

No. 1-10-2903

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOSEPHINE MERRITT,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 09 CH 48298
)	
ILLINOIS DEPARTMENT OF HUMAN SERVICES,)	Honorable
)	Rita Mary Novak,
Defendant-Appellee.)	Judge Presiding.

Quinn, P.J., delivered the judgment of the court.
Murphy and Steele, JJ., concurred in the judgment.

ORDER

- ¶1 *HELD:* The Illinois Department of Human Services properly dismissed plaintiff's untimely appeal from its final overpayment decision for lack of jurisdiction; judgment of circuit court of Cook County affirmed.
- ¶2 Plaintiff Josephine Merritt, *pro se*, appeals from an order of the circuit court of Cook County which affirmed the final administrative decision of defendant, Illinois Department of Human Services (Department), that it did not have jurisdiction to consider plaintiff's 2009 appeal from its 1996 and 1997 financial assistance and food stamps overpayment determinations. In this court, plaintiff maintains that she acknowledged the overpayments in a timely manner, and that the Department altered the date on the original repayment agreement to coincide with its defense. ¶3 The record filed on appeal shows that plaintiff and her son received financial assistance

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and food stamps for periods of time between January 19, 1995, and October 18, 1996. In February 1996, the Department notified plaintiff that she had received overpayments of \$834 in financial assistance from April through June 1995, and \$288 in food stamps from May to June 1995 because she failed to report her employment with the Chicago Park District. In June 1996, plaintiff was sent another notice informing her that she received overpayments of \$760 in financial assistance from September through November 1995, and \$258 in food stamps from October through November 1995 because she failed to report her earnings from her employer, Manpower, in a timely manner. In January 1997, the Department sent plaintiff a third notice of overpayment informing her that from April through September 1996, she received overpayments of \$1,506 in financial assistance and \$1,176 in food stamps because she failed to report her income.

¶4 These notices of overpayment were sent to plaintiff with demand letters informing her that she had a right to request a hearing if she disagreed with the overpayment determinations. She was also informed therein that she must request a hearing within 90 days of the date reflected on the calculation of the overpayment, and if she failed to request a hearing within 10 days of that date, action would be taken against her, such as referring the matter to a collection agency.

¶5 In August 1999, plaintiff was sent a revised notice of overpayment informing her that the \$1,176 food stamp overpayment for the period of April through September 1996 was being revised to \$45. In the same notice, she was advised that an appeal of a food stamp overpayment determination must be filed within 90 days of the date of notice, and an appeal of a cash assistance overpayment determination must be filed within 60 days of the date of notice. Plaintiff filed her appeal of these overpayment determinations on June 1, 2009.

¶6 A hearing was held in the matter on October 8, 2009.

¶7 Plaintiff testified that in January and February 1995, she was receiving public aid

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assistance, and training for a new job. Around this time, she was told to come to defendant's office on March 4, 1995, and on that date, her caseworker told her that she received an overpayment due to working, and plaintiff signed a repayment agreement.

¶8 In April 1995, plaintiff was hired by the Chicago Park District, and notified her caseworker that she would no longer need benefits, except for her son's medical card. After she started working, she began receiving letters regarding an overpayment, but thought it was a computer glitch. When other letters followed, she assumed her case was closed based on the conversation she had with her caseworker on March 4, 1995, and that after March 1995, she did not pick up any benefits. She then stated that she paid \$3,000 to defendant from April 1995 to June 1996, but she thought this was a mistake.

¶9 The hearing officer then asked plaintiff what prompted her to file an appeal in 2009 when she had been notified of the overpayments in 1996 and 1997. Plaintiff responded that she was "filing this appeal because [she] recently, once [she] had received the documents," that she had been out of Chicago for a while, and conceded that she had received a letter from a collection agency claiming that she owed \$2,600. She maintained, however, that she did not owe this money because she did not receive food stamps during the 14-month time period, as alleged.

¶10 On November 16, 2009, the Department issued the hearing officer's findings of fact and its final administrative decision. The hearing officer determined that in 1996 and 1997, the Department mailed plaintiff notices of overpayment of financial assistance and food stamps, and that plaintiff did not appeal the overpayment decisions until 2009. She claimed that she recently moved back to Chicago, and decided to pursue defendant's decisions at this time because she did not believe that she received the overpayments.

¶11 Based on these findings, the Department dismissed plaintiff's appeal for want of jurisdiction. In doing so, the Department noted that an appeal of a decision of overpayment of cash assistance must be filed within 60 days of that decision, and an appeal of a decision of overpayment of food stamps must be filed within 90 days of that decision. The Department thus

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concluded that it did not have jurisdiction over the subject financial assistance and food stamp overpayment decisions because plaintiff failed to file a timely appeal.

¶12 On December 3, 2009, plaintiff filed a *pro se* complaint for administrative review in the circuit court of Cook County alleging that since April 1995, she has not received cash or food stamps from defendant. She also alleged that in April 1995, she told defendant to discontinue her benefits.

¶12 In July 2010, the Department filed a memorandum in support of its final administrative decision, and plaintiff filed a memorandum in opposition. The circuit court issued a written order on September 28, 2010, affirming defendant's final administrative decision, and plaintiff now appeals from that order.

¶13 As an initial matter, we observe that plaintiff has filed a brief which does not conform with the supreme court rules governing appellate review. Ill. S. Ct. R. 341 (eff. July 1, 2008); Ill. S. Ct. R. 342 (eff. Jan. 1, 2005). Plaintiff has failed to present any relevant facts or argument pertaining to the dismissal of her appeal for lack of jurisdiction, and instead accuses the Department of obfuscation while challenging the Department's determination that she owed money for the overpayment of benefits from May 1995 to June 1996. Notwithstanding these shortcomings, we will entertain the appeal since the decisive issue is apparent and we have the benefit of the cogent brief filed by the Department. *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001).

¶14 On appeal from an administrative review action, we review the agency's decision, not that of the circuit court. *Arellano v. Department of Human Services*, 402 Ill. App. 3d 665, 669 (2010). Here, the Department dismissed plaintiff's 2009 appeal of its 1996 and 1997 overpayment decisions for want of jurisdiction. Whether the Department had jurisdiction is a question of law which we review *de novo*. *Rutka v. Board of Trustees of Cicero Police Pension Bd.*, 405 Ill. App. 3d 563, 565 (2010).

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¶15 Section 165.102 of the Illinois Administrative Code (Code) (89 Ill. Adm. Code 165.102, added at 11 Ill. Reg. 10604 (eff. May 29, 1987)), provides, in relevant part, that a demand for repayment of an overpayment shall be made in writing, and notify the debtor of her right to appeal and receive a hearing. According to section 102.82 of the Code (89 Ill. Adm. Code 102.82, amended at 6 Ill. Reg. 894 (eff. Jan. 7, 1982)), an appeal of a public assistance issue (except for food stamp cases) must be filed within 60 days of the date of the Department's action to notify plaintiff; day one of the 60 day time period shall be the day following the date on the written notification. That section further provides that a food stamp client may request a hearing on any action or loss of benefits which occurred in the prior 90 days. 89 Ill. Adm. Code 102.82, amended at 6 Ill. Reg. 894 (eff. Jan. 7, 1982). Such time limitations for bringing an action before an administrative agency are jurisdictional. *Reilly ex rel. Reilly v. Wyeth*, 377 Ill. App. 3d 20, 33-34 (2007).

¶16 The record here shows that in 1996 and 1997, defendant sent plaintiff notices of overpayment of public assistance and food stamps, along with demand letters informing her of her right to appeal and when to do so. Plaintiff acknowledged her receipt of these notices at the hearing on the matter, but she did not file an appeal within the required 60 and 90 day time periods. 89 Ill. Adm. Code 102.82, amended at 6 Ill. Reg. 894 (eff. Jan. 7, 1982). Instead, she filed an appeal in 2009, *i.e.*, more than 10 years after receiving the written notices of overpayment. It is thus clear that plaintiff did not file her appeal in a timely manner, and that the Department correctly dismissed her appeal for want of jurisdiction.

¶17 As a final matter, we observe that plaintiff claims in her reply brief that she was not timely notified of the overpayment decisions where the Department had 10 days to notify her of any changes. She cites to defendant's policy, PO 215.3, that it not make any changes until 10 days after the date of notice. Since plaintiff failed to raise this issue below, it is waived for purposes of review. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 408 (2001). Moreover, the record does not reflect that the Department violated its

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policy, especially where it indicated in its demand letters that it would take no action until 10 days had passed.

¶18 In light of the foregoing, we affirm the order of the circuit court of Cook County.

¶19 Affirmed.