

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Ph: (907)-334-2239
Fax: (907)-334-2285

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

In the Matter of)
)
 [REDACTED],) OHA Case No. 08-FH-60
)
 Claimant.) Division Case No. [REDACTED]
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a Medicaid recipient. (Ex. 1.0) On January 7, 2008, the Division of Public Assistance (Division) sent the Claimant notice her Medicaid benefits would terminate effective the end of January 2008. (Ex. 2.1) The Claimant requested a fair hearing on January 9, 2008. (Ex. 3.1) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held on February 19, 2008. [REDACTED], the Claimant's daughter, appeared telephonically on behalf of the Claimant. The Claimant did not participate in the hearing. [REDACTED], Public Assistance Analyst with the Division, attended in person to represent the Division.

ISSUE

Was the Division correct to terminate the Claimant's Medicaid benefits effective the end of January 2008, because she owned countable resources worth over \$2,000.00?

FINDINGS OF FACT

1. The Claimant resided with her husband in their jointly owned house located in [REDACTED] Alaska in 2001.

2. The Claimant left the house in either late 2001 or early 2002 to move to a long term care medical facility. A statement that she intended to return to the house was completed on her behalf on February 2, 2002. (Ex. 2.2)
3. On May 17, 2002, Claimant deeded her entire interest in the house to her husband. (Ex. 2.5)
4. The Claimant's husband subsequently died. His probate estate deeded the house back to the Claimant on December 31, 2005. (Ex. 2.6)
5. The house has a net value of \$93,000. (Ex.2.0)
5. The Claimant currently lives with her daughter. She has not lived in the house since she left in late 2001 or early 2002.

PRINCIPLES OF LAW

This case involves the termination of benefits. When the Division seeks to terminate benefits, the Division has the burden of proof¹ by a preponderance of the evidence.²

In order to qualify for Medicaid, a recipient must "meet the income and resource requirement of the appropriate cash assistance program for [your] status." 42 CFR 435.210. The Medicaid coverage categories for persons who are disabled, or age 65 or older use the Adult Public Assistance income and resource requirements. 7 AAC 100.400(a); 7 AAC 100.410.

A recipient cannot own more than \$2,000 in countable resources and maintain Medicaid eligibility. 7 AAC 40.270(a). The recipient's "principal place of residence" is not a countable resource. 7 AAC 40.280. The Division interpretation of this regulation allows a public assistance recipient to leave their "principal place of residence" and still claim the "principal place of residence" as exempt from being counted as a resource if the recipient intends to return to the residence. "A home property may be excluded as a resource while the individual is not living there if: a. The individual continues to consider it as his or her principal place of residence and intends to resume living in it." *Alaska Adult Public Assistance Manual* § 432-1A(3).

¹ "Ordinarily the party seeking a change in the status quo has the burden of proof." *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985)

² Preponderance of the evidence is defined as follows:

Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Black's Law Dictionary 1064 (5th Ed. 1979)

ANALYSIS

The facts in this case are undisputed. The Claimant was residing in the house. She left the house in 2001 or early 2002, intending to return. In 2002, she deeded the property to her husband, meaning she no longer had any ownership interest in the property. The property was then deeded back to her at the end of 2005. However, she has not resided in the house since she left it in 2001 or early 2002. In other words, the Claimant had a complete interruption in both her residency and legal ownership of the house. The interruption in legal ownership means the Claimant cannot intend to “return” to the house for the purposes of asserting its exemption from being counted as a countable resource. In order for the Claimant to “return” to the home she would need an uninterrupted legal ownership in the house. She cannot “return” to a property that she acquired after she left.

Because the Claimant is not entitled to an exemption for the house, it is countable as a resource. The house has equity of \$93,000. This amount exceeds the \$2,000 countable resource limit for Medicaid. As a result, the Claimant is not financially eligible for Medicaid benefits.

CONCLUSIONS OF LAW

1. The Claimant’s house is a countable resource for the purposes of determining her eligibility for Medicaid benefits.

DECISION

The Division was correct to terminate the Claimant’s Medicaid benefits effective the end of January 2008,

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


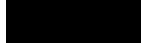
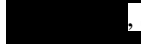


If the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision.

DATED this 1st day of April, 2008.

/Signed/
Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 1st day of April,
2008, true and correct copies of the
foregoing were sent to:

 – Claimant Representative – Certified Mail, Return Receipt Requested.
, Director
, Policy & Program Development
, Staff Development & Training
, Fair Hearing Representative

Al Levitre
Law Office Assistant I