

NOTICE

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2014 IL App (4th) 130508-U

NO. 4-13-0508

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 29, 2014

Carla Bender

4th District Appellate

Court, IL

WAYNE PATTERSON,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	McLean County
THE DEPARTMENT OF HUMAN SERVICES, an)	No. 11MR117
Administrative Agency in the State of Illinois; and)	
MICHELLE R.B. SADDLER, Individually and as)	
Secretary of The Department of Human Services,)	Honorable
Defendants-Appellees.)	Paul G. Lawrence,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) Plaintiff received a fair hearing in accordance with the requirements of due process.
- (2) The Department's decision plaintiff received an overpayment of \$27,049 in food-stamp benefits was not against the manifest weight of the evidence based on plaintiff's failure to report his income, assets, and household composition.
- ¶ 2 Plaintiff, Wayne Patterson, appeals from the trial court's administrative review of the Illinois Department of Human Services (Department) decision he received an overpayment of \$27,049 in food-stamp benefits. Plaintiff argues (1) he was denied due process where he was found to have received an overpayment in food-stamp benefits but was not able to cross-examine the investigator who prepared the written report for the Department, which included statements attributed to plaintiff claiming he owned real estate in West Virginia; and (2) the Department's

decision was against the manifest weight of the evidence. We affirm.

¶ 3

I. BACKGROUND

¶ 4

On April 21, 1998, plaintiff submitted an application to defendant, the Department, for food stamps. He indicated he lived at 715 Golfcrest, Normal, Illinois. His household consisted of himself and one child, Hailey, born in March 1994. He indicated no household member had any income or real estate, gave away nothing of substantial value in the past three months or was self-employed. In May 1999 and in July 1999, plaintiff submitted additional food stamp applications asserting the same facts. In January 2000, plaintiff submitted another redetermination report stating his address was the same, 715 Golfcrest, Normal, Illinois, and he still lived there with his one daughter. No household member received any pay for working.

¶ 5

In June 2000 and December 2000, plaintiff submitted other applications for food stamps, asserting the same facts as stated above in his 1998 application. In May 2001, December 2001, June 2002, December 2002, February 2003, and July 2003, plaintiff submitted additional applications for food stamps, asserting in each one his household consisted of himself and his daughter; no member had any income other than receiving money from friends or family, and no member had any real estate.

¶ 6

The Illinois Department of Healthcare and Family Services Bureau of Investigation (Bureau), received an anonymous complaint alleging plaintiff falsely reported where he lived. He actually lived with Amy Schneider, the mother of his children, and he did not properly report her income and finances to the Department. On November 9, 2005, after conducting an investigation, the Bureau issued an investigation report, concluding the allegations

were founded. The investigation revealed, to prevent a reduction or cancellation of his public assistance, plaintiff failed to report the following: he lived with Schneider; she had earned income as the owner of Expert A Photography; Schneider received income from rental properties located in West Virginia; plaintiff owned property in West Virginia, which he sold for \$70,000; and he had seven parcels of undeveloped property in West Virginia worth \$5,000 to \$10,000 each. The report stated plaintiff and Schneider conspired to hide assets from the State of West Virginia and to defraud the State of Illinois of Medicaid and food-stamp benefits.

¶ 7 Exhibits to the report included address verifications from the United States Post Office, school records, interview reports for plaintiff and Schneider, and bank records. Address verification forms from the United States Post Office for plaintiff and Schneider in June 2004 stated they each received mail at P.O. Box 1041 and the box was first rented in 1997 with the street address the same for both Schneider and plaintiff. Additional address verification forms completed in June 2004 indicated both plaintiff and Schneider received mail at 205 Saratoga Road, Normal, Illinois.

¶ 8 Epiphany School registration for Wayne Patterson, Jr., born in February 1998, for the 2003-04 school year filled out by Schneider stated the child lived at 205 Saratoga, Normal, and he lived with both parents, Schneider and plaintiff. The Epiphany School registration form for Hailey for the 2001-02 school years was signed by plaintiff in April 2001 and stated she lived at 1709-A Rockingham, Normal, and had the box checked indicating she lived with both parents and the box checked indicating she lived with her father. The school registration form for the 2000-01 school year for Hailey was filled out by Schneider and stated the child lived at 1709-A Rockingham, Normal, and lived with both parents.

¶ 9 Steve Hilgers interviewed plaintiff for the Bureau. The report he prepared after the interview indicated he interviewed plaintiff on December 13, 2004. Plaintiff stated he lived at 205 Saratoga, Normal, Illinois, with his children Hailey, Wayne, and Tia. He stated Schneider was the mother of his children, they had been involved since 1992, and they were together "90% of the time." Plaintiff stated Schneider was self-employed as a photographer for Expert A Photography and she had an office-storage unit at 715 Golfcrest Road, Normal, Illinois.

¶ 10 The report indicated plaintiff told Hilgers he transferred four properties located in West Virginia to Schneider before he applied for public assistance in Illinois to avoid a foreclosure suit. The properties were worth about \$300,000, with a mortgage of about \$50,000; plaintiff's name was on the mortgage and the properties generated about \$2,000 per month in rent. The rent would be mailed to Schneider, who deposited the money into her credit union account. Plaintiff also told Hilgers he sold development property in West Virginia for \$70,000 before his child-support problems and he owned seven undeveloped properties worth between \$5,000 and \$10,000 each.

¶ 11 Schneider was interviewed on December 16, 2004. Schneider told Hilgers she lived at 205 Saratoga, Normal, Illinois. She lived there with plaintiff and her daughter, Tia. Although she and plaintiff were not married, Schneider considered them "a family." Schneider reported she was self-employed as a photographer for Expert A Photography and had been so employed for four to five years. She earned \$8,000 to \$10,000 per year. Schneider stated plaintiff had an apartment at 715 Golfcrest Road but he was not there often. Schneider and plaintiff had been together since 1993 but were never married. According to Schneider, they reported they did not live together because they wanted the medical card for their child and to

"keep food on the table." A summary for Schneider's credit union account showed from June 2003 to December 2004, \$51,071.30 was deposited into the account.

¶ 12 On January 17, 2006, the Department sent a notice to plaintiff he had received an overpayment of \$27,049 in food-stamp benefits for the period of March 1998 through January 2006 because he failed to report (1) his excess assets, such as a credit union account and property located in West Virginia; (2) he lived with Schneider; and (3) Schneider's income and assets. In February 2006, plaintiff requested an administrative appeal and over two days in June and July 2006, the Department conducted a hearing on the appeal. After the Department affirmed the overpayment, plaintiff filed a complaint for administrative review of the decision in the circuit court on August 7, 2007. On January 6, 2011, the circuit court dismissed the complaint for administrative review and granted a new hearing before the Department because the Department could not obtain a transcript of the June 2006 portion of the original proceedings.

¶ 13 On February 14, 2011, the Department conducted a new hearing on plaintiff's administrative appeal. Kim Harms, a caseworker for the Department, testified in June 2004 the Bureau received a referral to investigate plaintiff's household composition, income, and assets. She stated the investigation concluded plaintiff failed to report he lived with Schneider and her earned income as owner and photographer of Expert A Photography. The investigation further found plaintiff failed to report his financial and business status with Schneider; Schneider received income from rental property in West Virginia; plaintiff had access to Schneider's credit union account; property plaintiff owned in West Virginia sold for \$70,000; and other property he owned was valued between \$5,000 and \$10,000. Harms stated the investigation found plaintiff failed to report these matters to prevent a reduction or cancellation of his public assistance, and

he and Schneider conspired to hide assets from West Virginia and to defraud the State of Illinois of Medicaid and food-stamp benefits. Harms stated, based on the investigation report, the Department's local office cancelled plaintiff's case and on January 17, 2006, issued him a notice of overpayment.

¶ 14 Harms testified the overpayment order was based on statements Schneider made to Hilgers about income from self-employment and rental properties and a bank account statement showing \$51,000 in the account. Schneider reported she had been self-employed as a photographer for the past four to five years and earned \$8,000 to \$10,000 per year. The investigation report also indicated plaintiff transferred property into Schneider's name in about 1995, although plaintiff stated his name was on the mortgage, he had a deed of trust, the balance on the mortgage was approximately \$50,000, and the property generated \$2,000 per month in rent. The rent was collected and mailed to Schneider monthly.

¶ 15 Harms further testified plaintiff and Schneider were living together from March 1998 to November 2005, and plaintiff was ineligible for benefits for each month of the overpayment period. Harms stated plaintiff and Schneider did not own the photography business together, but because they lived in the same household, it was included as income to plaintiff. When she was asked what proof the Department had plaintiff and Schneider lived together, Harms explained the investigation uncovered United States Postal Service documents indicating plaintiff and Schneider both received mail at the Saratoga address and Schneider reported on school forms the children lived with her and plaintiff at the Saratoga address.

¶ 16 Plaintiff testified he did not live with Schneider and the Department's evidence did not show he did. He claimed he maintained a separate residence but acknowledged he

received mail at Schneider's address. Both addresses were located in Normal, Illinois, within less than a quarter of a mile of each other.

¶ 17 Plaintiff denied he failed to report property in another state which sold for \$70,000, stating, "[t]here's no record of that," the alleged sale is not supported by any documentation, and "I categorically deny that." He also denied he failed to report seven undeveloped properties having a value of \$5,000 to \$10,000 each, stating, "I deny that and you won't find any records supporting that."

¶ 18 Plaintiff further stated the children lived with him but Schneider filled out the school documents.

¶ 19 Schneider testified she did not live with plaintiff during the period of 1998 to 2005; plaintiff did not have access to her checking account; and plaintiff never had any ownership interest in her photography business. In reference to the property Harms stated was transferred to her, Schneider stated her name was on the property and not plaintiff's name. Schneider denied telling Hilgers she lived with plaintiff or that he had access to her checking or savings account. Schneider denied indicating in school records the children lived with her.

¶ 20 During the hearing, plaintiff stated Hilgers should be available for cross-examination "because we're relying on statements that I've told him and they're using that as a third person." Plaintiff claimed Hilgers' statements as to what plaintiff told him were not true. But when he was asked whether he would like to state what he did tell Hilgers, plaintiff declined. Jan Rositer, a Department employee, stated an attempt was made to get Hilgers to the hearing, but due to the short notice they received of the hearing, Hilgers was unable to attend.

¶ 21 On April 6, 2011, the Department affirmed the local office decision plaintiff

received an overpayment of \$27,049 in food-stamp benefits. It found plaintiff had lived with Schneider since at least March 1998; she had income and assets which plaintiff did not report to the Department; and as a result of his failure to provide accurate information regarding his household composition, income, and assets, plaintiff received benefits for which he was not eligible. The Department further found plaintiff did not cooperate with it in determining his actual income, assets, and household composition because he continued to deny having income. The Department concluded plaintiff's entire monthly benefit was an overpayment. Plaintiff received an overpayment of \$27,049 in food-stamp benefits for the period of March 1998 to January 2006.

¶ 22 On May 2, 2011, plaintiff filed a complaint in the trial court seeking review of the Department's decision. On May 21, 2013, after the parties briefed the matter, the trial court entered an order affirming the Department's decision, finding it was not against the manifest weight of the evidence and the proceedings complied with due process. This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 A. Manifest Weight of the Evidence

¶ 25 When the statute conferring power on an administrative agency does not adopt the Administrative Review Law (Review Law) (735 ILCS 5/3-101 *et seq.* (West 2012)), a party may seek review of the agency's decisions through a common-law writ of *certiorari*. *Hanrahan v. Williams*, 174 Ill. 2d 268, 272, 673 N.E.2d 251, 253 (1996). The Department's decisions regarding food-stamp benefits are issued under article XII of the Illinois Public Aid Code (Code) (305 ILCS 5/12-4.13 (West 2012)). However, the Code does not adopt the Review Law for reviewing such decisions. See 305 ILCS 5/11-8.7 (West 2012) (The Review Law applies to "all

proceedings for the judicial review of final administrative decisions of the Illinois Department on appeals by applicants or recipients under Articles III, IV, or V."). Final decisions of the Department determining a person's eligibility for food-stamp benefits are subject to judicial review pursuant to a common-law writ of *certiorari*.

¶ 26 The standards of review under a writ of *certiorari* are "essentially the same" as under the Review Law. *Hanrahan*, 174 Ill. 2d at 272, 673 N.E.2d at 253-54. Under these standards, factual findings of an administrative agency are deemed *prima facie* true and correct and will not be disturbed by the reviewing court unless they are against the manifest weight of the evidence. *Powell v. City of Chicago Human Rights Comm'n*, 389 Ill. App. 3d 45, 54, 906 N.E.2d 24, 32 (2009). A decision is against the manifest weight of the evidence only when an opposite conclusion is clearly evident. *Finnerty v. Personnel Board of the City of Chicago*, 303 Ill. App. 3d 1, 11, 707 N.E.2d 600, 608 (1999). "If the record contains any evidence to support the agency's decision," it must be upheld. *Powell*, 389 Ill. App. 3d at 54, 906 N.E.2d at 32.

¶ 27 An issue that cannot be characterized as either a pure question of fact or law, but presents a mixed question of law and fact, involves an examination of the legal effect of a given set of facts. An agency's determination of a mixed question shall not be disturbed unless it is clearly erroneous. *Outcom, Inc. v. Illinois Department of Transportation*, 233 Ill. 2d 324, 337, 909 N.E.2d 806, 814 (2009). Under this standard, the agency's decision will be reversed only when the reviewing court is left with the definite and firm conviction a mistake has been made. *Id.*

¶ 28 The trial court's judgment upholding the Department's decision was not against the manifest weight of the evidence or clearly erroneous.

¶ 29 The federal Supplemental Nutrition Assistance Program authorizes a food-stamp program to permit low-income households to obtain a more nutritious diet by increasing food-purchasing power. 7 U.S.C. § 2011 (2014). A designated state agency within each participating state administers the program in the state. U.S.C. § 2020(a)(1) (2014). In Illinois, the Department is responsible for administering the food-stamp program. 305 ILCS 5/12-4.4 (West 2012).

¶ 30 Participation in the food-stamp program is limited to those households whose incomes are a substantial limiting factor in permitting them to obtain a more nutritious diet. 7 U.S.C. § 2014(a) (2014). Households not containing an elderly or disabled member must meet both the net-income eligibility standards and the gross-income eligibility standards for the program. 7 C.F.R. § 273.9(a) (2010). For these households, the asset limit per household is \$2,000. 89 Ill. Adm. Code § 121.59 (2011). A household unit consists of one person or a group of persons who live together and usually buy and prepare food together. 89 Ill. Adm. Code § 121.70(a) (1997).

¶ 31 Gross income is determined by adding the gross monthly income earned by all household members and the total monthly unearned income of all household members and subtracting any income exclusions. 7 C.F.R. § 273.10(e)(i)(A) (2010). Earned income is a salary or wages as well profits from self-employment. 89 Ill. Adm. Code § 121.40(b) (1982). Unearned income is all income other than salary or wages or profits from self-employment. 89 Ill. Adm. Code §§ 121.30(a), 121.40(a) (1982). Net income is determined by subtracting the allowable deductions from monthly gross nonexempt earned and unearned income. 89 Ill. Adm. Code § 121.63(a) (2013).

¶ 32 To participate in the food-stamp program, a household must submit an application, which is required for both initial certification and subsequent certification. 89 Ill. Adm. Code § 121.1(b) (2014). If the household does not meet the eligibility requirements, the application must be denied. 89 Ill. Adm. Code § 121.4(c) (1979). In addition, the application must be denied if eligibility cannot be conclusively determined because the applicant refuses to cooperate in providing essential information or if the applicant does not provide sufficient information to determine eligibility and the agency has offered assistance to obtain the information 89 Ill. Adm. Code § 121.4(a), (b) (1979).

¶ 33 A household is also required to cooperate in subsequent reviews of its eligibility. 89 Ill. Adm. Code § 121.5(b) (2014). If the certified household refuses to cooperate, its food-stamp benefits must be terminated. *Id.* When this occurs, the Department shall initiate an action to recover the overpayment.

¶ 34 It is undisputed plaintiff received \$27,049 in food-stamp benefits from March 1998 to January 2006. The record indicates plaintiff was not entitled to these benefits because he did not accurately report his household composition, income, and assets to the Department and did not cooperate with it in providing necessary information regarding the household's income and assets to determine eligibility.

¶ 35 Plaintiff submitted numerous food-stamp applications and redetermination forms stating he resided only with his daughter Hailey at the Golfcrest address, he had no income, and he had no significant assets. Contrary to these statements, however, the record showed plaintiff lived with Schneider and he and Schneider had income and assets he did not report in the applications. The address verification forms completed by the United States Post Office in June

2004 for plaintiff and Schneider stated they used the same post office box; the box was first rented in 1997; and Schneider's street address was the same as plaintiff's street address. The address verification forms stated both Schneider and plaintiff received mail at 205 Saratoga Road and at the administrative hearing, plaintiff stated his current address was 205 Saratoga Road.

¶ 36 In addition, beginning in 2000, the school records for the children of plaintiff and Schneider stated they lived with both parents. The report documenting the investigator's interviews with plaintiff and Schneider showed they lived together. Plaintiff told Hilgers in December 2004 he lived with his children, Schneider was their mother, and they were together 90% of the time. He also said the Golfcrest address was an office used by Schneider. Schneider indicated during her December 2004 interview she lived with plaintiff and their daughter Tia at 205 Saratoga Road. She also said plaintiff had an apartment on Golfcrest Road but was not there very often. Schneider also said she and plaintiff reported they did not live together because they wanted the medical card for their child and to keep food on the table.

¶ 37 The evidence showed Schneider and plaintiff had income and assets during the period in question plaintiff did not report on his applications. On the school registration forms, Schneider and plaintiff stated Schneider's occupation was a photographer at Expert A Photography. Schneider also told Hilgers she was so employed for four or five years, and she earned \$8,000 to \$10,000 per year. The records of her credit union account showed from June 2003 to December 2004, a total of \$51,071.30 was deposited into her account.

¶ 38 The report of the investigation indicated plaintiff stated he had transferred four properties worth about \$300,000 and located in West Virginia to his mother and brother to avoid a foreclosure suit. He had a mortgage on the properties for \$50,000 and they rented for \$2,000

per month. The rental income was mailed to Schneider each month and she deposited this money into her credit union account. Plaintiff also told Hilgers he owned seven undeveloped properties worth between \$5,000 and \$10,000 each. Thus, there was evidence before the Department Schneider and plaintiff had income and assets during the period in question not reported on the food-stamp applications.

¶ 39 The record also indicates plaintiff continued to deny such income and assets. He denied he lived with Schneider and insisted the evidence did not show he did live with her. He also denied property in another state sold for \$70,000. He denied owning the undeveloped properties. The Department found plaintiff failed to cooperate in determining his eligibility for benefits.

¶ 40 If the record contains evidence supporting an agency's decision, it is not against the manifest weight of the evidence. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 540, 870 N.E.2d 273, 297 (2006). Although plaintiff denied he lived with Schneider and owned or sold property in another state, it is the function of the agency to assess witness credibility and determine the weight of the evidence. *Id.*

¶ 41 B. Due Process

¶ 42 Whether an administrative hearing complied with the requirements of due process presents a question of law subject to *de novo* review. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 824, 914 N.E.2d 208, 218 (2009).

¶ 43 Plaintiff argues his right to due process was violated because Harms, a caseworker for the Department, and Kim Matone, another Department employee, intentionally tampered with and removed items from his case file. This argument has been forfeited because it

was not raised during the administrative review proceedings. *Connor v. City of Chicago*, 354 Ill. App. 3d 381, 386, 820 N.E.2d 1153, 1157 (2004). Plaintiff had not shown a denial of due process. His conclusory assertions regarding tampering with his case file are not supported by any evidence in the record. In addition, a court will find a due-process violation only if there is a showing of prejudice. *Gonzalez v. Pollution Control Board*, 2011 IL App (1st) 093021, ¶ 42, 960 N.E.2d 772. Plaintiff has not shown any prejudice because he does not state how the alleged tampering affected the Department's decision in this case.

¶ 44 Plaintiff also argues he was denied due process during the administrative hearing because he did not have an opportunity to cross-examine Hilgers, the investigator who completed the investigation report. While due process in the administrative hearing requires an opportunity to cross-examine witnesses and offer rebuttal evidence, a party cannot be deprived of a right he fails to exercise. *Dombrowski v. City of Chicago*, 363 Ill. App. 3d 420, 428, 842 N.E.2d 302, 309 (2005). The Department's rules allow parties to request subpoenas for witnesses. 89 Ill. Adm. Code § 14.30 (2014). The record indicates plaintiff never availed himself of this opportunity. A court will not find a due-process violation where there is no showing of prejudice. *Gonzalez*, 2011 IL App (1st) 093021, ¶ 42, 960 N.E.2d 772. Plaintiff did not show he was prejudiced by not questioning Hilgers at the hearing where both he and Schneider testified and had the opportunity to state what they told Hilgers. In fact, plaintiff was specifically asked during the hearing if he wanted to explain what he told Hilgers, and he declined.

¶ 45 Plaintiff also claims the Department erred in admitting the investigation report and its exhibits because the report is hearsay and because Hilgers did not testify to its authenticity. This argument has been forfeited because it was not raised in the administrative

hearing. *Connor*, 354 Ill. App. 3d at 386, 820 N.E.2d at 1157. Plaintiff objected to the report, but not on these grounds. Plaintiff's chief argument at the administrative hearing was he should have had the opportunity to cross-examine Hilgers.

¶ 46

III. CONCLUSION

¶ 47

For the reasons stated above, we affirm the trial court's judgment.

¶ 48

Affirmed.