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**STATE OF ALASKA  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
OFFICE OF HEARINGS AND APPEALS**

In the Matter of	)	
	)	
██████████,	)	OHA Case No. 08-FH-27
	)	
Claimant.	)	D.P.A. Case No. ██████████
_____	)	

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

██████████ (Claimant) applied for Adult Public Assistance, Medicaid, and Food Stamp benefits on or about December 10, 2007 (Ex. 2.0). The State of Alaska Division of Public Assistance (DPA or Division) denied her application on or about January 4, 2008 (Ex. 6.0). On or about January 9, 2008, the Claimant applied again for Adult Public Assistance (APA), Medicaid and Food Stamp benefits, and applied for Chronic and Acute Medical Assistance (CAMA) benefits<sup>1</sup> (Ex. 24.0 – 24.8). On or about January 16, 2008 the Claimant requested a fair hearing on the denial of the December 10, 2007 application. (Ex. 7.0).

A hearing was held on February 28, 2008. The Claimant appeared telephonically. The Claimant's brother, ██████████, appeared telephonically, represented the Claimant, and testified on behalf of the Claimant. ██████████ attended in person to represent the Division. This office has jurisdiction pursuant to 7 AAC 49.010.

**ISSUE**

Was the Division correct to deny the Claimant's December 10, 2007 application for Adult Public Assistance, Medicaid, and Food Stamp benefits on the basis that the value of the Claimant's non-

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<sup>1</sup> The Claimant's January 9, 2008 application for Food Stamp benefits was initially approved on an expedited basis, and one (1) month of Food Stamp benefits were issued (Ex. 8). However, on February 4, 2008 the Claimant's Food Stamp case was closed, and her January 9, 2008 APA and Medicaid applications were denied, based on the Claimant's failure to provide documentation. (Ex. 8). The record does not indicate what became of the Claimant's application for CAMA benefits.

excludable resources exceeded the maximum resource limitations of the Adult Public Assistance, Medicaid, and Food Stamp programs?

### FINDINGS OF FACT

1. The Claimant was born [REDACTED] (Ex. 26.2) and was [REDACTED] years old at the time of the hearing.
2. Based on prior benefit applications submitted by the Claimant, the Division had become aware by August 10, 2004 that the Claimant might have an ownership interest in a [REDACTED] Savings Account, account no. 511-26757 (Ex. 4.1) (hereafter “the [REDACTED] account”). This account was reported to have had a balance of \$11,326.00 as of December 31, 2003 (Ex. 4.1).
3. The Claimant applied for Adult Public Assistance, Medicaid, and Food Stamp benefits on or about December 10, 2007 (Ex. 2.0, Ex. 4.0). The Claimant had previously applied for Medicaid benefits on more than one occasion, but her applications had been denied due to failure to provide information (Ex. 4.1).
4. On or about December 27, 2007, the Claimant had a telephone conversation with DPA representative [REDACTED] (Ex. 4.0). During this telephone conversation, the Claimant advised Ms. [REDACTED] that she was unsure of the current ownership status of the [REDACTED] account (Ex. 4.0). The Claimant stated that she thought her name had been removed from the account, but that she would check on the ownership status of the account (Ex. 4.0).
5. On or about January 3, 2008 the Claimant had a telephone conversation with DPA representative [REDACTED] (Ex. 5, Ex. 6.1). During this telephone conversation, the Claimant advised that she owned the [REDACTED] account with [REDACTED], her adopted daughter (Ex. 4.1), and that the account contained more than \$10,000.00 (Ex. 6.1). The Claimant stated that the money in the account had been left to [REDACTED] by Ms. [REDACTED]’s deceased mother (Ex. 5.0). The Claimant stated that she and Ms. [REDACTED] were “both on the account,” but that the account was for Ms. Baurick only, to use when she went to college (Ex. 5.0). Ms. [REDACTED] had just started attending college during the fall of 2007 (Ex. 5.0).
6. On or about January 4, 2008 DPA representative [REDACTED] sent the Claimant a notice advising that her Food Stamp case had been closed because she was over the Food Stamp program’s \$2,000.00 resource limit as a result of her ownership of the [REDACTED] account (Ex. 6.1). The notice stated that the Division’s action was based on Food Stamp Manual Section 602-2 (Ex. 6.1).
7. On or about January 4, 2008 DPA representative [REDACTED] sent the Claimant a separate notice advising that her application for Adult Public Assistance (APA) benefits and Medicaid benefits had been denied because she was over the APA and Medicaid programs’ \$2,000.00 resource limit as the result of her ownership of the [REDACTED] account (Ex. 6.0). The notice stated that the Division’s action was based on APA Manual Section 430 (Ex. 6.0).

8. On or about January 9, 2008, the Claimant applied again for Adult Public Assistance, Medicaid and Food Stamp benefits, and applied for Chronic and Acute Medical Assistance (CAMA) benefits (Ex. 24.0 – 24.8). On the same date, the Claimant and Mr. ██████ had a face-to-face interview with a DPA representative (Ex. 8). The DPA representative's notes from that interview indicate the Claimant told him that she was the trustee (not the owner) of the ██████ Alaska College Savings Account; that the current value of the account was approximately \$10,000.00; and that the money originally invested in the account "came from the estate of her ex-spouse when he died" (Ex. 8).

9. The Claimant's January 9, 2008 application for Food Stamp benefits was initially approved on an expedited basis, and one (1) month of Food Stamp benefits was issued (Ex. 8). However, on February 4, 2008 the Claimant's Food Stamp case was closed, and her January 9, 2008 APA and Medicaid applications were denied, based on the Claimant's failure to provide documentation of her alleged transfer of the ██████ account (Ex. 8). The record does not indicate what became of the Claimant's application for CAMA benefits.

10. On or about January 16, 2008, Mr. ██████ telephonically requested a Fair Hearing on behalf of the Claimant (Ex. 7.0).

11. On or about January 29, 2008, Mr. ██████ advised a DPA representative that the Claimant's Fair Hearing request pertained to the December 10, 2007 benefit denial and not the January 8, 2008 application (Ex. 8).

12. At some time subsequent to February 4, 2008, the Claimant provided to the Division documents indicating that (a) prior to January 8, 2008, the Claimant was the owner of the ██████ account; (b) prior to January 8, 2008, Brianna Baurick was the beneficiary of the ██████ account; and (c) the T. Rowe Price account was transferred from the Claimant to ██████ on January 8, 2008 (Ex. 4.1, Ex. 26.0 - 26.8). This alleged transfer occurred after the Division sent its termination and denial notices. See Findings of Fact Nos. 6 and 7. However, the record contains no ██████ Price account statements or similar documents to confirm that the transfer of the account was ever completed. Accordingly, it is unknown as to what ██████'s records actually show regarding account ownership, account use, and the asserted transfer of the account to Ms. Baurick on January 8, 2008.<sup>2</sup>

13. The Claimant did not testify at the hearing. The Claimant's brother, ██████, testified that it had been the intention of ██████ deceased mother (who was also the sister of the Claimant and Mr. Falkinburg) that the Claimant keep the money at issue for the benefit of

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<sup>2</sup> At the hearing, Mr. ██████ claimed that he had personally delivered documents to the Division regarding the transfer of the ██████ account. It is possible that these were the documents marked as Exhibits 26.0 – 26.8; Mr. ██████ did not relate his testimony to any particular exhibit. However, because this claim relates to the January 9, 2008 application rather than the December 10, 2007 application at issue here, it is not necessary to resolve this factual issue. In addition, when her January 9, 2008 application benefits was denied and her Food Stamps terminated, the Division would have informed the Claimant of her right to request an appeal of the Division's decision. This would have provided the Claimant with an opportunity to present, in the proper forum, her argument that the documents were delivered to the Division.

Ms. [REDACTED] until such time as Ms. [REDACTED] reached the age of 18 ([REDACTED] hearing testimony).

14. Ms. [REDACTED] was born on [REDACTED] and was approximately [REDACTED] months old at the time of the application for benefits and [REDACTED] months old at the time of the hearing.

15. Mr. [REDACTED] testified that the money currently contained in the [REDACTED] account had been held in the form of a certificate of deposit prior to 2001 but in 2001 had been placed in the [REDACTED] account ([REDACTED] hearing testimony). He further testified that the [REDACTED] account had been set-up the way it was in 2001 because the Claimant was attempting to qualify for benefits at that time, and the Division had told the Claimant to do it that way in order to qualify for benefits ([REDACTED] hearing testimony).

16. Mr. [REDACTED] testified that in 2001 the Division had recognized that the [REDACTED] account was the property of Ms. [REDACTED] and not the Claimant, and had granted medical benefits to the Claimant on this basis (Falkinburg hearing testimony). However, the Claimant did not provide any documentation to support this claim, and the Division's electronic case notes from 2004 neither supported nor refuted this claim (Ex. 4.1).

17. Mr. [REDACTED] testified that prior to the alleged transfer of January 8, 2008, the [REDACTED] account was "in the names of" both the Claimant and Ms. [REDACTED]. However, this testimony contradicted both the Claimant's own prior statements to DPA personnel (referenced above) and the January 8, 2008 transfer records themselves (Ex. 26.0 – 26.8).

18. Mr. [REDACTED] testified that the money in the [REDACTED] account was the property of Ms. [REDACTED] rather than the Claimant; that the money was held "in trust" by the Claimant for Ms. [REDACTED]; and that the money was "not available for [the Claimant's] own personal use" ([REDACTED] hearing testimony).

19. Mr. [REDACTED] asserted that the transfer of the [REDACTED] account from the Claimant to Ms. [REDACTED] fell within the "payment of an antecedent debt" exemption because it was "a debt owed to the memory of my deceased sister" ([REDACTED] hearing testimony). He asserted that, based on the wishes of Ms. [REDACTED]'s deceased mother, the Claimant had the obligation to use the [REDACTED] account money to pay Ms. Baurick's college expenses. *Id.* However, because this argument is related to the DPA's denial of the Claimant's January 8, 2008 application (Ex. 8) rather than the Claimant's December 10, 2007 application, it is irrelevant to this case.

20. Mr. [REDACTED] asserted that he had requested a copy of the regulations supporting the denial of the Claimant's application from a DPA representative named [REDACTED] (phonetic spelling), but that this individual had refused his request ([REDACTED] hearing testimony). However, any dealings with this DPA representative were related to the Claimant's January 8, 2008 application (Ex. 8) rather than the Claimant's December 10, 2007 application, and so this assertion is irrelevant to this case.

21. At the hearing, Ms. ██████ testified that, with regard to the Claimant's December 10, 2007 application, the DPA "did not receive any evidence indicating that [the Claimant] was unable to access the funds in the ██████ account." This testimony was credible.

## **PRINCIPLES OF LAW**

### I. Burden of Proof and Standard of Proof.

Ordinarily, the party seeking a change in the status quo has the burden of proof. State of Alaska Alcoholic Beverage Control Board v. Decker, 700 P.2d 483, 485 (Alaska 1985). This case involves the Division's denial of an application for benefits. Accordingly, the Claimant has the burden of proof here because she is attempting to change the existing status quo by obtaining benefits.

A party in an administrative proceeding can assume that preponderance of the evidence is the standard of proof unless otherwise stated. Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission, 711 P.2d 1170 (Alaska 1986). The regulations applicable to this case do not specify any particular standard of proof. Therefore, the "preponderance of the evidence" is the standard of proof applicable to this case. This standard is met when the evidence, taken as a whole, shows that the fact sought to be proved is more probable than not or more likely than not. Black's Law Dictionary 1064 (5<sup>th</sup> Ed. 1979).

### II. Medicaid Program.

The Medicaid program, established in 1965 as Title XIX of the Social Security Act, provides federal financial assistance to states that choose to reimburse certain costs of medical treatment for needy persons. Schweiker v. Gray Panthers, 453 U.S. 34, 101 S.Ct. 2633, 69 L.Ed.2d 460 (1981). An individual is entitled to Medicaid when his "income and resources are insufficient to meet the costs of necessary medical services" (42 U.S.C. § 1396), and he fulfills the criteria established by the state of his residence. However, the state must comply with the requirements imposed by Federal statutes and regulations. Schweiker, supra.

Because Medicaid is a federal program, many of its requirements are contained in the Code of Federal Regulations (CFRs). In addition, because federal law requires that Medicaid eligibility be determined using the same methodology for the treatment of resources as is applicable to the Social Security Administration's SSI program, reference to SSI regulations is appropriate. Miller v. Ibarra, 746 F.Supp. 19, 31 (D.Colo. 1990).

20 C.F.R. § 416.1201 (a) defines "resources" in relevant part as "cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance . . . If the individual has the right, authority or power to liquidate the property or his or her share of the property, it is considered a resource."

20 C.F.R. § 416.1208 addresses funds held in accounts at financial institutions, and provides in relevant part as follows:

(a) General. Funds held in a financial institution account (including savings, checking, and time deposits, also known as certificates of deposit) are an individual's resource if the individual owns the account and can use the funds for his or her support and maintenance. We determine whether an individual owns the account and can use the funds for his or her support and maintenance by looking at how the individual holds the account. This is reflected in the way the account is titled.

(b) Individually-held account. If an individual is designated as sole owner by the account title and can withdraw funds and use them for his or her support and maintenance, all of the funds, regardless of their source, are that individual's resource. For as long as these conditions are met, we presume that the individual owns 100 percent of the funds in the account. This presumption is non-rebuttable.

(c) Jointly-held account-

(1) Account holders include one or more SSI claimants or recipients. If there is only one SSI claimant or recipient account holder on a jointly held account, we presume that all of the funds in the account belong to that individual. If there is more than one claimant or recipient account holder, we presume that all the funds in the account belong to those individuals in equal shares.

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(3) Right to rebut presumption of ownership. If the claimant . . . disagrees with an ownership presumption as described in paragraph (c)(1) or (c)(2) of this section, we give the individual the opportunity to rebut the presumption. Rebuttal is a procedure as described in paragraph (c)(4) of this section, which permits an individual to furnish evidence and establish that some or all of the funds in a jointly- held account do not belong to him or her. Successful rebuttal establishes that the individual does not own some or all of the funds. The effect of successful rebuttal may be retroactive as well as prospective.

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(4) Procedure for rebuttal. To rebut an ownership presumption as described in paragraph (c)(1) or (c)(2) of this section, the individual must:

(i) Submit his/her statement, along with corroborating statements from other account holders, regarding who owns the funds in the joint account, why there is a joint account, who has made deposits to and withdrawals from the account, and how withdrawals have been spent;

(ii) Submit account records showing deposits, withdrawals, and interest (if any) in the months for which ownership of funds is at issue; and

(iii) Correct the account title to show that the individual is no longer a co-owner if the individual owns none of the funds; or, if the individual owns only a portion of the funds, separate the funds owned by the other account holder(s) from his/her own funds and correct the account title on the individual's own funds to show they are solely-owned by the individual.

Pursuant to 42 U.S.C.A. § 1382(a)(3)(B) and 20 C.F.R. § 416.1205, an individual applying for Medicaid on or after January 1, 1989 must have no more than \$2,000 in non-excludable resources.

7 AAC 100.144, (which directly applies only to the Family Medicaid program), provides in relevant part as follows:

(c) If an applicant or recipient of Family Medicaid is living with a recipient of SSI or APA, a jointly held resource will be prorated. If an applicant or recipient of Family Medicaid is not living with an SSI or APA recipient, the department will determine the value of a jointly held resource as follows . . . (3) except as provided in 7 AAC 100.138(q), the department will consider an applicant's or recipient's equity in a jointly owned bank account to be the entire amount in the account if the applicant or recipient can withdraw money from the account without the consent or approval of the other person and can use the money for any purpose without incurring liability to the other person.

Pursuant to 7 AAC 100.400(11), the state APA program's \$2,000.00 individual resource limit (specified in 7 AAC 40.240) also applies to Medicaid eligibility determinations.

In Alaska, pursuant to 7 AAC 100.410(b) "an individual who is eligible for and receiving APA is [also] eligible for Medicaid . . .".

Alaska Medicaid Manual Section 602-2(D)(1) states in relevant part that "[r]esources held jointly by separate households are considered available in total to each household unless it can be demonstrated to the satisfaction of the caseworker that such resources are inaccessible".

### III. The Food Stamp Program.

The Food Stamp program was established by the federal Food Stamp Act of 1977, codified at 7 USC Sections 2011 – 2029. The United States Department of Agriculture's Food and Nutrition Service has promulgated regulations to implement the Food Stamp Act. These regulations are codified primarily at 7 CFR Sections 271-274.

The Food Stamp Program has been delegated to the several states for administration. 7 CFR Section 271.4. The Department of Health and Social Services administers the Food Stamp program in Alaska, and has promulgated regulations which adopt the federal regulations (with certain minor variations as allowed by federal law). 7 CFR Section 272.7; 7 AAC Sections 46.010 - .990.

The resource eligibility standards for the Food Stamp program are set forth in 7 C.F.R. § 273.8. Pursuant to 7 C.F.R. § 273.8(b), “the maximum allowable resources, including both liquid and nonliquid assets, of all members of the household shall not exceed \$2,000 for the household, except that, for households including a member or members age 60 or over, such resources shall not exceed \$3,000.”

7 C.F.R. § 273.8(c) defines resources for purposes of financial eligibility for the Food Stamp program. Pursuant to subsection (c)(1), resources include “liquid resources, such as cash on hand, money in checking or savings accounts, savings certificates . . . .”

7 C.F.R. § 273.8(d) discusses the treatment of jointly owned resources for purposes of the Food Stamp program. That regulation provides in relevant part as follows:

Resources owned jointly by separate households shall be considered available in their entirety to each household, unless it can be demonstrated by the applicant household that such resources are inaccessible to that household. If the household can demonstrate that it has access to only a portion of the resource, the value of that portion of the resource shall be counted toward the household's resource level. . . .

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#### IV. Adult Public Assistance Program.

Adult Public Assistance is a program created by the Alaska Statutes. See A.S.47.25.430 – A.S.47.25.615. The purpose of the Adult Public Assistance program is to furnish financial assistance as far as practicable to needy aged, blind, and disabled persons, and to help them attain self-support or self-care. See A.S.47.25.590.(b).

Because Adult Public Assistance is a state program, its governing law is found in the Alaska Statutes and the Alaska Administrative Code. Pursuant to 7 AAC 40.260(a), an applicant's “resources” are defined as “any real or personal property that an applicant, together with his or her spouse under 7 AAC 40.240, owns and can convert to cash to be used for his or her support and maintenance.” Pursuant to 7 AAC 40.270(a), “to be eligible for assistance, an applicant, together with his or her spouse under 7 AAC 40.240, must have non-excludable resources which do not exceed . . . \$2,000 for an individual . . .”.

7 AAC 40.280 lists those resources which are excluded in determining the resources of an applicant and/or an applicant's spouse for purposes of determining financial eligibility for the Adult Public Assistance program. This regulation does not list joint accounts as an excluded resource.



The Alaska Adult Public Assistance Program does not appear to have a regulation directly addressing the ownership of joint accounts.<sup>3</sup> However, APA Manual Section 430-4A states that “assets are not resources if the individual does not have: (1) any ownership interest; and (2) the legal right, authority, or power to liquidate them; or (3) the legal right to use the assets for his or her own support and maintenance.”

## ANALYSIS

### I. The Arguments of the Parties.

At the hearing, Mr. ██████ made essentially two arguments. First, he asserted that the money at issue could not properly be considered a resource of the Claimant because (a) based on the intentions of the parties, the account was the property of Ms. ██████ only and was not at all the property of the Claimant; (b) the account was jointly held by both the Claimant and Ms. ██████; and/or (c) the account was held by the Claimant in trust for Ms. ██████ (██████ hearing testimony). Second, he asserted that the alleged January 8, 2008 transfer of the ██████ account from the Claimant to Ms. ██████ did not make the Claimant ineligible for benefits because the transfer fell within the “payment of an antecedent debt” exemption. This was so because, based on the wishes of Ms. ██████’s deceased mother, the Claimant had the obligation to use the money to pay Ms. ██████’s college expenses (██████ hearing testimony).

At the hearing, the Division asserted that the Claimant’s second argument (regarding the alleged asset transfer) was not relevant because the DPA’s denial of the application at issue (the application of December 10, 2007) was based solely on the Claimant having excess resources and not on the Claimant having made a transfer of resources for less than fair market value (██████ hearing testimony). The Division’s position is supported by the evidence and thus is correct as explained below.

The Claimant’s Request for Fair Hearing pertained solely to the DPA’s denial of the Claimant’s December 10, 2007 application for Adult Public Assistance, Medicaid, and Food Stamp benefits (Ex. 8). The DPA’s benefit denial notices stated that (1) the basis for the denial of Food Stamp benefits was that the Claimant was over the Food Stamp program’s \$2,000.00 resource limit (Ex. 6.1); and (2) the basis for denial of Adult Public Assistance (APA) benefits and Medicaid benefits was that the Claimant was over the APA and Medicaid programs’ \$2,000.00 resource limit (Ex. 6.0). Neither denial notice referenced any transfer of assets as a basis for denial of benefits. Accordingly, the validity or invalidity of any transfer of the ██████ account is not relevant to this case. Therefore, the sole issue here is whether or not the DPA was correct in counting the value of the ██████ account as an available, nonexempt resource of the Claimant for purposes of the Claimant’s financial eligibility for the three benefit programs at issue.

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<sup>3</sup> In contrast, the Alaska Temporary Assistance Program (ATAP) has two such regulations, 7 AAC 45.300(q) and 7 AAC 45.310(c)(3).

## II. The Claimant Was, at Minimum, a Co-Owner of the [REDACTED] Account.

As mentioned above, Mr. [REDACTED] made essentially three arguments relevant to the DPA's denial of the Claimant's December 10, 2007 application. These were that the money at issue could not properly be considered a resource of the Claimant because (a) based on the intentions of the parties, the account was the property of Ms. [REDACTED] only and was not at all the property of the Claimant; (b) the account was jointly held by both the Claimant and Ms. [REDACTED]; and/or (c) the account was held by the Claimant in trust for Ms. [REDACTED] ([REDACTED] hearing testimony).

The statements of the Claimant and Mr. [REDACTED] regarding the exact ownership status of the [REDACTED] account were conflicting, as indicated below:

On or about December 27, 2007 the Claimant told [REDACTED] that she was unsure of the current ownership status of the [REDACTED] account; that she thought her name had been removed from the account; but that she would check on the ownership status of the account (Ex. 4.0).

On or about January 3, 2008 the Claimant told [REDACTED] that she owned the [REDACTED] account with [REDACTED] (Ex. 4.1); that she and Ms. [REDACTED] were "both on the account".

On or about January 9, 2008 the Claimant or Mr. [REDACTED] told a DPA representative that the Claimant was the trustee (not the owner) of the [REDACTED] account (Ex. 8).

The account documents which the Claimant provided to the Division indicate that prior to January 8, 2008, the Claimant was the owner of the [REDACTED] account and [REDACTED] was the beneficiary of the [REDACTED] account (Ex. 4.1, Ex. 26.0 - 26.8).

Mr. [REDACTED] testified that prior to the alleged transfer of January 8, 2008, the [REDACTED] account was "in the names of" both the Claimant and Ms. [REDACTED], but also testified that the money in the [REDACTED] account was held "in trust" by the Claimant for Ms. [REDACTED] ([REDACTED] hearing testimony).

The record contains no [REDACTED] account statements dated on or prior to the date of the Claimant's December 10, 2007 application. Accordingly, it is unknown as to what [REDACTED]'s records actually show regarding account ownership. However, it is clear based on the Claimant's own statements, as summarized above, that Claimant never asserted that the account was held solely in the name of [REDACTED] at the time of the Claimant's December 10, 2007 application. Likewise, despite the general assertion that the money at issue was held in trust by the Claimant for Ms. [REDACTED] there was no assertion by the Claimant, and no evidence was ever introduced to show, that a proper trust had ever been established.

Accordingly, the evidence indicates that the Claimant was either the sole owner, or (at minimum) the co-owner, of the [REDACTED] account. In this case, it is not necessary to reconcile the

conflicting evidence as to whether the Claimant was the sole owner of the [REDACTED] account, or was merely a co-owner of the account at the time the application was signed by the Claimant. This is because, under the applicable law (as discussed below), the outcome is the same.

### III. Under Applicable Law, the Entire Balance of the [REDACTED] Account is Deemed a Resource of the Claimant.

This case involves the Division's denial of an application for Medicaid, Adult Public Assistance and Food Stamp benefits. The same \$2,000.00 resource limit applies to each of the three benefit programs at issue in this case. See 42 U.S.C.A. § 1382(a)(3)(B) and 20 C.F.R. § 416.1205 (Medicaid program); 7 C.F.R. § 273.8(b) (Food Stamp program); and 7 AAC 40.270(a) (Alaska APA program). Accordingly, under each program, the issue is whether at least \$2,000.00 of the [REDACTED] account can properly be counted as a resource of the Claimant.

#### A. The Medicaid Program.

Pursuant to 20 C.F.R. § 416.1208(c)(1), if there is only one program "claimant or recipient account holder on a jointly held account, [it is] presume[d] that all of the funds in the account belong to that individual. If there is more than one claimant or recipient account holder, we presume that all the funds in the account belong to those individuals in equal shares." There is no evidence in the record indicating that [REDACTED] is also a Medicaid applicant or recipient. Thus, even if [REDACTED] were named as a co-owner of the [REDACTED] account, the entire balance of the account is still deemed a resource of the Claimant for Medicaid purposes.<sup>4</sup> Further, even if there was evidence that [REDACTED] was a Medicaid applicant or recipient, then pursuant to the above-cited regulation, 20 C.F.R. 416.1208(c)(1), the Claimant and Ms. [REDACTED] would be considered to own the account in equal shares, and \$5,000 (half of the account's value) would be deemed a resource of the Claimant.

It was not disputed that the account contained more than \$10,000.00 at the time of the Claimant's application (Ex. 6.1). Because the entire \$10,000.00 balance of the [REDACTED] account is deemed a resource of the Claimant pursuant to 20 C.F.R. § 416.1208(c), the Division was correct to deny the Claimant's Medicaid application, based on ownership of resources in excess of \$2,000.00, pursuant to 42 U.S.C.A. § 1382(a)(3)(B), 20 C.F.R. § 416.1205, 7 AAC 100.400(11), and 7 AAC 40.240. Further, even if there was evidence that [REDACTED] was a Medicaid applicant or recipient, then pursuant to the above-cited regulation, 20 C.F.R. 416.1208(c)(1), the Claimant would be deemed to own half of the account's value (\$5,000), which still exceeds the applicable \$2,000 limit.

#### B. The Food Stamp Program.

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<sup>4</sup> It should be noted that 20 C.F.R. § 416.1208(c)(3-4) provides a mechanism whereby an applicant or claimant may contest and rebut this presumption of ownership. However, the Claimant in this case never provided the evidence necessary to do so.

7 C.F.R. § 273.8(d) discusses the treatment of jointly owned resources for purposes of the Food Stamp program. That regulation provides in relevant part as follows:

Resources owned jointly by separate households shall be considered available in their entirety to each household, unless it can be demonstrated by the applicant household that such resources are inaccessible to that household. If the household can demonstrate that it has access to only a portion of the resource, the value of that portion of the resource shall be counted toward the household's resource level. . . .

In this case, the Claimant never attempted to prove that any portion of the [REDACTED] account was “inaccessible” to her. Accordingly, under 7 C.F.R. § 273.8(d), even were [REDACTED] named as a co-owner of the [REDACTED] account, the entire balance of the account is still deemed a resource of the Claimant for purposes of Food Stamp benefits. Further, it was not disputed that the account contained more than \$10,000.00 at the time of the Claimant’s application (Ex. 6.1). Because the entire \$10,000.00 balance of the [REDACTED] account is deemed a resource of the Claimant pursuant to 7 C.F.R. § 273.8(d), the Division was correct to deny the Claimant’s Food Stamp application, based on ownership of resources in excess of \$2,000.00, pursuant to 7 C.F.R. § 273.8(b).

#### C. The Adult Public Assistance Program.

Pursuant to 7 AAC 40.260(a), an applicant’s “resources” for purposes of the Adult Public Assistance program are “any real or personal property that an applicant, together with his or her spouse under 7 AAC 40.240, owns and can convert to cash to be used for his or her support and maintenance.” APA Manual Section 430-4A provides further guidance, stating that “assets are not resources if the individual does not have: (1) any ownership interest; and (2) the legal right, authority, or power to liquidate them; or (3) the legal right to use the assets for his or her own support and maintenance.” In addition, APA Manual Section 431-2A states that “all funds in a jointly owned checking and savings account to which each owner has unrestricted access are totally available to each owner of the account.”<sup>5</sup> The only exception to this rule is that, “if each owner of the account is eligible for SSI or APA, the funds in the account are prorated equally to each owner.” *Id.*

In this case, the Claimant never attempted to prove that she did not have “unrestricted access” to any portion of the [REDACTED] account, or that Ms. [REDACTED] was also eligible for SSI or APA. Accordingly, under 7 AAC § 40.260(a) and APA Manual Sections 430-4A and 431-2A, even were [REDACTED] named as a co-owner of the [REDACTED] account, the entire balance of the account is still deemed a resource of the Claimant for purposes of Alaska Adult Public Assistance benefits. Further, it was not disputed that the account contained more than \$10,000.00 at the time of the Claimant’s application (Ex. 6.1). Because the entire \$10,000.00 balance of the [REDACTED] account is deemed a resource of the Claimant pursuant to 7 AAC § 40.260(a) and

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<sup>5</sup> It should be noted that APA Manual § 431-2A provides a mechanism whereby an applicant or claimant may contest and rebut this presumption of ownership. However, the Claimant in this case never provided the evidence necessary to do so.

APA Manual Sections 430-4A and 431-2A, the Division was correct to deny the Claimant's Alaska Adult Public Assistance application, based on ownership of resources in excess of \$2,000.00, pursuant to 7 AAC 40.270(a).

### CONCLUSIONS OF LAW

1. At the time of the filing of her application for Adult Public Assistance, Medicaid, and Food Stamp benefits on or about December 10, 2007, the Claimant had an ownership interest in a [REDACTED] Savings Account (account no. [REDACTED]).

2. At all times relevant hereto, the balance of the [REDACTED] Savings Account (account no. [REDACTED]) was in excess of \$10,000.00. This balance is in excess of the \$2,000.00 resource limit applicable to each of the three benefit programs at issue in this case. See 42 U.S.C.A. § 1382(a)(3)(B) and 20 C.F.R. § 416.1205 (Medicaid program); 7 C.F.R. § 273.8(b) (Food Stamp program); and 7 AAC 40.270(a) (Alaska APA program).

3. The Claimant's ownership interest in the [REDACTED] Savings Account (account no. [REDACTED]) was, at minimum, as a co-owner or joint owner of the account. However, pursuant to the applicable Medicaid, Food Stamp, and Adult Public Assistance regulations (referenced below), the co-ownership or joint ownership did not convert the account into an exempt resource.

4. For purposes of determining eligibility for the Medicaid program, the entire \$10,000.00 balance of the [REDACTED] account is deemed a resource of the Claimant pursuant to 20 C.F.R. § 416.1208(c). Accordingly, the Division was correct to deny the Claimant's Medicaid application, based on ownership of resources in excess of \$2,000.00, pursuant to 42 U.S.C.A. § 1382(a)(3)(B), 20 C.F.R. § 416.1205, 7 AAC 100.400(11), and 7 AAC 40.240.

5. For purposes of determining eligibility for the Food Stamp program, the entire \$10,000.00 balance of the [REDACTED] account is deemed a resource of the Claimant pursuant to 7 C.F.R. § 273.8(d). Accordingly, the Division was correct to deny the Claimant's Food Stamp application, based on ownership of resources in excess of \$2,000.00, pursuant to 7 C.F.R. § 273.8(b).

6. For purposes of determining eligibility for the Alaska Adult Public Assistance program, the entire \$10,000.00 balance of the T. Rowe Price account is deemed a resource of the Claimant pursuant to 7 AAC § 40.260(a) and APA Manual Sections 430-4A and 431-2A. Accordingly, the Division was correct to deny the Claimant's Alaska Adult Public Assistance application, based on ownership of resources in excess of \$2,000.00, pursuant to 7 AAC 40.270(a).

### DECISION

The Division was correct to deny the Claimant's December 10, 2007 application for Adult Public Assistance, Medicaid, and Food Stamp benefits based on ownership of excess resources.

**APPEAL RIGHTS**

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. To do this, send a written request directly to:

Director of the Division of Public Assistance  
Department of Health and Social Services  
PO Box 110640  
Juneau, AK 99811-0640

If the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision.

DATED this \_\_\_\_\_ day of January, 2009.

\_\_\_\_\_  
Jay Durych  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this \_\_\_\_\_ day of January, 2009, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

\_\_\_\_\_, Director, D.P.A.  
\_\_\_\_\_, Policy & Program Development  
\_\_\_\_\_, Staff Development & Training  
\_\_\_\_\_, Fair Hearing Representative

\_\_\_\_\_  
Al Levitre  
Law Office Assistant I

