

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

**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC ASSISTANCE
ADMINISTRATIVE DISQUALIFICATION HEARING**

In the Matter of

██████████

)
)
)
)
)
)
) OHA Case No. 08-FH-61
) Division Case No. ██████████

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (hereinafter “Claimant”) was a recipient of Food Stamps, Adult Public Assistance, and Medicaid. (Ex. 1). On November 13, 2007, the Division of Public Assistance (hereinafter “Division”) processed Claimant’s Food Stamps recertification form. Based on events surrounding the process, the Division denied recertification of Food Stamp benefits on November 30, 2007 and terminated Adult Public Assistance Benefits and Medicaid benefits on December 14, 2007. (Ex. 2.4 and 2.7) On January 11, 2008, the Claimant requested a fair hearing. (Ex. 3). Pursuant to the Claimant’s request, a hearing was held on February 20, 2008. The Applicant attended the hearing telephonically and represented himself. ██████████, his partner, testified on his behalf. ██████████, Public Assistance Analyst with the Division, attended in person to represent the Division.

STATEMENT OF THE ISSUES

The issues to be determined are:

1. Was the Division correct to deny Claimant’s recertification of Food Stamps?
2. Was the Division correct to terminate Claimant’s Alaska Public Assistance and Medicaid benefits?
3. Was the Division correct to impose a “transfer of resource penalty” on Claimant?

FINDINGS OF FACT

1. The Claimant had been a recipient of Food Stamps, Adult Public Assistance, and Medicaid. On November 13, 2007, the Division processed Claimant's recertification of Food Stamps and learned, through Department of Motor Vehicle Records that a [REDACTED] boat was registered to Claimant "or" a third party, who was Claimant's partner. (Ex. 2).
2. On November 14, 2007, the Division mailed Claimant a request for information regarding the fair market value of the boat, the amount owed on the boat, and the use of the boat. This request was made for his Food Stamp benefits. The Division gave Claimant until November 26, 2007 to supply this information, or his Food Stamp benefits would be denied. (Ex. 2.2). On November 30, 2007, the Division mailed Claimant notice that his Food Stamp recertification was denied because he failed to provide the information requested. (Ex. 2.4).
3. On November 30, 2007, the agency mailed Claimant a request for information notice on the boat. This request was made for his Adult Public Assistance and Medicaid benefits. (Ex. 2.5) The notice stated:

Information Needed:
Proof of the fair market value and amount owed on the [REDACTED]. Note – you indicated that [REDACTED] would be taking your name off of this boat. This may result in a 'transfer of resource' penalty. We have sent copies of policy to you under separate cover.
4. On December 14, 2007, the Division mailed Claimant notice it was closing his Adult Public Assistance and Medicaid benefits because Claimant had not provided the requested information. (Ex. 2.7).
5. On December 7, 2007, Claimant removed his name from the title of the boat. On January 28, 2008, the Division mailed a notice stating it was closing his Adult Public Assistance and Medicaid benefits because Claimant transferred the boat for less than it was worth. The Division also imposed a "transfer of resource penalty" for the transfer. This penalty would make Claimant not eligible for benefits from January 2008 through May 2009. (Ex. 2.9).
6. The Division established the fair market value of the boat at \$17,000.00, as that was the purchase price in 2004. Both Claimant and his partner testified the value of the boat was more than \$2,000.00.
7. Claimant testified his partner put his name on her boat when she had breast cancer in case something happened to her. She has been successfully treated for cancer, therefore he has removed his name from the boat.
8. Claimant also testified he was never good at paperwork, and was not aware how important it was to provide the information regarding the boat until his benefits were terminated.

PRINCIPALS OF LAW

1. The party wishing to change the status quo has the burden of proof. There are a number of issues in this case and the burden of proof varies with each issue. The party wishing to change the status quo regarding the denial of Food Stamp benefits is the Claimant, therefore he has the burden. The party wishing to change the status quo regarding the termination of Adult Public Assistance and Medicaid is the Division, therefore it has the burden. The party wishing to change the status quo regarding the imposition of a transfer of resource penalty is the Division, therefore it has the burden. The burden of proof on all these issues is by a preponderance of the evidence.¹

2. The Division is entitled to request documentation on income and resources for the Food Stamp and Medicaid programs. If a recipient **refuses** to provide the Division with verification of eligibility, that person is not eligible for the program. 7 CFR 273.2(f)(4) & (5)(Food Stamps); 42 CFR 435.948(a)(6) and 7 AAC 43.021(a)(Medicaid). The Food Stamp program distinguishes between a failure to provide information and a refusal to provide information. A refusal to provide information is grounds for denial, while a failure to provide information is not. 7 CFR 273.2(d)(1). The standard is higher than failure to provide the information. “For example, to be denied for refusal to cooperate, a household must refuse to be interviewed not merely failing to appear for the interview.” Id.

3. Regulation 7 AAC 40.450 addresses the Claimant’s responsibility to provide information the Division requests:

(a) Upon receipt of information from any source that indicates that a change in circumstances affecting an applicant's eligibility or amount of assistance may have occurred, the division shall investigate and, if necessary, adjust the amount of assistance or suspend or terminate assistance in accordance with 7 AAC [49.060](#).

(b) At least annually, or more frequently as circumstances warrant, the division will redetermine each recipient's eligibility. The division may require a recipient or the person acting on the recipient's behalf under 7 AAC [40.040](#) to complete a review application and furnish documentation to support it.

4. Regulation 7 AAC 40.295 addresses when the Division can impose a “transfer of resource penalty.” The regulation states:

The division may deny assistance for a maximum of 36 months to an applicant who, within 36 months before applying for assistance, makes a voluntary assignment or transfer of a resource in order to qualify for assistance. If the transfer is made for less than fair market value, it is presumed that the transfer was made intentionally and for the purpose of qualifying for assistance. The individual who made the transfer may rebut the presumed intent and purpose of the transfer by providing evidence satisfactory to the division that the transfer was made unintentionally or for a different purpose. Evidence to support a determination that the individual made the transfer unintentionally or for a different purpose may include any of the following:

¹¹ Amerada Hess Pipeline v. Alaska Public Utilities Comm’n, 711 P.2d 1170, 1179 n. 14 (Alaska 1986). Preponderance of the evidence is evidence which as a whole shows the fact sought to be proved is more probable than not.

- (1) documents or testimony establishing that the transfer was made to settle a legally enforceable debt approximately equal to the equity value of the resource;
- (2) documents establishing that the transfer was required by a court or an administrative agency empowered to require the transfer of property;
- (3) documents establishing that the individual was a victim of theft, fraud, or coercion; the transfer was made as a result of the theft, fraud, or coercion; and the individual has taken appropriate steps to recover the resource or the equity value of the resource;
- (4) evidence that the individual did not believe the transfer would affect the eligibility of the assistance unit;
- (5) evidence that the individual believed that the compensation received was approximately equal to the equity value of the resource;
- (6) evidence that the individual received property or services approximately equal to the equity value of the resource in exchange for the resource, regardless of whether the property received in exchange would be considered an excludable resource under 7 AAC [40.280](#);
- (7) evidence that, if the transfer had not occurred, the transferred resource would not have caused the assistance unit's countable resources as determined under 7 AAC [45.270](#) - 7 AAC [40.290](#) to exceed the resource limit under 7 AAC [45.270](#) in the month following the transfer;
- (8) evidence that the individual was not receiving assistance at the time of the transfer and did not anticipate applying for assistance within the potential period of disqualification under this section.

5. Claimant's qualification for Medicaid is that he is on Adult Public Assistance. If his Adult Public Assistance is terminated, then his Medicaid would also be terminated. 7 AAC 100.410.

6. To be eligible of Adult Public Assistance, a person cannot have resources in excess of \$2,000.00. 7 AAC 40.270.

ANALYSIS

For the termination of Medicaid benefits, the Division has the burden of proving Claimant refused to provide the fair market value of the boat to the Division. Despite repeated efforts on the part of the Division, the Claimant never provided the fair market value of the boat. He never contacted the Division regarding the request. Instead, a month after the Division's request, he transferred ownership in the boat. He claims he did not understand the importance of the request. However, the request from the Division clearly stated if the information was not provided, benefits could be denied. These circumstances demonstrate the Claimant refused to provide the information requested. Therefore, the

Division has met its burden; the Division acted properly when it terminated Claimant's Medicaid benefits.

For recertification of Food Stamp benefits, the Claimant has the burden of proving he did not refuse to provide the fair market value of the boat to the Division. Since it has already been found that Claimant refused to provide the information when the Division had the burden, it is clear, Claimant can not prove he did not refuse to provide the information when he has the burden. Therefore, the Claimant has failed to meet his burden; the Division acted properly in terminating Claimant's Medicaid benefits.

For termination of Adult Public Assistance, the Division does not have to demonstrate refusal on the Claimant's part to provide information. The Division merely needs to investigate, and adjust the amount of assistance if there is an indication such a change necessary. 7 AAC 40.450. The Division learned of Claimant's ownership in the boat, investigated the value of the boat by making an information request to the Claimant and reviewing the purchase price. After determining it had obtained all the information it was able to receive, the Division determined the Claimant had a resource valued over \$2,000.00 and terminated benefits. The Division's termination was proper.

The Division has the burden to prove it acted properly in imposing a "transfer of resource penalty." It is clear the transfer of the boat was made for less than fair market value, as Claimant did not receive anything for the transfer and the boat by Claimant's own admission, had a value of over \$2,000.00. Regulation 7 AAC 40.295 states if the transfer is made for less than fair market value, the presumption is the transfer was made intentionally for purposes of qualifying for assistance. The Claimant then has the burden of proving the transfer was made unintentionally or for a different purpose.

The Claimant has failed to meet that burden. Claimant had ownership in that boat since 2006. It was only after he was denied benefits because of ownership of that boat did he change ownership. He stated his partner gave him part ownership in the boat because of a battle with cancer. However, Claimant did not relinquish ownership after the recovery of his partner, but rather after the termination of his benefits. This demonstrates it was the termination of benefits, and not his partner's recovery which motivated the title transfer. Therefore, Claimant has failed to overcome the presumption. Because the Claimant failed to overcome the presumption, the Division was proper to impose a "transfer of resource penalty."

Since Claimant qualifies for Medicaid only because he is on Adult Public Assistance, if he is penalized from receiving Adult Public Assistance, he is also not eligible for Medicaid during the same time period. 7 AAC 100.410.

DECISION

Based upon a preponderance of the evidence, this Hearing Authority finds the following:

1. The Division was correct to deny Claimant's recertification of Food Stamps.
2. The Division was correct to terminate Claimant's Alaska Public Assistance and Medicaid benefits.
3. The Division was correct to impose a "transfer of resource penalty" on Claimant.

This decision is supported by the above mentioned citations as well as AS 47.27.015(c); 7 AAC 45.970(e); 7 AAC 49 et seq.

APPEAL RIGHTS

If the Applicant is dissatisfied with this decision for any reason, the Applicant has the right to appeal by requesting a review by the Director. To do this, send a written request directly to:

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

If the Applicant appeals, the Applicant must send the request within 15 days from the date the Applicant receives this letter. Filing an appeal with the Director could result in the reversal of the Hearing Authority's decision.

Dated: April 10, 2007.

Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 3rd day of April, 2008, true and correct copies of the foregoing were sent to:

Recipient – Certified Mail, Return Receipt Requested.

██████████, Director
██████████, Program and Policy Development
██████████, Staff Development & Training
██████████, Program Integrity
██████████, Fair Hearing Representative

Case File
Hearing File

Al Levitre, Law Office Assistant I