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, Defendants-Appellants.	)	On Appeal from the Appellate Court of Illinois, Second Judicial District, No. 2-20-0364 There Heard on Appeal from the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, No. 19 MR 1341 The Honorable BONNIE M. WHEATON, Judge Presiding.

REPLY BRIEF OF DEFENDANTS-APPELLANTS

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-3312

Attorneys for Defendants-Appellants

DAVID E. NEUMEISTER
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2129 (office)
(312) 848-6474 (cell)
CivilAppeals@ilag.gov (primary)
David.Neumeister@ilag.gov (secondary)

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I. Introduction

This case centers on a question of statutory construction: on which party did the Illinois General Assembly intend to place the burden of proof at a hearing to determine an overpayment of Supplemental Nutrition Assistance Program (SNAP) benefits under the Illinois Administrative Code (Code)? In this context, the burden plainly rests with the benefits recipient, here Plaintiff-Appellee Ayesha Chaudhary.

Under the Code, the Department of Human Services is charged with gathering evidence of an overpayment of SNAP benefits and issuing an overpayment notice to a benefits recipient if an overpayment is found. If the Department issues such a notice, the recipient has a choice: repay the overpayment using one of the available plans or appeal the determination that an overpayment was made. If a recipient does not appeal, the overpayment is established with no further proceedings being necessary. But if an appeal is taken, then the recipient must present evidence to rebut the Department's overpayment determination. This is the procedure clearly established by the Code.

In seeking to upend the Department's longstanding procedure for resolving disputes about SNAP benefits overpayments, Chaudhary ignores the relevant provisions of the Code, as well as pertinent precedent. The authorities upon which she instead relies, including the erroneous appellate

court decision under review here, are inapt, as explained in the opening brief and below.

II. In this context, the burden of proof rested on Chaudhary, not the Department.

Applying settled principles of statutory construction, the Code is properly interpreted as impliedly placing the burden of proof on the SNAP benefits recipient challenging the Department's overpayment determination.

To decide which party has the burden of proof in an administrative proceeding, the court examines the language and structure of the statute and/or administrative regulation at issue, *see, e.g., Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56 (2005), and considers the statute or regulation in its entirety, *People ex rel. Madigan v. Ill. Com. Comm'n*, 231 Ill. 2d 370, 380 (2008). When doing so, the court should be guided by the principle that, absent a reason to believe that the legislature intended otherwise, the burden of proof "lies where it usually falls, upon the party seeking relief" from the agency's action. *Schaffer*, 546 U.S. at 57-58. Here, that party was Chaudhary, the party who appealed and sought to challenge the Department's determination that she was overpaid SNAP benefits.

A. Chaudhary ignores the Code sections most relevant to SNAP overpayment hearings.

The Department's opening brief explained that sections 14.60 and 14.22(a) of the Code, 89 Ill. Admin. Code §§ 14.60, 14.22(a), impliedly establish that the benefits recipient bears the burden of proof at a SNAP overpayment

hearing. *See* AT BR. 23-25. Although Chaudhary makes blanket statements about the import of these sections (AE Br. 17, 19),[1] her response brief does not grapple with their actual language.

1. Section 14.60 of the Code does not require the Department to further prove an overpayment if the recipient does not appeal its overpayment determination.

Section 14.60 provides that if a recipient does not take an administrative appeal after the Department issues an overpayment notice, then the overpayment is established and the Department may collect it without having to produce any evidence in support of its overpayment determination. 89 Ill. Admin. Code § 14.60(a)-(c). As explained (AT Br. 24-26), the fact that the Department need not prove anything further if no appeal is taken implies that the burden is on the benefit recipient if he or she appeals. Indeed, in the event of an appeal, the Department's overpayment determination is presumed to be correct but may be overcome by the recipient's evidence. *See Schaffer*, 546 U.S. at 59-60 (recognizing legislative presumption that if agency follows own procedural requirements, complaining party will prevail when it has legitimate grievance).

[1] This brief cites the record on appeal as "C __," the supplemental record as "Sup R __," the opening brief filed in this Court as "AT Br. __," the response brief filed in this Court as "AE Br. __," and the brief of *amici curae* filed in this Court as "AC Br. __."

Section 14.60 stands in stark contrast to provisions in which the General Assembly explicitly placed the burden of proof on the Department. *See, e.g.*, 89 Ill. Admin. Code § 14.300 *et seq.* (termination of SNAP benefits for intentional rule violation); 59 Ill. Admin. Code § 50.90(d)(2) (abuse, neglect, or financial exploitation by healthcare worker); 77 Ill. Admin. Code 672.600(b) (vendor sanction hearings); 89 Ill. Admin. Code 650.130(g)(3) (disciplining blind vendors); (AT Br. at 25-26). And Chaudhary's reliance on 7 C.F.R. § 277, App. A (c)(1)(A) (AE Br. 19) for the proposition that section 14.60 is solely for the purpose of administrative efficiency is not well taken. That federal code provision merely sets forth a general guideline for States to follow to obtain reimbursement for certain administrative costs and makes no reference to overpayment collections. 7 C.F.R. §277, App A, (C)(1)(a). Indeed, it is part of an appendix to a different section of the federal code than the one governing administrative hearings initiated by state benefit recipients (7 C.F.R. § 273 *et seq.*), and Chaudhary cites no authority for any correlation between that section and the Illinois Code sections at issue here.

2. Section 14.22(a) of the Code requires a recipient, like Chaudhary, who appeals the Department's overpayment determination to present evidence to rebut the Department's position.

If an appeal from the Department's overpayment notice is taken, then section 14.22(a) also requires the benefits recipient, here Chaudhary, to present evidence to rebut the Department's determination.

Section 14.22(a) provides that "[t]he appellant shall have the opportunity to: (1) [p]resent evidence and witnesses in the appellant's behalf[; and] (2) [r]efute testimony or other evidence and cross-examine witnesses." 89 Ill. Admin. Code § 14.22(a). The significance of section 14.22(a) is clear from two decisions upon which Chaudhary relies — *Scott v. Department of Commerce & Community Affairs*, 84 Ill. 2d 42 (1981), and *Fitch/Larocca Associates, Inc. v. Skinner*, 106 Ill. App. 3d 522 (1st Dist. 1982) (AE Br. 15) — but which actually favor the Department.

In each case, the court determined that the agency had the burden of proof at a hearing conducted under the "contested cases" provision of the Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1001 *et seq.*). *Scott*, 84 Ill. 2d at 52-53; *Fitch/Larocca*, 106 Ill. App. 3d at 523-24. Both the version of that provision in effect at the time of the decisions, Ill. Rev. Stat. 1979, ch. 127, par. 1001 *et seq.*, and the current version, 5 ILCS 100/10-40(b) (2020), specify that "a party may conduct cross-examination required for a full and fair disclosure of the facts." The courts in *Scott* and *Fitch/Larocca* each ruled that this right of cross-examination implied that the opposing party (*i.e.*, the agency) would put on witnesses and bear the burden of proof. *Scott*, 84 Ill. 2d at 53; *Fitch/Larocca*, 106 Ill. App. 3d at 523-24.

But section 14.22(a) is different. That section, "Appellant Participation in Hearing," refers solely to the appellant, here Chaudhary, and provides a right to present evidence and witnesses in addition to the right of cross-

examination. 89 Ill. Admin. Code § 14.22(a). It follows that under the reasoning of *Scott* and *Fitch*/*Larocca*, the fact that section 14.22(a) gives the appellant a right to affirmatively present evidence and witnesses (and not just the right to cross-examine any witnesses and otherwise refute any evidence presented by the Department like the provisions in those cases) implies that the burden of proof rests with the benefits recipient who is appealing the Department's overpayment determination.

This makes sense when considering that the benefits recipient has superior access to relevant evidence, as this case demonstrates. As Chaudhary admits (AE Br. 32-33), whether she was overpaid SNAP benefits turns on where her ex-husband, Jon Ramzan, lived at the relevant times. And as shown by the affidavits of Ramzan and the other tenants at the White Oak address that Chaudhary obtained and submitted to the Administrative Law Judge (ALJ) (C 594-96, 644-46), she knew of and was in communication with them and otherwise had superior access to and control over evidence than the Department. Illinois courts have relied on this factor when assigning the burden of proof at an administrative hearing. *See, e.g., 520 S. Mich. Ave. Assoc's v. Dep't of Emp. Sec.*, 404 Ill. App. 3d 304, 318 (1st Dist. 2010) (employer had burden of proving resumption of normal operations where it had principal control of relevant evidence).

Chaudhary's protestations that the Department had superior access to relevant evidence and the power to gather it (AE Br. 7, 12) are wrong. While

the facts necessary to establish an overpayment determination may vary from case to case, where a benefits recipient lived at a particular time will always be critical, and evidence relevant to that determination is nearly always more accessible to the recipient than to the Department. Indeed, that was the case here. Although the Department's internal records showed addresses provided by Ramzan at various times, the Department had to otherwise rely on public sources (such as the Illinois Secretary of State and the United States Postal Service) to gather evidence. But Chaudhary had the easiest access to evidence of Ramzan's actual residence and whereabouts based on her relationship with him and the other tenants at the White Oak address.

Instead of addressing the language of sections 14.60 and 14.22(a), Chaudhary offers two blanket assertions: (1) "[n]othing in the regulations impl[y] that [she] should bear the burden [of proof]"; and (2) "[t]he regulations imply that the burden of proof is allocated based on whether agency action is permitted prior to the appeal." (AE Br. 17). But she cites no authority for either one. *(Id*. at 17-18). Further, her concern for the efficient use of taxpayer money by saving the Department the time and inconvenience of a prove-up (AE Br. 19) is ironic given that placing the burden of proof on the Department would make it harder for it to recover overpaid SNAP benefits, which come from government dollars.

Finally, to the extent that Chaudhary's position and the appellate court's opinion are based on a perceived unfairness associated with placing the

burden proof on the appellant, it is the legislature's, not the courts', role, to address such policy considerations. The appellate court's decision wrongfully altered Illinois law for a number of agencies without the essential input and deliberation that would accompany the legislative process.

B. Chaudhary's assignment of the burden of proof also is not supported by precedent.

As the Department explained in its opening brief, where the statutes and regulations governing an agency's administrative proceedings do not explicitly assign the burden of proof, a "general" or "default" rule places it on the party challenging an agency's decision. *See* AT Br. 28-36; *see also, e.g., Schaffer*, 546 U.S. at 56. Chaudhary's contention that the party attempting to "change the *status quo*" bears the burden of proof in an agency proceeding is contrary to precedent, and appears nowhere in the authority she cites beyond the appellate court's erroneous opinion in this case. (AE Br. at 8).

1. Chaudhary's cited authorities to do not support placing the burden of proof on the Department.

Chaudhary argues that: (1) "the appellate court properly adhered to the default rule that the party seeking to change the *status quo* bears the burden of proof" (AE Br. at 8); and (2) "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*" (*id*. at 18).

Those statements are wrong, and find no support in the authorities Chaudhary cites. No court has discussed, much less adopted, Chaudhary's "default" rule. Rather, the cases acknowledge the rule to be that the party challenging an agency's decision generally has the burden of proof, *see, e.g., Marconi v. Chi. Heights Police Pension Bd.*, 225 Ill. 2d 497, 532-33 (2006), unless it is otherwise assigned by statute or regulation, *see, e.g., Julie Q v. Dep't of Child. & Fam. Servs.*, 2011 IL App (2d) 100643, ¶ 30 (citing 89 Ill. Admin. Code §§ 300.20, 336.100(e)).

Initially, Chaudhary's reliance on *Eastman v. Department of Public Aid*, 178 Ill. App. 3d 993 (2d Dist. 1989), is misplaced. *Eastman* stands for the proposition, which the Department does not challenge, that an agency defending its position at an administrative hearing will need to introduce competent evidence. *Id.* at 998. However, as explained in the Department's opening brief (AT Br. 32), *Eastman* was not a "burden of proof" case. The decision did not mention the phrase "burden of proof" much less discuss the concept. Chaudhary's reliance on *Scott*, 84 Ill. 2d at 53, and *Fitch/Larocca*, 106 Ill. App. 3d at 523-24, is likewise inapt, because of the difference between the statutes that governed the administrative hearings at issue in those cases and the Code sections that govern this case.

Indeed, that the General Assembly knew how to assign the burden of proof to the Department when it wished to is apparent from the statutory provision applicable when the Department seeks to terminate benefits for an

intentional violation of the SNAP rules. Section 14.340 of the Code, applicable to those hearings, requires the Department to prove that "an intentional violation of the program was committed based on clear and convincing evidence" even where the recipient does not appear at the hearing. 89 Ill. Admin. Code § 14.340. And unlike that section and the provisions at issue in *Petrovic v. Department of Employment Security*, 2016 IL 118562, upon which also Chaudhary relies, the Code sections at issue in this case do not establish specific elements that the Department must prove to establish an overpayment.

In *Petrovic*, this Court determined that an employer discharging an employee for intentional misconduct had the burden of proving each element of that charge as set forth in the governing provisions of the Unemployment Insurance Act, 820 ILCS 405/602(A) (2008). *Petrovic*, 2016 IL 118562, ¶¶ 26-28. The Court first established that the employee has the initial burden of proving his or her eligibility for unemployment benefits under the statute. *Id.* at ¶ 28. Then the employer may raise the employee's deliberate misconduct as a defense, and only then has the burden of proving the facts necessary to support that defense. *Id.* at ¶¶ 26-28. That is akin to the Department being assigned the burden of proof in an intentional violation case, but it does not support imposing the burden of proof on the Department in this context where the Code did not establish specific elements of an overpayment determination.

Chaudhary also cites *Martin v. Thompson*, 195 Ill. App. 3d 43 (1st Dist. 1990), for the proposition that an agency that does not "divest" a benefit prior to an administrative appeal bears the burden of proof at the associated hearing. (AE Br. 15). But in *Martin*, the agency (Chicago Police Department) discharged (*i.e.*, "divested") Thompson prior to its Board's administrative hearing. 195 Ill. App. 3d at 44. After the Board reinstated Thompson, the Department brought an administrative review action in which the circuit court remanded the matter to the Board for a further hearing to determine an appropriate sanction. *Id.* at 47. The Department had the burden of proof before the Board not because of the timing of its discharge (*i.e.*, "divestment"), but because — like Chaudhary — it initiated the administrative proceeding. *Id.* at 48.

And *Fender v. School District No. 25, Arlington Heights, Cook County, Ill.*, 37 Ill. App. 3d 736 (1st Dist. 1976), although cited by Chaudhary (AE Br. 15), supports the Department's position. In that case, the school board voted in March 1972 to terminate Fender effective in November 1972. *Id.* at 738. Fender initiated an administrative hearing to contest the upcoming termination. *Id.* at 739. Despite the fact that the hearing took place before the November termination (*i.e.*, before the actual "divestment"), the court recognized that the board's findings were presumed to be correct if it followed its own procedures, and applied the "default" rule that Fender had the burden of proof at the administrative hearing even though he had not yet been

officially terminated. *Id.* at 743-45. This is akin to the instant case, where Chaudhary initiated an administrative appeal before the Department collected any of the overpayment — that is, in her own words, before she was actually "divested" of any benefit.[2]

Similarly, *Miller v. Hill*, 337 Ill. App. 3d 210 (3d Dist. 2003) (AE Br. 15), favors the Department. That case did not involve an agency's "divestment" of any government benefit. Rather, the agency rejected a challenge to a zoning board decision because the party who initiated the board's review could not prove that the property at issue was in violation of the zoning. *Id.* at 215. Put another way, the party challenging the zoning board's decision did not meet its burden of proof. In short, none of the cases Chaudhary cites support her argument that the burden of proof lies with the Department.

2. The Department's authorities, which Chaudhary did not meaningfully distinguish, support application of the general rule that Chaudhary, as the party challenging the Department's decision, bore the burden of proof.

Chaudhary's attempt to distinguish the Department's authorities fails. In *Smoke N Stuff v. City of Chicago*, 2015 IL App (1st) 140936, the Chicago Municipal Code — like the Code in this case — did not explicitly assign the burden of proof. Rather than explicitly assigning the burden of proof to the appellant as Chaudhary implies, the municipal code provision in *Smoke N*

[2] In the event of an overpayment determination, the SNAP benefit recipient must only repay the amount of the overpayment but remains eligible for SNAP benefits.

Stuff codified the recognized principle that an agency's findings are deemed to be *prima facie* true and correct if the agency follows its own internal procedures. (AE Br. 16 (citing City of Chicago Municipal Code, § 2-14-076)). And in that scenario, the burden of proof falls on the party who initiates a challenge to those findings even though the governing provisions do not explicitly assign the burden — just as in this case. *Smoke N Stuff*, 2015 IL App (1st) 140936, ¶ 15.

Schaffer also directly refutes Chaudhary's position. First, it explains that the term "burden of proof" encompasses two distinct concepts: the burden of production and the burden of persuasion. *Schaffer*, 546 U.S. at 56-58. The "burden of persuasion" identifies the party that "loses if the evidence is closely balanced." *Id.* This, with "extremely rare" exceptions, is the party who initiates the action and so must prove the basis of their claim. *Id.* at 56-58. Undisputedly, that was Chaudhary, who sought an administrative appeal to show that she did not violate SNAP rules — because Ramzan did not live with her at the White Oak address at the relevant times — and thus had to produce evidence proving facts relevant to that issue by a preponderance of the evidence.

Second, *Schaffer* debunks Chaudhary's view that a person challenging an agency's decision has the burden of proof only if she has been "divested" of the benefit before the administrative hearing. (AE Br. 13). There was no such pre-hearing "divestment" in *Schaffer*, where the Individuals with Disabilities

Education Act (IDEA) "require[d] a child to remain in his or her 'then-current educational placement' during the pendency of an IDEA hearing." 546 U.S. at 59 (citing 20 U.S.C § 1415(j)). Although Chaudhary notes various procedural protections afforded to the appellants by the IDEA in *Schaffer* that she claims were not afforded to her under the Code (AE Br. 19-20), the court in *Schaffer* did not decide the burden of proof issue on that basis. Rather, it focused on whether the IDEA implied any legislative intent to deviate from the general rule, found none, and so recognized a legislative presumption that an agency is correct unless a challenger proves otherwise. *Schaffer*, 546 U.S. at 57-60. This Court should undertake the same analysis and reach the same conclusion here.

And, in any event, Chaudhary's suggestion that the IDEA provided the plaintiff in *Shaeffer* meaningfully greater procedural protections than she received under the Code (AE Br. 19-20) is incorrect. She did not have to wait until she filed her appeal to contact the Department. Indeed, she had been in contact with the Department during the time that she was receiving benefits, including in May 2017 to advise that she had stopped working in order to increase her benefits. (C 184-85). And once she filed the appeal, the Department sent her a "[s]tatement of [f]acts" along with contact information so that she could reach the Department at any time before the hearing. (C 52-55). The letters confirming her appeal and hearing date advised her that "[n]ow is the time to start gathering the documentation you would like to give the [h]earing [o]fficer" (C 40-41), and how to submit it (C 44). If there was

anything she did not understand, she could have asked the Department; she had both the knowledge and opportunity to do so. Choosing to take a more passive role in the appeal that she initiated does not relieve her of the burden of proof.

The Department's other principal authorities, *Arvia v. Madigan*, 209 Ill. 2d 520 (2004), and *People v. Orth*, 124 Ill. 2d 326 (1988), accurately reflect this Court's application of the general rule. Both demonstrate that the party challenging the agency's action bears the burden of proof at a hearing to challenge that action when the controlling statute does not explicitly assign that burden. *Arvia*, 209 Ill. 2d at 540-42; *Orth*, 124 Ill. 2d at 337-38. Chaudhary attempts to distinguish those cases on the grounds that "the statute [sic] in *Arvia* and *Orth* mandated the agency to act on its determination immediately." (AE Br. 18). She appears to assign significance to the fact that in those cases, the agencies' suspension of the individuals' driving privileges was immediate, and the hearing to challenge that action took place after the suspensions were already in place; meaning, in her words, that those individuals were "divested" of the government benefit before their appeal hearing took place. But that distinction is meaningless in light of *Schaffer*, 546 U.S. at 59, where the child's educational placement remained in place until after the hearing challenging the agency's action, and there was no prehearing "divestment."

C. Chaudhary's assertion that due process requires the Department to bear the burden of proof is wrong.

Chaudhary's assertion that due process requires the Department to bear the burden of proof is wrong for three principal reasons: (1) she received due process as required by Illinois law; (2) her cited authorities support the Department's position; and (3) any due process protections afforded relative to the placement of the burden of proof does not depend on a party's personal circumstances.

1. Chaudhary received due process in the course of the administrative hearing.

Chaudhary received all the process she was entitled to. With respect to the conduct of the administrative hearing itself, this Court has settled the due process question. Due process does not require the equivalent of a judicial proceeding; it merely requires notice and the opportunity to be heard, the chance to cross examine adverse witnesses, and an impartial decision-maker. *Abrahamson v. Ill. Dep't of Prof. Regul.*, 153 Ill. 2d 76, 92 (1992). Undisputedly, Chaudhary received all of those protections. (C 41, 45, 325-26, 496, 508, 510, 573-89). This Court has also established that placing the burden of proof on the person challenging government action at an administrative hearing does not violate due process. *Orth*, 124 Ill. 2d at 337-38; *Arvia*, 209 Ill. 2d at 542. Chaudhary cites no authority that supports expanding these settled due process concepts.

2. Chaudhary's cited authorities support the Department's position.

The authorities upon which Chaudhary principally relies support the Department. Initially, *Bliek v. Palmer*, 102 F.3d 1472 (8th Cir. 1997), did *not* rule that due process requires the burden of proof in a hearing to challenge an overpayment determination to be placed on the agency. Indeed, the court in *Bliek* did not address the due process requirements at an overpayment hearing or the burden of proof at such a hearing.

Bliek involved the content of the notice that was provided to Iowa SNAP benefit recipients in a scenario not at issue here: cases where they had been overpaid due solely to the agency's error. *Bliek* was a class action in which SNAP recipients claimed a due process violation based on the State of Iowa's failure to notify them of its authority to unilaterally settle overpayments that had resulted solely from the agency's mistake. *Id.* at 1473. The court concluded, by analyzing *Goldberg v. Kelly*, 397 U.S. 254 (1970) and *Matthews v. Eldridge*, 424 U.S. 319 (1976), that the due process to which the plaintiffs were entitled included: adequate notice of the claim against them, including the state's authority to unilaterally resolve it; and the opportunity for a fair hearing. *Bliek*, 102 F.3d at 1475-77. The personal circumstances of SNAP recipients, which Chaudhary contends bear on the burden of proof issue (AE Br. 24-27), are mentioned only in that context.

Thus, Chaudhary cites *Bliek*, and hence *Goldberg* and *Matthews* as well, out of context. Those cases do not support her contention that the

Department must bear the burden of proof for a hearing to be "fair" for due process purposes. As explained above, this Court has settled the due process requirements for an administrative hearing, and the assignment of the burden of proof has no bearing on that issue. *Abrahamson*, 153 Ill. 2d at 92. And contrary to Chaudhary's suggestion (AE Br. 29-30), none of the cases she cites requires notice to a benefits recipient that he or she will bear the burden of proof when challenging the Department's determination in an administrative hearing.

Chaudhary's contention that cases addressing the burden of proof in proceedings regarding Social Security overpayment determinations "are instructive here" (AE Br. 27) is true — but these cases support the Department's position rather than Chaudhary's. In *Wilkening v. Barnhart*, No. 02 C 9096, 2004 U.S. Dist. Lexis 7298 (N.D. Ill. Apr. 26, 2004), *aff'd*, 139 Fed. Appx. 715 (7th Cir. 2005), the contested issues involved: (1) whether there had been an overpayment of benefits and the amount of that overpayment; and (2) whether the recipient was at fault for the overpayment, and whether recovery from the recipient would defeat the purpose of the Social Security Act. *Id*. at *20-*21. The court noted that the agency had the burden of establishing the initial existence and amount of an overpayment, *id.* at *14-*15, but that the recipient had the burden of establishing that she was not at fault, and that recovery from her would defeat the purposes of the Social Security Act, *id.* at *21. This was because "the fault inquiry settles on the

actions of the recipient" regardless of the amount of the overpayment. *Id.* at *21-*22.

That same reasoning applies here. Undisputedly, the Department had to document the amount of the overpayment, which it did and which was not contested. (C 512, 516-21). But Chaudhary had the burden of proving that the reason for the overpayment determination — that she and Ramzan lived together at the relevant time — was wrong. This is because, according to the reasoning of *Wilkening*, which Chaudhary cites but fails to fully describe, the inquiry as to the recipient's fault "settles upon the actions of the recipient, regardless of the [agency's] role" in the overpayment. 2004 U.S. Dist. Lexis at *21. And as Chaudhary admits (AE Br. 32), the outcome of this case turned on that issue.

The other cases Chaudhary relies upon, *McCarthy v. Apfel*, 221 F.3d 1119, 1125-26 (9th Cir. 2000), and *Newton v. Apfel*, No. 99-35759, 2000 U.S. App. Lexis 24086 (9th Cir. Sep. 26, 2000), are similarly unhelpful to her position. The court in *McCarthy* placed the same burden of proof upon the benefits recipient as did the court in *Wilkening*. *McCarthy*, 221 F.3d at 1126. The court in *Newton* did not reach the issue of the recipient's fault because the agency did not establish the amount of the overpayment. 2000 U.S. App. Lexis at *2. It follows that Chaudhary, as the benefits recipient, has the ultimate burden of proof in contesting the overpayment determination because the outcome ultimately hinged on her "fault" in violating SNAP rules.

3. Whether due process requires the burden of proof to be assigned to a particular party during an administrative hearing does not turn on the parties' personal circumstances.

Adopting Chaudhary's (and the *amici*'s) position would make providing due process in administrative proceedings dependent on the type of proceeding at issue and the personal circumstances of the parties involved. (AE Br. 24-25; AC Br. 16-22). Other than again citing *Goldberg* out of context (AE Br. 24), Chaudhary's argument on this point is not supported by authority and, in any event, is inconsistent with principles of statutory construction.

With respect to regulations governing SNAP benefits, *Goldberg* held that due process requires an administrative hearing before benefits are terminated. 397 U.S. at 260-61. It did not suggest that the due process requirements vary according to "the capacities and circumstances of those who are to be heard," as Chaudhary implies. (AE Br. 24). And she provides no authority for her suggestion that due process requirements should vary with income level, age, sophistication, education level, and other factors (*id.*), which would upend settled due process requirements.

To the extent that Chaudhary (and her *amici*) assert that due process requires the Department to bear the burden of proof because of its superior access to evidence *(id.* at 25-26), they ignore that, as explained, in most cases, as here, the benefits recipient will have that superior access. Were the burden of proof as Chaudhary suggests, the Department would have needed to identify and interview (or even depose) material witnesses, obtain other relevant

evidence to which Chaudhary had ready access, and prepare to use it for impeachment purposes as well as in its principal case. The administrative hearing would become much akin to a trial, which neither the Code, 89 Ill. Admin. Code § 14.23 (administrative hearings are not subject to common law or statutory evidentiary and procedural rules), nor this Court, *Abrahamson*, 153 Ill. 2d at 92 (due process does not require proceeding in nature of judicial proceeding), contemplate.

Finally, criticism of the Department for pursuing SNAP benefits overpayments (AC Br. 10-15), is misplaced. Federal law requires it to pursue overpayments to maintain its SNAP funding and that funding is, in any event, limited. 7 C.F.R. § 273.18. Hindering the Department's ability to pursue and collect overpayments would impact its ability to fund this important public program.

III. The Secretary's decision was not against the manifest weight of the evidence.

Because Chaudhary bore the burden of proof at the administrative hearing, she was required to establish by a preponderance of the evidence that Ramzan did not live with her at the White Oak address during the relevant time period. (AT Br. 24-25, 36-37). The Secretary's finding that Chaudhary did not carry her burden of proof, and therefore that there was an overpayment of SNAP benefits, should be upheld unless it is against the manifest weight of the evidence, *Abrahamson*, 153 Ill. 2d at 87-88, which it

was not.[3] As explained (AT Br. 31-35), evidence properly in the record supported the overpayment determination even if the opposite conclusion was reasonable. *See Abrahamson*, 153 Ill. 2d at 87-88. The Department introduced evidence, properly admitted under the relaxed evidentiary rules, 89 Ill. Admin. Code § 14.23, that Ramzan lived at the White Oak address at the relevant time. (C 143-80, 186-206, 210-21, 237-46, 471-83, 558-60, 563-72). Although Chaudhary introduced conflicting evidence, the Secretary resolved the conflicts in the Department's favor, including by finding that Chaudhary was not a credible witness. (C 673). *See* AT Br. 42; *see also Bd. v. Educ. of City of Chi. v. Ill. Educ. Lab. Rel. Bd.*, 2015 IL 118043, ¶¶ 14-15 (agency's factual findings and credibility determinations receive deference); *People v. Brown*, 2013 IL 114196, ¶ 48 (similar). On administrative review, courts are not free to disregard the Secretary's credibility determinations.

The Department and Secretary stand on their opening brief on this issue, but would stress certain points. First, Chaudhary's contention that the Department's evidence was from outside the overpayment period (AE Br. 31, 36) requires proper context. The Department's investigation, including its search for evidence, naturally took place after the overpayment period ended. (C 60, 521, 523-24). Hence, the records that the Department submitted into

[3] If this Court disagrees, and holds that the Secretary's decision was against the manifest weight of the evidence, it should nevertheless decide the burden of proof issue, given that the issue is of significant importance to how administrative hearings are conducted in this State.

evidence were printed or produced on a date after the overpayment period, but still reflected Ramzan's actions and status during that period. Also, Chaudhary cites to documents she submitted that reflect addresses for Ramzan other than the White Oak address that the Department and the Secretary allegedly "ignored." (AE Br. 34). But those documents were merely evidence conflicting with the Department's, and, again, it was the Secretary's prerogative to weigh the conflicts in the evidence. And Chaudhary's criticism that the Department's evidence was not competent (AE Br. 35-37), is not well taken in light of the Code's relaxed evidentiary standards for administrative hearings. 89 Ill. Admin. Code § 14.23. The Secretary's decision thus was not against the manifest weight of the evidence.

CONCLUSION

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

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-3312

Attorneys for Defendants-Appellants

DAVID E. NEUMEISTER
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2129 (office)
(312) 848-6474 (cell)
CivilAppeals@ilag.gov (primary)
David.Neumeister@ilag.gov (secondary)

July 13, 2022

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the petition under Rule 342(a), is 5,696 words.

/s/ David E. Neumeister
DAVID E. NEUMEISTER
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2129 (office)
(312) 848-6474 (cell)
CivilAppeals@ilag.gov (primary)
David.Neumeister@ilag.gov (secondary)

CERTIFICATE OF FILING AND SERVICE

I certify that on July 13, 2022, I filed the foregoing **Reply Brief** with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey EFileIL system.

Patricia Nelson
pnelson@pslegal.org
westsuburban@pslegal.org

Nolan Patrick Downey
nolandowney@povertylaw.org

Jin-Ho Chung
jinho@equipforequality.org

Susan M. Simone
ssimone@lincolnlegal.org

Miriam Hallbauer
mhallbauer@legalaidchicago.org

Meghan P. Carter
mcarter@legalcouncil.org

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

/s/ David E. Neumeister
DAVID E. NEUMEISTER
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2129 (office)
(312) 848-6474 (cell)
CivilAppeals@ilag.gov (primary)
David.Neumeister@ilag.gov
(secondary)