

IN THE COURT OF APPEALS OF IOWA

No. 0-134 / 89-551

**FILED**

APR 24 1990

CLERK SUPREME COURT

**LINDA THOMAS,**

Petitioner-Appellant,

vs.

**IOWA DEPARTMENT OF HUMAN SERVICES,**

Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County,  
Ray Hanrahan, Judge.

Appellant appeals a district court decision affirming  
the department's final decision to seek repayment of a food  
stamp overissuance. **REVERSED AND REMANDED.**

Carolyn F. Coleman, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Gordon E. Allen,  
Deputy Attorney General, and Stephen C. Robinson, Assistant  
Attorney General, for appellee.

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

**SACKETT, J.**

Linda Thomas appeals a district court decision affirming the department's final decision to seek repayment of a food stamp overissuance. Thomas contends that the department erred by defining the overissuance as all the benefits received during the time period, rather than calculating the difference between the benefits received and those that should have been received. Thomas also claims the department erred by finding she refused to cooperate in their investigation. We reverse.

We do not find substantial evidence to support the department's finding that Thomas failed to cooperate. We reverse on this issue and remand to the agency. We do not retain jurisdiction.

Linda Thomas's household received food stamp benefits for a time period including July 1, 1985, through May 30, 1986. Linda Thomas is married to Gilbert Thomas and lives with Gilbert Thomas. Gilbert is therefore a member of Linda's household for purposes of determining Linda's food stamp eligibility. Linda's food stamp applications attributed no income to Gilbert.

The department received information that Gilbert was self-employed as a sewer-septic tank serviceman. The Department of Human Services began an investigation. Upon the request of the department, Linda Thomas signed various releases directed to the Thomases' creditors. The

investigation revealed the Thomases' payments to creditors were made in amounts exceeding the money they received as ADC payments. The department asked the Thomases to verify how payments to their creditors were made. The department received letters from Gilbert and three relatives concerning personal loans made to Gilbert.

The Thomases were then asked to sign a release to the Des Moines Wastewater Treatment Plant. Apparently, the department sought information from the city to verify whether Gilbert Thomas was operating a business. The first requested release was returned to the department with a note instructing the department to ask Gilbert's mother, who apparently owned the business. The second requested release was returned unsigned.

It is unclear from the record whether releases were necessary to obtain the information the department sought from the City of Des Moines. Apparently, the requested information was received by an investigator working for the State. Both parties concede the record is extremely confusing.

The department then notified Linda Thomas that her household had received an overpayment of food stamp benefits in the amount of \$4,759 for the period of July 1, 1985, through May 30, 1986, because of unreported earned income. Linda Thomas appealed. A hearing was held. The final decision of the department affirmed the assessment of

the claimed overissuance. The department found the personal loans were not properly verified and the letters from Gilbert's relatives were conflicting and did not specify the exact dates and amounts of the loans. The department also found the evidence, including a business license application, a business bond, and statements in the relatives' letters, indicated that Gilbert Thomas owned or operated a business. Linda Thomas filed a petition for judicial review. The district court affirmed. Linda Thomas now appeals.

Linda contends there was not substantial evidence to support a finding that she failed to cooperate. Linda also contends she should not have been charged with improperly receiving all food stamps issued. Rather, the department should have recalculated the amount she was entitled to receive and given her credit accordingly. 7 C.F.R. section 273.2(d) provides in part:

If the household refuses to cooperate with the State agency in completing this process, the application shall be denied at the time of refusal. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take that are required to complete the application process. . . . The household shall also be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility, including reviews generated by reporting changes and applications for recertification.

(emphasis added)

The district court concluded that the Department of Human Services was authorized to establish an overissuance for all benefits received during the period due to the refusal to cooperate. The evidence of failure to cooperate centers on the two returned requests for release to the City of Des Moines. There is no showing the Thomases owned the business and could sign the release, and there is no showing the release was necessary to obtain the information from the city. We do not find this evidence to be substantial support for the finding that the Thomases failed to cooperate. See Foods, Inc. v. Iowa Civil Rights Comm'n, 318 N.W.2d 162, 165 (Iowa 1984). We reverse the trial court on this issue.

We are unable to determine under this record what, if any, the Thomases' eligibility for food stamps would have been during the period in question. We remand to the agency.

**REVERSED AND REMANDED.**