FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

342

MARY THORNTON,

Petitioner-Appellant,

vs.

IOWA DEPARTMENT OF SOCIAL SERVICES,

Respondent-Appellee.

Filed November 30, 1983

3-313
83-166

Appeal from Black Hawk District Court - Carroll E. Engelkes, Judge.

Petitioner appeals from the district court's order on judicial review affirming respondent agency's finding that the former was disqualified from receiving food stamps because she committed deliberate food stamp fraud. AFFIRMED.

Shirley Markland, Waterloo, for petitioner-appellant.

Thomas J. Miller, Attorney General, and Mark Hunacek, Assistant Attorney General, for respondent-appellee.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

DONIELSON, P.J.

Petitioner appeals from the district court's order on judicial review affirming respondent agency's finding that the former was disqualified from receiving food stamps because she committed deliberate food stamp fraud. Petitioner claims that the fraud finding is not supported by substantial evidence in the record and that the court erred in failing to give proper deference to the decision of the hearing officer who found no fraud. We affirm.

After dropping out of high school during her eleventh grade year, petitioner's daughter, Charain, joined the Job Corps and stayed at the Job Corps facility in Denison. She did not move her belongings out of her mother's Waterloo home for approximately a year following enrollment in the Job Corps and frequently returned to her mother's home on weekends. During that year, on forms used by respondent agency for the purpose of computing eligibility for benefits, petitioner listed Charain as a member of her household and indicated that she attended Waterloo Central High School in a column for the listing of household members' school and grade. Shortly after Charain moved her belongings out of petitioner's home, petitioner informed the agency that she had moved out. At a food stamp fraud disqualification hearing, petitioner testified that she was confused by the forms. The hearing officer's proposed decision found a lack of intent to defraud which was based largely on petitioner's credibility during her testimony at the hearing. The agency commissioner adopted the hearing officer's findings of fact but concluded that petitioner had committed fraud. The district court affirmed on judicial review and this appeal followed.

Our review of the agency's fraud finding is governed by the familiar provisions of Iowa Code § 17A.19(8) which we need not repeat here. In determining whether an agency finding is supported by substantial evidence, we are guided by the following additional principles:

> The mere possibility that the record would support another conclusion does not permit the district court or this court to make a finding inconsistent with the agency findings so long as there is substantial evidence to support it. While the substantiality of evidence must take into account whatever in the record fairly detracts from its weight, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. The question is not whether there is sufficient evidence to warrant a decision the agency did not make, but rather whether there is substantial evidence to warrant the decision it did make.

Peoples Memorial Hospital v. Iowa Civil Rights Commission, 322 N.W.2d 87, 91 (Iowa 1982) (citations omitted).

While we may have reached a different conclusion if we were reviewing the record de novo, we must conclude that the record contains substantial evidence to support the agency's finding of food stamp fraud on petitioner's part. Although Charain had been at Job Corps in Denison since November of 1980, petitioner indicated on her food stamp application forms in January and August of 1981 that Charain was living at home and was attending Waterloo Central High School. Asked why she mistakenly indicated Charain was at Central High, petitioner responded:

> That I don't understand, you know why, how I got that down, because I have a lot of stuff that's been bothering me lately, so evidently I just made an error in some kind of way that isn't natural, you know.

We are mindful of standard of proof required in food stamp fraud cases; see 7 C.F.R. § 273.16(d). However, we are convinced that this and similar evidence in the record constitutes substantial evidence to support the agency's finding of fraud.

We also reject petitioner's argument that the court should have given greater deference to the hearing officer's determination that petitioner was a credible witness and that she intended no fraud. The supreme court has rejected the idea that the hearing officer's decision is entitled to any special weight:

> Nothing in the statute supports giving the hearing officer's proposed decision elevated status when, as in the present case, the officer and the agency disagree. The statute gives the agency an unfettered right to find the facts in the first instance. It makes the hearing officer an adjunct of the agency rather than an independent decisionmaker.
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> Even when credibility is involved, the agency, not the hearing officer, is charged with the authoritative responsibility to decide what the evidence means under the governing statute.

Iowa State Fairgrounds Security v. Iowa Civil Rights Commission, 322 N.W.2d 293, 294, 295 (Iowa 1982). Petitioner's argument amounts to little more than a claim that the agency is always required to accept the hearing officer's determinations of witness credibility. As Iowa State Fairgrounds makes clear, however, that is not the law.

The district court correctly ruled that the agency's decision was supported by substantial evidence. The court's order is therefore affirmed.

AFFIRMED.