ramzan is the father of Ms. Chaudhary's three children. Therefore, if he did, in fact, live at White Oak with them, he was required to be in the same SNAP household as Ms. Chaudhary and the children, and his income should have been included in determining the amount of benefits received by the family. 89 Ill. Adm. Code § 121.70(b)(2); *Chaudhary* at ¶ 64

The Department consistently ignores the issue of where Mr. Ramzan actually lived, and instead muddies the issue by referring to SNAP benefits as being received "at" a certain address. For example, the Department argues that the evidence in the record that supported the Secretary's finding 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)." (App. Br. at 38, emphasis added) (*See also* Ap. Br at 9, 10, 11, 13) It is unclear what this means, other than one address the Department had on file for both Mr. Ramzan and Ms. Chaudhary was White Oak.

However, the Department's own evidence shows that the Department keeps both a mailing and residential address for recipients. (C 237) Stating that a recipient receives benefits "at" an address ignores the Department's own standard forms and record keeping.

It also ignores the fact that SNAP benefits are not received in the mail at a particular address. Instead, benefits are directly deposited onto a recipient's electronic benefits card. 89 Ill. Admin. Code § 121.93. The fact that Mr. Ramzan used the White Oak address as a mailing address did not give Ms. Chaudhary any access to Mr. Ramzan's benefits. Referring to benefits being received "at" White Oak is unhelpful to this Court's analysis of the case, and ignores the real issue: where Mr. Ramzan actually lived during the overpayment period.

B. The Department's own evidence shows Mr. Ramzan lived at Morton Rd. but used White Oak for mailing.

The Department's own evidence reflects Mr. Ramzan used White Oak only for mailing purposes and Morton Rd. was his residence. A Department summary page for Mr. Ramzan's account lists Morton Rd. as his residence and White Oak as his mailing address. (C 237) In addition, the Department's evidence included a copy of Mr. Ramzan's driver's license from the overpayment period, which listed the Morton Rd. address. (C 222) The Department's evidence included other documents with the Morton Rd. address, which Mr. Chairez did not identify. (C 207, 219, 223, 224) Despite having this evidence in its records, the Department still concluded that Mr. Ramzan lived with Ms. Chaudhary, determined the alleged overpayment and attempted to defend its position at hearing. The Secretary followed by ignoring all of this evidence. (C 663-674)

C. Evidence that Mr. Ramzan used White Oak as a mailing address could not alone support the conclusion that he lived there.

The Department presented no evidence of where Mr. Ramzan actually lived. Such evidence could have included where he slept, where he did his laundry, and where he kept his personal belongings. In *Hudson v. Bowling*, the spouses lived on the same piece of land,

the husband in a camper and the wife in the home. The husband received his mail at his wife's address. Relying on *Robinson v. Block*, which held that "Congress did not intend that households be subject to a 'same address' test in determining whether individuals 'live together,'" 869 F.2d 202, 214 (3rd Cir. 1989), the *Hudson* court ruled that the couple did not live together, despite using the same mailing address. 232 W. Va. 282, 295 (2013) "Evidence that individuals use the same mailing address may be considered, but cannot, by itself be solely determinative of the issue." *Id*. at 295*; see also Kurdi v. DuPage Cnty. Hous. Auth.*, 161 Ill. App. 3d 988, 995 (2d Dist. 1987)

In this case, Ms. Chaudhary submitted considerable evidence of where Mr. Ramzan actually lived; including his own statement as well as evidence of where his daughter went to school, utility bills for service at Morton Rd. in his name, and his lease and rent receipts from the overpayment period. (C 594-662) The Department did not consider any of this evidence. (C 663-674)

The Secretary was obligated to consider more than just evidence of where Mr. Ramzan received mail but failed to do so, and even ignored the Department's own evidence showing that Mr. Ramzan lived at Morton Rd. and only used White Oak only as a mailing address.

D. The appellate court did not reweigh the evidence, but rather, properly set aside a decision that was unsupported by any competent evidence.

The appellate court properly set aside the Secretary's decision because it was unsupported by any competent evidence, and the opposite conclusion was clearly evident. Mr. Ramzan did not live at White Oak during the overpayment period, but used it only as a mailing address.

"While it is true that an agency's factual findings are held to be *prima facie* true and correct, that rule does not relieve this court of its duties to examine the evidence in an impartial manner and to set aside an order which is unsupported in fact. … The deference afforded to the agency is not boundless ..., and a reviewing court should not hesitate to grant relief where the administrative record does not show evidentiary support for the agency's determination (internal citations omitted)." *McCumber v. Bd. of Trustees of Oswego Fire Prot. Dist. Firefighters' Pension Fund*, 2019 IL App (2d) 180316, ¶ 48.

Administrative decisions are against the manifest weight of the evidence when the court determines that no rational trier of fact could have agreed with the agency's decision and that an opposite conclusion is clearly evident. *Lapp v. Vill. of Winnetka*, 359 Ill. App. 3d 152, 167 (1st Dist. 2005). If an administrative decision is against the manifest weight of the evidence, it is the duty of the court to reverse it. *Terrano v. Ret. Bd. of Policemen's Annuity & Benefit Fund of City of Chicago*, 315 Ill. App. 3d 270, 274 (1st Dist. 2000).

"Unlike other triers of fact in civil cases, an ALJ is not presumed to have considered only competent evidence. 'It is clear that an administrative body must be regarded as more closely akin to a jury on review of decisions where incompetent evidence reaches the body, because there is no presumption that the body has considered only competent evidence. In such situations the reviewing court must search the record to determine whether there is enough competent evidence to support the decision.'" *Diamond v. Bd. of Fire & Police Com'rs of Vill. of Elk Grove Vill., Cook County*, 115 Ill. App. 3d 437, 442 (1st Dist. 1983), *citing Consolidation Coal Co. v. Property Tax Appeal Board of the Department of Local Government Affairs*, 29 Ill.App.3d 465, 468 (1975)

1. The Department's evidence was entirely immaterial, unreliable, unauthenticated hearsay.

The appellate court properly discounted the Department's immaterial evidence from outside the overpayment period, as well as evidence that was unreliable hearsay and lacked foundation. None of it was competent and could support a finding that Mr. Ramzan lived at White Oak during the overpayment period.

Evidence from outside the overpayment period is immaterial to where Mr. Ramzan lived during the overpayment period. The Department notes that the appellate court commented that the evidence "...was largely from outside the overpayment period." *Chaudhary* at ¶ 65. However, the Department in its brief does not point, and cannot point to, one piece of the Department's evidence that was from the overpayment period. Whether the Department's evidence was discovered and printed after the Department's investigation is irrelevant. No matter when it was obtained, the evidence still needs to show where Mr. Ramzan lived during the overpayment period. Any inference that might be drawn from evidence outside of the overpayment period about where Mr. Ramzan lived during the overpayment period is not reasonable given all of the other competent and corroborated evidence in this case.

By the same token, while hearsay is admissible in administrative hearings, it must be evidence that would be relied upon by a reasonable person, and any determination that relies on that hearsay evidence must also be supported by some other competent evidence. "Where hearsay evidence appears in record, it may not be considered in reaching a decision, and any factual determination based on hearsay and unsupported by other competent evidence in record must be reversed." *Kurdi*, 161 Ill. App. 3d at 993, 994. Even if admitted into evidence, an agency may not rely on hearsay where it is "immaterial, irrelevant, or unreliable." *Id.* at 993.

Authentication by laying a foundation is not only required as a condition precedent to admission, it is also an indicator of reliability. In *Eastman*, the Second District held that it was reversible error to admit records of a SNAP overpayment without foundational testimony to indicate their reliability. *Eastman*, 178 Ill. App. 3d. at 998; *see also Anderson v. Human Rights Comm'n*, 314 Ill. App. 3d 35, 42-43 (1st Dist. 2000). The Department inaccurately represents in its brief that, "Chairez authenticated each document and explained them during the hearing." (Ap. Br. at 11) An examination of Mr. Chairez's testimony regarding each document (*infra* at 37-41), shows that is simply not true. Further, the incompetent evidence should not have been accepted into evidence simply because Mr. Chairez was a Department employee presenting it. *See Dombrowski v. City of Chicago*, 363 Ill. App. 3d 420, 429 (1st Dist. 2005) (holding that a government official's testimony cannot be presumed as inherently more credible than that of any other witness).

Reliance solely on immaterial and incompetent evidence clearly prejudiced Ms. Chaudhary and resulted in substantial injustice. An analysis of materiality, reliability, and authentication of the evidence relied upon by the Secretary follows.

a. The Yasmar documents are from different sources, are internally contradictory, are from outside the overpayment period, and their origin is unknown.

The Department submitted several documents related to Yasmar, Inc. ("Yasmar") (C 471-76, "the Yasmar documents"), and Mr. Chairez testified regarding them. (C 568 – 69, 572-73) In her decision, the Secretary specifically relied on those documents, describing them as, "A record dated September 10, 2019, from the Illinois Office of the Secretary of State…" (C 23) Although the decision refers to "a" record, the record actually contains several distinct documents regarding Yasmar. (C471-476)

The first document, at pages C 471-472, is dated September 10, 2019, nearly two years outside of the overpayment period. That document does reflect the White Oak address for Yasmar, lists Mr. Ramzan as president, and Ms. Chaudhary as secretary. (C 471-472) However, there was no testimony as to where that information came from. Ms. Chaudhary testified she had nothing to do with the Secretary of State, and Mr. Chairez assumed it was Mr. Ramzan. (C 573, 577)

The second document at pages C 473-474 appears to be a printout from Facebook dated September 10, 2020, close to three years after the overpayment period. Rather than White Oak, it actually lists a Bloomingdale, IL address for Yasmar. (C 473-474) Mr. Chairez testified regarding this evidence, "I don't subscribe to Facebook, so I don't know how you get to this information, but it was sent to me by the Bureau of Collections." (C 568)

Next, the record at C 475-476 appears to be pages 1 and 3 out of a total of 16, of a printout from a website called findlocal.com. It is dated September 10, 2020, three years after the overpayment period. It refers to Yasmar as being in Glendale Heights, IL in 2019. It does not reflect the White Oak address at all. (C 475-476). Mr. Chairez did not testify where, when, or how he obtained these printouts.

None of these documents are within the overpayment period. The documents themselves are internally contradictory, and therefore obviously unreliable. The alleged printout from the Secretary of State shows an address of White Oak for Yasmar, while the apparent Facebook and findlocal.com websites show a Bloomingdale address.

b. The address verification contains no information about where Mr. Ramzan lived during the overpayment period.

The second piece of the Department's evidence relied on by the ALJ was a Department address Verification Request. (C 672) The blank form was sent by the Department to the U.S. Postmaster, who completed it on February 9, 2018 and returned it to the Department. It specifies that Mr. Ramzan *currently* receives mail at White Oak. (C 210) It contains no information about where Mr. Ramzan received mail at any other time. Mr. Chairez testified that he was not the one who filled out the form, sent it to the West Chicago Post Office, or received it back. (C 558) Notwithstanding that this evidence is hearsay and unauthenticated, the only conclusion that is clearly evident from this evidence is that Mr. Ramzan used White Oak as a mailing address on February 9, 2018, a date outside of the overpayment period.

c. The vehicle registrations are from outside the overpayment period, and their source is unknown.

The third piece of evidence relied on by the Secretary purported to show Mr. Ramzan had various vehicles registered at White Oak on February 8, 2018. (C 215) This evidence is also outside of the overpayment period. It is also not of a type commonly relied upon by a reasonably prudent person in the conduct of their affairs. 5 ILCS § 100/10-40. Prudence would require at least some evidence of where the documents came from. Nothing on the face of the documents even indicates a website or a computer system, or anything that might point toward the source of the documents. Mr. Chairez testified, "I don't even know where they get this information because I'm not familiar with the system that has this stuff." (C 559)

Despite this evidence being outside the overpayment period, and zero indication or testimony of where it came from, the Secretary specifically relied on it to conclude that Mr. Ramzan lived at White Oak. She stated, "…the Department submitted various records from the Illinois Office of the Secretary of State which denote that Adult A [Mr. Ramzan] had several vehicles registered at Residence A [White Oak]." (C672) Most of those various records the Secretary relied on were actually not from the Secretary of State, and Mr. Chairez had no personal knowledge to authenticate them.

d. The property records are from ten years prior to the overpayment period and their source is unknown.

The third piece of evidence relied on by the Secretary were Department documents that the Department refers to as "property records" purportedly showing that Mr. Ramzan and his former wife, Shannon Ramsay, once owned White Oak. (C 477-83, 569-70, 572-73) The Secretary relied on these documents in making her credibility determination of Ms. Chaudhary, stating, "The Department submitted property records which show that at one point Adult A [Mr. Ramzan] owned Address A [White Oak]. It is highly implausible that Appellant [Ms. Chaudhary] would move into Address A [White Oak] and not know that Adult A [Mr. Ramzan] (her ex-husband) once owned and lived at that very same address." (C 673)

There is nothing in these documents that is even remotely close to the timeframe of the overpayment. The most these documents could reasonably be concluded to show is that Mr. Ramzan's name was associated with the property and a refinancing sometime in 2005 and 2006.

Even if ownership of White Oak a dozen years earlier is relevant to the overpayment determination, these documents are not reliable enough to show it. In fact,

nothing on the face of the documents indicates that they are reliable public records that might meet an exception to the hearsay rule. Nothing indicates that they are public records as kept in a public office where property records are kept. Instead, there is a notation on the top that reads, "Individual Report Plus Associates." Mr. Chairez was unable to offer any useful testimony or offer any authentication. He testified, "So now I'm on page eight of ten of these documents I don't know the source of …" The ALJ responds, "I understand. But you're not sure where this document was generated from?" Mr. Chairez answers, "That's correct. I don't see the source." (C 570)

2. The appellate court properly rejected the Secretary's credibility determination of Ms. Chaudhary.

a. The ALJ who heard Ms. Chaudhary's testimony did not make a credibility determination for the Secretary to adopt.

The appellate court properly noted that despite the Secretary's credibility determination of Ms. Chaudhary, the ALJ actually never made a credibility determination for the Secretary to adopt. On her own, the Secretary, having not actually attended the hearing, discounted Ms. Chaudhary's testimony and came to the opposite conclusion. The Secretary was not in the position to make a credibility determination. (C 665-666)

b. The Secretary's credibility determination was based on minor discrepancies concerning immaterial issues. Ms. Chaudhary's testimony was corroborated and uncontradicted.

Despite there being no competent evidence that Mr. Ramzan lived at White Oak during the overpayment period and all of the evidence being consistent with Ms. Chaudhary's assertion that Mr. Ramzan lived elsewhere, the Secretary nevertheless decided that a review of Ms. Chaudhary's credibility was warranted. (C 673) The essence of Ms. Chaudhary's testimony is that she never lived with Mr. Ramzan, even when they were married, and that she only found out that Mr. Ramzan was using White Oak as a

mailing address when the Department charged her with an overpayment. None of her testimony is contradicted by any other evidence, and is instead corroborated. Even the incompetent evidence that should have been excluded does not contradict Ms. Chaudhary's assertion that Mr. Ramzan used White Oak as a mailing address. Regardless, the decision points to three reasons the Secretary found Ms. Chaudhary lacked credibility.

First, the Secretary found it highly implausible that Ms. Chaudhary would move into White Oak and not know that Mr. Ramzan once owned and lived there. "Under Illinois law, a witness' testimony is inherently improbable if it is 'contradictory of the laws of nature or universal human experience, so as to be incredible and beyond the limits of human belief, or if facts stated by the witness demonstrate the falsity of the testimony' (internal citations omitted)." *Sweilem v. Illinois Dep't of Revenue*, 372 Ill. App. 3d 475, 485 (1st Dist. 2007).

The court in *Bucktown Partners v. Johnson*, 119 Ill. App. 3d 346, 354 (1st Dist. 1983) found that the trial court erred in disregarding plaintiff's testimony that a family of four was able to survive on the food stamps and public assistance they received. Taking into account that some human experiences are dependent on the experiences afforded by socio-economic circumstances, the court stated, "While it may be inconceivable to some that a public assistance recipient could survive on his public assistance grant, thousands of people throughout Illinois manage every year despite the seeming inadequacy of the amount received." *Id.* The court did not think, therefore, that the witness's testimony was "contrary of the laws of nature or universal human experience, so as to be incredible and beyond the limits of human belief," and therefore reversed, holding that the trial court acted improperly by disregarding the witness' uncontradicted testimony. *Id.*

Here, the Secretary found it inconceivable that Ms. Chaudhary would rent a home from a relative of her ex-husband and not know that her ex-husband ever owned or lived there. While it may be inconceivable to the Secretary that Ms. Chaudhary would be in this situation without knowledge of Mr. Ramzan's history of ownership of White Oak, it is not contrary to any laws of nature or a common immigrant experience, so as to be incredible and beyond the limits of human belief. The Secretary erred in finding Ms. Chaudhary's uncontradicted testimony not credible, as the trial court did in *Bucktown*.

Second, the Secretary found it unlikely that the renters in the basement apartment distributed the mail, and therefore that Ms. Chaudhary did not know Mr. Ramzan was using White Oak as a mailing address. (C 673) White Oak is a house consisting of two apartments that share the same entrance and the same address. (C578-580) Therefore, the mail for both apartments all comes to the same mailbox. There must be some way that the mail is distributed among the two different apartments. While it may be contradictory to the Secretary's human experience to live in such an arrangement, it certainly is not beyond the universal human experience.

Third, the Secretary points to an allegedly inconsistency between Ms. Chaudhary's testimony and her written statement regarding whether she had ever lived with Mr. Ramzan. This perceived discrepancy is clearly the result of Ms. Chaudhary communicating in her non-native language.

Ms. Chaudhary testified repeatedly and consistently that Mr. Ramzan did not live at White Oak at any time after she moved there in January 2013. (C 576-77, 585) Whether he lived at White Oak prior to January 2013 is irrelevant and immaterial to the issue of whether he lived there between May 2015 and December 2017, and therefore Ms.

Chaudhary's credibility should not hinge on it. Regardless, it was clear that the ALJ was focused on this point as she repeatedly asked Ms. Chaudhary about it. (C 586, 588, 592)

The Secretary contrasts Ms. Chaudhary's insistence that she never lived with Mr. Ramzan anywhere, not just at White Oak, with the letter Ms. Chaudhary submitted in anticipation of the hearing. The letter states, "I and Jon (sic) were divorced on April 2nd 2012. Since then we are not living together. I do not know how all this came up to me. (sic) I went to IDHS office and a lady told me there that he has his case on the same address of mine (sic). I think he might be using that address as mailing address. Which I am not aware of. He does not live with us." (C 461)

The Secretary's focus on the word "since" to infer that Ms. Chaudhary and Mr. Ramzan must have lived together before their divorce is not well taken. In light of the basis for the overpayment described in the Notice, from Ms. Chaudhary's perspective the relevant point in time was the divorce. The Notice indicated that married persons were required to be in the same SNAP case. (C 112) The date of their divorce would therefore be a relevant date to Ms. Chaudhary, and she clarified that Mr. Ramzan had not lived with her since that date.

In addition, it is clear Ms. Chaudhary is not communicating in her native language, and any minor discrepancy in her testimony about an irrelevant issue should not destroy her credibility. "Minor discrepancies in a witness's testimony are not unusual and do not destroy the witness's credibility (internal citations omitted)." *Longanecker v. E. Moline Sch. Dist. No. 37*, 2020 IL App (3d) 150890, ¶ 45.

The Department also argues that Ms. Chaudhary's production of evidence after the close of the hearing colored her credibility. (Ap. Br. at 39, 40) It is especially inappropriate

to consider that Ms. Chaudhary's evidence came after the hearing when the Department's Notice suggested that the reason for the overpayment was that Ms. Chaudhary and Mr. Ramzan were married, not whether Mr. Ramzan was living at White Oak, and the ALJ specifically allowed Ms. Chaudhary to submit evidence after the hearing. Contrary to its assertion, the Department did not inform Ms. Chaudhary of the reason for the overpayment until the hearing, as the appellate court properly noted. Most of the Department's evidence was discovered by the Bureau of Collections after the pre-hearing review, and Ms. Chaudhary did not even receive a copy of that evidence until the morning of the hearing. (C 505)

Nevertheless, the evidence Ms. Chaudhary produced after the hearing is even more indicative that she was in fact telling the truth, because it corroborated small, inconsequential details that she had mentioned in her testimony. When asked about where Mr. Ramzan lived during the overpayment period, Ms. Chaudhary stated that he lived on Morton Rd., but then offhandedly added that he also stayed in Winfield sometimes. (C 523, 578) In the dozens of documents Ms. Chaudhary submitted after the hearing showing Mr. Ramzan lived at Morton Rd, there was also included two paystubs from Ozark Pizza showing a Winfield address, as well as a document showing Mr. Ramzan had car insurance at an address in Winfield. (C 228-231, 626, 628). If Ms. Chaudhary was not telling the truth at the hearing, this means that she must have remembered every inconsequential detail of her untruthful testimony and then asked Mr. Ramzan to produce documents consistent with even the minor and inconsequential details of her testimony. A more natural course of events is that Ms. Chaudhary was telling the truth.

The ALJ asked Ms. Chaudhary about the tenants in the downstairs apartment, and their names. Ms. Chaudhary stated, "Yeah, one's name is I think so is Nisakut [phonetic]. I don't know the last name." The ALJ then asked about the name of the second tenant and Ms. Chaudhary responded, "We call him, everybody call him, when we have to call it's Khan, K-h-a-n." (C 579-80) In her evidence Ms. Chaudhary submitted after the hearing were two notarized letters. One is from Nizakat Khan and one is from Sher Dill Khan. Both verify they live in the basement apartment of White Oak and Ms. Chaudhary lives upstairs with her three children and nobody else. (C 644-45) The Secretary, when discounting Ms. Chaudhary's credibility, stated, "Appellant [Ms. Chaudhary] testified that she had housemates but was unable to even identify their last names at the hearing." (C 673) They were not "housemates," but had their own apartment separate from Ms. Chaudhary's. While it is true that Ms. Chaudhary could not recall or did not know their full names, her recollection of part of their names during the hearing was corroborated by the notarized letters.

Ms. Chaudhary's testimony was consistent and uncontroverted regarding all material issues, and down to the smallest details. Her testimony was not "contrary to the laws of nature or universal human experience, so as to be incredible and beyond the limits of human belief, " but consistent with that of an immigrant mother trying to co-parent with her ex-husband, navigate a foreign legal system, and communicate in a non-native language. Finding her testimony not credible was an abuse of discretion, and the appellate court was correct to disregard this finding.

3. The Secretary was precluded from concluding that the opposite of Ms. Chaudhary's testimony was true without any other competent evidence.

Even assuming *arguendo* that the Secretary had proper reason to find Ms. Chaudhary's testimony not credible, this does not mean that the Secretary is then free to automatically conclude the reverse is true – that Ramzan did live at White Oak during the overpayment period. "Disbelief of oral testimony cannot support an affirmative finding that the reverse of that testimony is true, that is, it cannot supply a want of proof (internal citations omitted)." *Gold v. Ziff Communications Co.*, 196 Ill. App. 3d 425, 433 (1st Dist. 1989).

Here, the evidence needed to show that Mr. Ramzan lived at White Oak during the overpayment period in order for the Secretary to uphold the overpayment. Ms. Chaudhary testified that he did not. However, the Department's own evidence showed Mr. Ramzan lived at Morton Rd. but used White Oak for mailing. (C 207, 237) Mr. Chairez even testified that "…we know that he's using that [White Oak] address for mail purposes." (C 573)

The Secretary could not, according to *Gold*, conclude that Mr. Ramzan did live at White Oak, just because she did not believe Ms. Chaudhary's testimony that he did not live there. The Secretary was still required to look at the remaining evidence and conclude that Mr. Ramzan lived at White Oak only if this conclusion was supported by other competent evidence. It was not.

4. The opposite conclusion is clearly evident.

Assuming *arguendo* that the ALJ properly admitted and considered all of the Department's immaterial, unauthenticated hearsay evidence, that the Secretary's credibility determination of Ms. Chaudhary was not an abuse of discretion, and that the

Secretary properly disregarded Ms. Chaudhary's testimony without concluding the opposite to be true, the only evidence remaining still makes it clearly evident that Mr. Ramzan used White Oak only as his mailing address and did not live there.

The Department argues that the Department's decision should be given deference because it is the Secretary's role as the final decision maker to resolve conflicts in the evidence, and that she did so in the Department's favor. (Ap. Br. at 40, 41) However, there were no conflicts in any evidence that the Secretary needed to resolve. All of the evidence is entirely consistent with both Ms. Chaudhary's and Mr. Ramzan's assertion that he used the White Oak address only as his mailing address and that he did not reside there between May 2015 and December 2017.

Excluding all evidence from outside the overpayment period, the following evidence of where Mr. Ramzan lived during the overpayment period remains in the record:

1. A State of Illinois Driver's License issued to Mr. Ramzan on August 14, 2013 at the Morton Rd. address. The license expired on June 19, 2017. (C 604)
2. An internal Department record, showing Mr. Ramzan listed White Oak as a mailing address and Morton Rd. as his residence address with the Department. (C 237)
3. A residential lease for the Morton Rd. address beginning June 1, 2013 and ending May 31, 2015 between Mr. Ramzan and Rasched Banuri ("Rasched"), dated, signed and each page initialed by both on June 1, 2013. (C 610 – 614)
4. A residential lease for the Morton Rd. address beginning June 1, 2015 and ending August 31, 2020 between Mr. Ramzan and Rasched, dated, signed and each page initialed by both on June 1, 2015. (C 605-609)

5. Rent receipts for rent for Morton Rd. for July, August, and partial rent for September, 2015, signed by Rasched. (C 622)
6. A cashier's check designated for the balance of rent in the memo, from Mr. Ramzan at Morton Rd. to Rasched dated September 8, 2015. (C 625)
7. A letter from Rasched to Mr. Ramzan at the Morton Rd. address dated September 3, 2015, enclosing a copy of the lease for Morton Rd. and confirming Ramzan had paid rent. (C 624)
8. An approval letter to Mr. Ramzan at the Morton Rd. address from Benjamin School District for free meal services for the 2015-2016 school year, signed by the Superintendent and dated September 1, 2015. (C 616, 617)
9. An approved application and fee waiver for Mr. Ramzan's daughter's school fees to Benjamin School District 25, showing the Morton Rd. address, and signed and dated by the school on September 15, 2015. (C 597, C 599)
10. A temporary proof of an automobile insurance card for Mr. Ramzan at the Morton Rd. address, for a 2001 Honda Accord, effective September 3, 2015 through October 19, 2015. (C 627)
11. A copy of a check from Allstate Insurance dated December 17, 2016, addressed to Mr. Ramzan at the Morton Rd. address. (C 630)
12. Electricity bills addressed to Mr. Ramzan at the Morton Rd. address, for service from June 2013, September, 2015, and March – April 2016. (C 631-633)
13. Mr. Ramzan's paychecks, addressed to the Morton Rd. address, from Papa John's Pizza from August, 2015. (C 620 – 622)

14. A bill from Northwestern Medicine, addressed to Mr. Ramzan at the Morton Rd. address dated May 27, 2017. (C 600)
15. A collection notice addressed to Mr. Ramzan at the Morton Rd. address from October 6, 2017. (C 634)
16. Copies of envelopes with U.S. Postal stamps showing delivery to Mr. Ramzan from Benjamin School District 25 dated September 1, 2015, and September 27, 2017 to the Morton Rd. address. (C637, 642)

The only conclusion clearly evident is that Mr. Ramzan used White Oak as a mailing address and did not live there between May 2015 and December 2017.

CONCLUSION

It is fundamentally unfair and contrary to existing case law to require a SNAP recipients to prove they were not overpaid. The default rule is that the party seeking to change the *status quo* bears the burden of proof. Here, that party is the Department because it did not and could not reduce Ms. Chaudhary's benefits prior to her appeal. The Department is the proponent of the overpayment and of the change, and should bear the burden.

Ms. Chaudhary provided a litany of documents that corroborated her testimony. Mr. Ramzan did not live with her during the overpayment period, but used her address for mailing. That is the only conclusion that is clearly evident.

Consequently, this Court should uphold the ruling of the appellate court.

Respectfully Submitted,

/s/ Patricia Nelson
Ayesha Chaudhary

CERTIFICATE OF COMPLIANCE WITH RULE 341

I hereby certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the words or pages contained in 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 brief under Rule 342(a) is 50 pages.

/s/ Patricia Nelson

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CERTIFICATE OF FILING AND SERVICE

I certify that on May 25, 2022, I electronically filed the foregoing BRIEF AND ARGUMENT OF APPELLEE 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.

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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.

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