2017 IL App (1st) 163119-U

No. 1-16-3119

Order filed December 21, 2017

Fourth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

NATHAN NISSENBAUM,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant	)	Cook County
	)	
v.	)	No. 15 CH 17378
	)	
ILLINOIS DEPARTMENT OF CHILDREN	)	Honorable
and FAMILY SERVICES,	)	Thomas R. Allen,
	)	Judge Presiding.
Defendant-Appellee.	)	

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the Department's denial of plaintiff's request to expunge the indicated finding against him where the Director had the authority to reject the ALJ's recommendation and the Department's final administrative decision was not against the manifest weight of the evidence, nor clearly erroneous.

¶ 2 Defendant Illinois Department of Children and Family Services (the "Department") received a call to its "Child Abuse and Neglect Hotline" that plaintiff, Nathan Nissenbaum, had physically abused his girlfriend, Danielle Kelson, and her minor daughter, K.P. Following an

investigation, the Department "indicated" plaintiff for Department Allegation #60: Environment Injurious to Health and Welfare as to K.P. Plaintiff appealed the finding to the Department and sought to have it expunged. After a hearing, an Administrative Law Judge (ALJ) determined that the Department had not met its burden for an indicated finding of Allegation #60 and recommended that the Director of the Department (Director) grant plaintiff's request to expunge the indicated finding. The Director, however, disagreed with the ALJ's recommendation and denied the expungement. Plaintiff sought administrative review of that decision in the circuit court of Cook County. The circuit court affirmed the Department's decision and plaintiff appealed.

¶ 3 On appeal, plaintiff asserts that the Director's finding is against the manifest weight of the evidence where the Director's decision contravened the ALJ's recommendation. Plaintiff contends that this court should defer to the recommendation of the ALJ who had the opportunity to view the witnesses and make credibility determinations. For the reasons that follow, we affirm the decision of the Department.

¶ 4 I. BACKGROUND

¶ 5 On December 12, 2014, the Department received a call to its Child Abuse and Neglect Hotline alleging that plaintiff was physically abusive to his girlfriend, Kelson and her minor daughter, K.P. The report further alleged that Kelson was a prostitute, abused alcohol and drugs, and would bring "clients" to the residence while K.P. was present. Department Child Protection Investigators Donna Morrison and Rosalind Wiekerson investigated the case on behalf of the Department. The investigators learned that plaintiff and Kelson were in a relationship and lived together with K.P. from approximately December 31, 2013, through December 3, 2014. Plaintiff also lived at his parents' home during their relationship and K.P. was not his biological child.

¶ 6 A. The Investigation

¶ 7 Investigator Morrison met with K.P. in Kelson's home. K.P. told her that plaintiff had tried to involve her in the most recent verbal fight between him and Kelson. She told Investigator Morrison that she felt safe now that plaintiff was out of the house, but that she would miss him.

¶ 8 Investigator Wiekerson spoke with plaintiff and explained the allegations to him. Plaintiff told Investigator Wiekerson that the allegations were a lie and that he believed the report was made by Kelson's ex-husband who was trying to get back at her. Plaintiff said that Kelson is a social drinker and does not use drugs except for prescription sleep medication. He denied ever physically abusing Kelson and denied that she was a prostitute.

¶ 9 Investigator Wiekerson also spoke with Kelson who reported that she was in the process of a divorce and the allegations were likely made by her ex-husband trying to make trouble for her. However, she told Investigator Wiekerson that there had been a few altercations between her and plaintiff and that is why she left him. She reported that in June 2014, he had hit her and she hit her head on a wooden stool. She also reported that other times there "was just a lot of yelling between them." Investigator Wiekerson spoke with K.P. and she reported that she had never seen Kelson hit anyone or be hit by anyone, but had heard yelling between Kelson and plaintiff when plaintiff lived at their home.

¶ 10 Investigator Wiekerson spoke with plaintiff again and he reported that all of the allegations made on the hotline call were true. Investigator Wiekerson asked plaintiff about denying the allegations the first time they spoke and he said that he did not know what he was talking about when they spoke previously. He told Investigator Wiekerson that he knows Kelson does drugs because he does them with her. He reported that K.P. would be in the room when they were doing drugs. He also told Investigator Wiekerson that Kelson will have "clients" over

to the house and K.P. will be in the room "when this goes on." He further told Investigator Wiekerson about an occasion where Kelson went to New York to visit a client and he stayed in the home with K.P. for several days.

¶ 11 He reported that there had been three instances of domestic violence in their home, the most recent of which occurred in November 2014. He admitted that on one occasion, he "lost total control" and choked and slapped Kelson. He denied ever knocking her unconscious, but said that she did hit her face on a chair, which caused her to have a black eye. He reported that one time, after Kelson had surgery, they got into a physical altercation, but he only put his arms around her to restrain her because he did not want to hit her knowing she had just had surgery. He reported that "he knew something was wrong with him, but he didn't know what" and that he would get so angry that he would totally lose control. He told Investigator Wiekerson that when Kelson would fight back, he would go into a "blind rage." He reported that during these incidents, K.P. would be in the room sleeping or wearing big headphones.

¶ 12 Investigator Wiekerson spoke with K.P. again who told her that she felt safe now that plaintiff was not in the house. She told Investigator Wiekerson that plaintiff made her feel scared because he would yell and scream at Kelson. K.P. also told Investigator Wiekerson that plaintiff would try to tell her things about Kelson, but K.P. would not tell Investigator Wiekerson what plaintiff tried to tell her.

¶ 13 Investigator Wiekerson also spoke to K.P.'s therapist. K.P.'s therapist reported to Investigator Wiekerson that K.P. told her about an incident where she saw a physical altercation between plaintiff and Kelson. K.P.'s therapist also reported that K.P. said she felt safe now that plaintiff has left their home.

¶ 14 B. Allegation #60

¶ 15 Investigators Wiekerson and Morrison's investigation centered around whether the evidence supported a finding for Allegation #60, Substantial Risk of Physical Injury/Environment Injurious to Health and Welfare by Neglect. Allegation 60 of the Illinois Administrative Code (Code) provides:

> "Environment injurious means that a child's environment creates a likelihood of harm to the child's health, physical well-being or welfare and that the likely harm to the child is the result of a blatant disregard of parent or caretaker responsibilities [325 ILCS 5/3]. This allegation shall be used when the type or extent of harm is undefined but the totality of circumstances, including inculpatory and exculpatory evidence, leads a reasonable person to believe that the child's environment may likely cause harm to the child's health, physical well-being or welfare due to the parent's or caretaker's blatant disregard. Blatant disregard is defined as an incident where the real, significant and imminent risk of harm would be so obvious to a reasonable parent or caretaker that it is unlikely that a reasonable parent or caretaker would have exposed the child to the danger without exercising precautionary measures to protect the child from harm [325 ILCS 5/3]. This allegation of harm shall also be used when there are conditions that create a real, significant and imminent likelihood of harm to the child's health, well-being or welfare (i.e., domestic violence, intimidation, or a child's participation in a criminal act) and the parent or caretaker blatantly disregarded his/her parental responsibility by failing to exercise reasonable precautionary measures to prevent or mitigate the imminent risk of moderate to severe harm." 89 Ill. Adm. Code 300 appendix B (Allegation 60) (2011).

Rule 300, Allegation #60 also lists a series of factors and examples to consider in determining whether a minor has been exposed to an injurious environment.

¶ 16 The Code works in conjunction with the Abused and Neglected Child Reporting Act (ANCRA) (325 ILCS 5/1 *et seq* (West 2014)), which requires the Department to maintain a central register of all cases of suspected child abuse or neglect and to investigate and classify all reports as indicated, unfounded, or undetermined. 325 ILCS 7/7.7, 7.12 (West 2014). A report is "indicated" where "an investigation determines that credible evidence of the alleged abuse or neglect exists." 325 ILCS 5/3 (West 2014). Credible evidence of child abuse or neglect "means that the available facts, when viewed in light of surrounding circumstances, would cause a reasonable person to believe that a child was abused or neglected." 89 Ill. Adm. Code 300.20 (2011).

¶ 17 C. The Indicated Finding

¶ 18 Investigator Wiekerson reviewed the case with her supervisor, Gloria Kidd. After reviewing Investigator Wiekerson's reports, Kidd determined that there was credible evidence to indicate the allegation where the investigation showed that plaintiff had caused domestic violence toward Kelson in the home in the presence of K.P.

¶ 19 D. The Administrative Hearing

¶ 20 Plaintiff appealed the indicated finding and the matter was assigned to an ALJ for an administrative hearing to determine whether the indicated finding against plaintiff should be expunged. At the hearing, the Department bore the burden of proving that a preponderance of the evidence supported the indicated finding. *Shilvock-Cinefro v. Department of Children and Family Services*, 2014 IL App (2d) 130042, ¶ 21.

¶ 21 At the hearing, Investigator Wiekerson testified that in speaking with K.P., K.P. told her that she only ever heard yelling between plaintiff and Kelson, and did not see any physical acts of violence. Plaintiff, however, told Investigator Wiekerson about three incidents of physical violence that occurred during his relationship with Kelson. Plaintiff reported that there was one incident where he slapped and choked Kelson, and there were other times where he got so angry that he would "lose control." Plaintiff told Investigator Wiekerson that during these incidents, K.P. would be in her room either asleep or with headphones on.

¶ 22 Investigator Wiekerson explained that the Department indicated plaintiff for Allegation #60 based on the incidents of physical domestic violence that occurred while K.P. was in the home. Specifically, Investigator Wiekerson relied on K.P. telling her that at one point plaintiff attempted to draw her into one of the verbal arguments between him and Kelson and K.P.'s admission that she was afraid of plaintiff and felt safer now that he was out of the home. K.P. also said that plaintiff yelled at Kelson a lot, which scared her, and would tell her things about Kelson, although K.P. would not divulge what plaintiff told her. Investigator Wiekerson testified that K.P. was sad and unable to protect herself and could not leave the room when the incidents were occurring. On cross-examination, Investigator Wiekerson stated that plaintiff was not K.P.'s primary caretaker, although she noted that he did care for K.P. while Kelson was out of town on at least one occasion.

¶ 23 Plaintiff testified that he dated Kelson for approximately one year and frequently visited her house during that time, but lived with his parents during their relationship. He testified that Kelson was an escort and would bring clients home while K.P. was present. Plaintiff then discussed the June 2014 incident. He testified that Kelson was in New York visiting clients and plaintiff was watching K.P. at Kelson's home. He testified that Kelson became jealous and angry

when she learned that he had played on a co-ed flag football team. When Kelson arrived home after her trip, plaintiff was sleeping. Kelson was drunk and yelled at him and then jumped on the bed and punched him twice in the face. Plaintiff got out of the bed and Kelson threw a large mason jar at him. Plaintiff picked up a wooden footstool to use as a shield and Kelson jumped at him and hit her head on the stool, which caused a bump on her eye.

¶ 24 Plaintiff testified that he had an "emotional reaction" to Kelson's attack. He grabbed her by the arm and around her neck, shoved her against the wall, and yelled in her face. Kelson punched him and he slapped her. He testified that he was not trying to hurt her, but was trying to get her to stop attacking him. After the fight, plaintiff left the house and went to stay at a friend's house. Plaintiff told Kelson that he would not return to the house until Kelson told her therapist and K.P.'s therapist about the incident.

¶ 25 Plaintiff testified that there had been two other instances of physical violence between him and Kelson and that Kelson was the initial aggressor on both of those occasions. He further testified that he never struck her before the June incident. On cross-examination, he stated that he sometimes used drugs with Kelson, but never while K.P. was in the house.

¶ 26 1. *The ALJ's Recommended Decision*

¶ 27 As part of the Department's appeals process, the ALJ conducted the hearing and made a recommended decision for the Director of the Department. In his recommendation, the ALJ found that although the incidents between plaintiff and Kelson in the residence were not "severe," there were numerous physical altercations between them in K.P.'s presence. The ALJ rejected plaintiff's contention that he was not responsible for K.P. because he was not her primary caretaker. The ALJ noted that plaintiff watched K.P. on at least one occasion while

Kelson was out of town and was, therefore, an eligible perpetrator under the ANCRA and the Code.

¶ 28 In fact, the ALJ found none of plaintiff's testimony credible. The ALJ observed that plaintiff's first conversation with Investigator Wiekerson differed completely with his statements to her in their second conversation. The ALJ further found that plaintiff's testimony at the hearing that Kelson was the initial aggressor in their altercations was not credible where plaintiff never claimed to be the victim in any of his communications with the Department prior to the hearing.

¶ 29 Nonetheless, the ALJ found that there was insufficient evidence gathered by the Department to support a finding that plaintiff's actions ever exposed K.P. to an injurious environment. The ALJ relied on K.P.'s own statements, which the ALJ found credible, that although K.P. heard yelling and screaming between plaintiff and Kelson, she never witnessed or heard any physical altercation between them. The ALJ thus found that the Department had not met its burden of proof and recommended that the Director grant plaintiff's request to expunge the indicated finding of Allegation #60.

¶ 30 E. The Director's Decision

¶ 31 In his decision, the Director recounted the evidence gathered in the investigation, the evidence adduced at the hearing, and the factors listed in Allegation #60. The Director also detailed the ALJ's recommended finding and the basis for his recommendation. The Director agreed with the ALJ's finding that plaintiff was not credible either during the investigation or during the hearing. The Director, ultimately, however, rejected the ALJ's recommendation to expunge the indicated finding.

¶ 32 The Director noted that the ALJ found that K.P. was susceptible to harm from plaintiff and plaintiff admitted during the investigation and the hearing that there were numerous physical altercations between him and Kelson. Plaintiff acknowledged that he was in a "blind rage" and lost "total control" during at least one of those incidents. The Director also noted that plaintiff testified that he participated in illegal drug usage in the home, but denied doing so while K.P. was present. The Director observed that the ALJ based his recommendation to expunge the indicated finding on K.P.'s statements that although she often heard yelling and screaming between plaintiff and Kelson, she never witnessed any physical altercations between them. The Director disagreed with the ALJ, and found K.P.'s statements only "partially credible."

¶ 33 The Director stated that he found it "implausible that [K.P.] would hear the adults in her home fighting and that she would be unaware of what was going on yet make no attempt to intervene." The Director observed that K.P. told Investigator Wiekerson that she felt good and safe now that plaintiff was out of the home. K.P. also told Investigator Wiekerson that plaintiff would scare her by yelling and screaming at Kelson when he lived with them. Based on these statements, the Director found that it was more likely that K.P. heard or witnessed these violent altercations that occurred in her home. The Director, therefore, rejected the ALJ's recommendation and found that plaintiff's actions were sufficient to support an indicated finding of Allegation #60 by a preponderance of the evidence. Accordingly, the Director denied plaintiff's request to expunge the indicated finding.

¶ 34 F. Complaint for Administrative Review

¶ 35 Plaintiff filed a complaint for administrative review of the Department's decision in the circuit court. The circuit court affirmed the Department's administrative decision. This appeal follows.

¶ 36 II. ANALYSIS

¶ 37 On appeal, plaintiff contends that the Department's finding is against the manifest weight of the evidence given the ALJ's recommendation and the evidence admitted at the hearing. Plaintiff asserts that the Director's decision contravenes the recommendation of the ALJ who had an opportunity to see and hear the witnesses, judge their credibility, and consider the totality of the evidence. Plaintiff therefore asks this court to give deference to the ALJ's recommendation rather than the Director's decision, which was against the manifest weight of the evidence and based on only general conclusions and improper credibility determinations. Plaintiff also asserts that the Director's decision ignored the provisions of the ANCRA and failed to show how plaintiff's actions constituted neglect.

¶ 38 A. Standard of Review

¶ 39 In reviewing a final determination under the Administrative Review Law (735 ILCS 5/3-101, *et seq.* (West 2014)), we review the decision of the administrative agency and not the circuit court. *Bolger v. Department of Children & Family Services*, 399 Ill. App. 3d 437, 448 (2010). The statute limits our review to the record before us and we may not consider new or additional evidence put forth by either party. *Robbins v. Board of Trustees of the Carbondale Police Pension Fund*, 177 Ill. 2d 533, 538 (1997). The statute further provides that the "findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct." 735 ILCS 3-110 (West 2014). Under the statute, we review all factual questions under the manifest weight standard, we review questions of law *de novo*, and we review mixed questions of law and fact under the clearly erroneous standard. *Tiller v. Department of Children & Family Services*, 2013 IL App (4th) 120504, ¶ 27.

¶ 40 B. The Director is Not Required to Adopt the ALJ's Recommendation

¶ 41 Plaintiff contends that the Director's finding was against the manifest weight of the evidence where the Director's findings of fact and credibility determinations contradicted those made by the ALJ who, as the trier of fact, was the only person in a position to make such determinations. Plaintiff asserts that, as such, this court should give deference to the findings of fact and credibility determinations made by the ALJ, not the Director. Plaintiff maintains that the ALJ's recommendation was more detailed and properly applied the relevant legal standards while the Director's decision made general conclusions of fact, ignored the ANCRA, and made improper credibility determinations. Essentially, plaintiff asks this court to follow the recommendation made by the ALJ, rather than the final determination made by the Director.

¶ 42 Here, the ALJ found that plaintiff was not a credible witness and that physical altercations occurred between him and Kelson in the home while K.P. was present. Nonetheless, the ALJ credited K.P.'s statements to Investigator Wiekerson that she never witnessed any physical violence between plaintiff and Kelson in recommending that the indicated finding against plaintiff be expunged. In contrast to the ALJ's recommendation, the Director found K.P. only partially credible in her statements regarding the altercations between Kelson and plaintiff. The Director did not find it believable that K.P. would hear the fights between Kelson and plaintiff, but never witnessed any physical violence, despite the fact that both Kelson and plaintiff acknowledged that their physical altercations occurred while K.P. was in the home. The Director therefore found, despite the ALJ's recommendation, that the Department had proved the indicated allegation against plaintiff by a preponderance of the evidence. Plaintiff contends that these findings are improper where the ALJ, not the Director, was present at that hearing and was the only party able to make credibility determinations and to consider the totality of the evidence.

¶ 43 Contrary to plaintiff's contentions, however, "[i]t is settled that, absent express statutory language to the contrary, agency members making the final decision need not be present when the evidence is taken, so long as they review the record of proceedings." *Abrahamson v. Illinois Department of Professional Regulation*, 152 Ill. 2d 76, 95 (1992) (citing *Homefinders, Inc. v. City of Evanston*, 65 Ill. 2d 115, 128 (1976)). Here, the Code provides that the ALJ shall conduct a fair, impartial, and formal hearing and present a written opinion to the Director including a recommended decision. 89 Ill. Adm. Code 336.120(b)(1), (15) (2011). The Code also provides that, after the hearing, the Director will make the final administrative decision and shall "accept, reject, [or] amend" the ALJ's recommendation. 89 Ill. Adm. Code 336.220(a)(2) (2011).

¶ 44 Thus, there is no express statutory language that would require the Director to be present for the hearing in order to render a final administrative decision and the plain language of the statute explicitly permits the Director to "accept, reject, [or] amend" the ALJ's recommendation. Here, the Director's written decision shows that he reviewed the record of the proceedings, as evidenced by his recitation of the facts adduced at the hearing, and nothing in the Code requires that the Director be present at the hearing in order to make the final administrative decision. As such, we accord deference to the Director's findings, rather than the ALJ's recommendation. See *Schmeier v. Chicago Park District*, 301 Ill. App. 3d 17, 30 (1998) ("The law is settled that it is the findings of the *agency* which are entitled to deference, not the findings of a hearing officer or administrative law judge (ALJ). This is true even when the agency's findings differ from those of the hearing officer and the agency has not had the opportunity to observe the witnesses.") (Emphasis in original.)

¶ 45 C. The Director's Decision was Not Against the Manifest Weight of the Evidence

¶ 46 Plaintiff contends, nonetheless, that the Director's decision was against the manifest weight of the evidence. An administrative agency's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Slater v. Department of Children and Family Services*, 2011 IL App (1st) 102914, ¶ 30. On review, it is not our function to reweigh the evidence or make an independent determination of the facts. *Id.* ¶ 28. The fact that an opposite conclusion is reasonable or that the reviewing court may have reached a different outcome does not justify the reversal of the administrative findings. *Id.* ¶ 30. " 'If the record contains evidence to support the agency's decision, it should be affirmed.' " *Id.* (quoting *Abrahamson*, 153 Ill. 2d at 88-89).

¶ 47 Here, the record contains ample evidence to support the Department's decision. The record shows that plaintiff lived in the home with Kelson and K.P., and, on at least one occasion, watched K.P. while Kelson was out of town. Thus, as both the ALJ and the Director found, it was reasonable to conclude that plaintiff was K.P.'s caretaker, as that term is defined in the ANCRA (325 ILCS 5/3 (West 2014)), and that he was an eligible perpetrator under the ANCRA and the Code.

¶ 48 The information collected by Investigator Wiekerson during her investigation and adduced at the hearing showed that plaintiff's conduct in the home created an "environment [] likely [to] cause harm to the child's health, physical well-being or welfare due to the parent's or caretaker's blatant disregard." 89 Ill. Adm. Code 300 appendix B (Allegation 60) (2011). The ALJ's findings showed that there were numerous physical and verbal altercations between Kelson and plaintiff in the home while K.P. was present. On at least one of these occasions, plaintiff went into a "blind rage" and "lost total control." Plaintiff also acknowledged that he

slapped Kelson, slammed her against a wall, and physically restrained her. He also admitted that he and Kelson used illegal drugs together in the home.

¶ 49 The Director determined that these incidents had a profound effect on K.P.'s well-being. The Director noted K.P. reported to Investigator Wiekerson that she felt safe now that plaintiff was out of the home. The Director observed that K.P. also told Investigator Wiekerson that she often heard yelling and screaming between plaintiff and Kelson, which scared her. The record further shows that plaintiff told K.P. things about Kelson and attempted to involve her in one of their verbal fights. The Director found it implausible that K.P. did not witness any of the physical altercations between plaintiff and Kelson. Accordingly, the Director found that plaintiff's actions were sufficient to show that the Department had established an indicated finding for Allegation #60 by a preponderance of the evidence, and the record is more than adequate to support this determination. Thus, we cannot say that the Department's determination to not expunge the indicated finding against plaintiff was against the manifest weight of the evidence.

¶ 50 D. The Director's Decision was not Clearly Erroneous

¶ 51 Although not explicitly raised in his brief, plaintiff's contentions give rise to a question of whether the Director's decision was clearly erroneous. Plaintiff contends that in his decision, the Director failed to apply the ANCRA and show what actions by plaintiff constituted neglect as defined in that statute. This is a mixed question of fact and law. When a case involves mixed questions of fact and law, we review those questions under a "clearly erroneous" standard. *Bolger*, 399 Ill. App. 3d at 448. A decision is clearly erroneous when a reviewing court is left with the definite and firm conviction that a mistake has been committed. *Id.* The clearly erroneous standard of review is deferential and recognizes the agency's expertise in interpreting and applying the statutes it administers. *Slater*, 2011 IL App (1st) 102914, ¶ 33.

¶ 52 The language of Allegation #60 is largely mirrored in the definition section of the ANCRA, which defines a "neglected child" as, *inter alia,* any child who is subjected to an injurious environment insofar as "(i) the child's environment creates a likelihood of harm to the child's health, physical well-being, or welfare and (ii) the likely harm to the child is the result of a blatant disregard of parent, caretaker, or agency responsibilities." 325 ILCS 5/3 (West 2014). As discussed above, there was ample evidence to support the Director's determination that plaintiff was K.P.'s caretaker, that plaintiff created an environment likely to harm K.P.'s well-being, and that such neglect was the result of plaintiff's blatant disregard where the "risk of harm would be so obvious to a reasonable parent or caretaker that it is unlikely that a reasonable parent or caretaker would have exposed the child to the danger without exercising precautionary measures to protect the child from harm." 325 ILCS 5/3 (West 2014). Although, as plaintiff points out, the Director did not include citations to the ANCRA in his decision, as the ALJ did, the Director's language and findings show that he considered the relevant provisions of the ANCRA in rendering his decision. The Director quoted the factors to be considered from Allegation #60 and focused his decision on whether plaintiff's actions "ever exposed [K.P.] to a likelihood of harm to her health, physical well-being or welfare." This parallels the language in the ANCRA. 325 ILCS 5/3 (West 2014). The record thus shows that the Director considered the factors in the ANCRA and the Code in determining whether the allegation of harm had been proven by a preponderance of the evidence and in determining whether the provisions of the Code and the ANCRA were met. See *Shilvock-Cinefro,* 2014 IL App (2d), ¶¶ 29-30. Accordingly, we cannot say that the Department's determination was clearly erroneous.

¶ 53 III. CONCLUSION

¶ 54 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 55 Affirmed.