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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-324
)	
Claimant.)	Division Case No. ██████████
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) applied to the Division of Public Assistance (Division) for Adult Public Assistance, Medicaid, and Food Stamp benefits on February 19, 2008. (Ex. 2) On March 17, 2008, the Division sent the Claimant notice her application for all three public assistance benefit programs was denied due to excess resources. (Ex. 4) The Claimant requested a fair hearing on April 29, 2008. (Ex. 5) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held June 4, 2008. The Claimant attended the hearing telephonically and represented herself. ██████████, Public Assistance Analyst with the Division, attended in person to represent the Division.

The Division had requested a Dismissal of Claimant's Adult Public Assistance and Medicaid benefits on May 20, 2008. At the hearing, the Claimant's Adult Public Assistance and Medicaid benefits case were dismissed by this Hearing Authority. That decision will be further addressed in this decision.

The record remained open until July 10, 2008, so the Claimant would have an opportunity to submit additional documentation on her Food Stamp issue, and the Division would have an opportunity to respond.

ISSUES

1. Should the Claimant's fair hearing request on the Division's denial of her application for Adult Public Assistance and Medicaid benefits be dismissed?
2. Was the Division correct to deny the Claimant's Food Stamp application because she owned countable resources worth over \$2,000?

FINDINGS OF FACT

1. The Claimant submitted an application for Adult Public Assistance, Medicaid and Food Stamp benefits on February 19, 2008. The application was signed on February 14, 2008. The Claimant is [REDACTED] years old (dob [REDACTED]). In the application she disclosed owning a duplex/house worth \$620,000.00 but stated there was a \$260,232.00 mortgage. She also stated she owned a number of banking accounts. (Ex. 2.4).
2. After the above application was submitted, the Claimant had an interview on March 15, 2008 interview with a Division Eligibility Technician. During this interview, Claimant admitted having \$30,000.00 in a bank account jointly owned with her estranged husband and, \$10,000.00 in her personal checking account. In that interview she again admitted to owning a home valued at \$620,000.00 with her spouse. She also stated she was not living in the house and the mortgage on that home was \$260,232.00. (Ex. 3).
3. Based on the amount of resources Claimant owned, the Division sent her notice of denial of her Adult Public Assistance, Medicaid, and Food Stamp benefits on March 17, 2008. (Ex. 4).
4. On April 29, 2008, Claimant signed a form requesting a fair hearing, which the Division received that day. (Ex. 5). At the hearing, Claimant testified she waited to file her request because she initially thought she should give up on the application process. In addition, she testified she had medical issues.
5. On May 20, 2008, the Division requested a Dismissal of Claimant's Adult Public Assistance and Medicaid benefits claim for failing to file a fair hearing request in a timely manner. At hearing, the Adult Public Assistance and Medicaid benefits claims were dismissed because the Claimant did not request a hearing in a timely manner. The hearing proceeded solely on the issue of Food Stamp benefits.
6. During the hearing, the Claimant testified she did not have any money or resources. She testified she is currently going through a divorce. When her husband left her in May or June of 2007, she had the \$30,000.00 and \$10,000.00 in the two accounts. However, those accounts have since been depleted. She also testified regarding the home, which she stated her husband is managing. Currently, the house is being rented, and the rent is paying the mortgage.

7. The record remained open so that Claimant could submit additional documentation on her bank accounts. She submitted a June 29, 2008 bank statement stating she had a total of \$1,021.44 in both accounts.

PRINCIPLES OF LAW

This case involves the denial of an application for benefits. When an application is denied, the applicant (Claimant) has the burden of proof¹ by a preponderance of the evidence.²

In regard to the Alaska Public Assistance and Medicaid benefits, this case is governed, by the State of Alaska Fair Hearing regulations, 7 AAC 49.010 et. seq. The regulation that controls the timing of a hearing request is 7 AAC 49.040:

A hearing is available upon request only for those clients who make or mail an oral or written request within 30 days after receipt of notice of the division action by which they are aggrieved.

The Food Stamp program has a resource limit of \$2,000 for a household whose members are under 60 years of age. 7 CFR 273.8(b). “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.” 7 CFR 273.8.

Resources are measured on the date the applicant participates in a Food Stamp intake interview. 7 CFR 273.10(b).

ANALYSIS

There are two issues in this case: Should the Claimant’s fair hearing request on the Division’s denial of her application for Adult Public Assistance and Medicaid benefits be dismissed because it was untimely? The second issue is did the Division err when it denied the Claimant’s Food Stamp application because she owned countable resources

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)

worth over \$2,000.00? This decision will address the Adult Public Assistance and Medicaid benefits separately from the Food Stamp benefits.

A. Adult Public Assistance and Medicaid.

The Claimant was sent written notice her application for Adult Public Assistance and Medicaid benefits was denied on March 17, 2008. She requested a fair hearing on April 29, 2008, which the Division received that day. This was forty-three days after she was sent the denial notice. The timeline for filing a hearing request is 30 days. 7 AAC 49.040.

The deadline, per regulation, for requesting a hearing is 30 days after receipt of the written Division's notice. 7 AAC 49.040. The Division allows a five day mailing time. This would place the deadline for filing a hearing at 35 days after mailing, which would be April 21, 2008. The Division received the Claimant's hearing request on April 29, 2008.

The Claimant testified she did not file a fair hearing request right away because she thought she should give up on her claim. Furthermore, she discussed some health issues. Neither of these reasons constitute good cause.

Thus, the Claimant's request for a fair hearing on the APA and Medicaid denial was untimely. Therefore, the Claimant's request for a fair hearing on these two programs is hereby dismissed with prejudice.

B. Food Stamps.

The Division denied the Claimant's February 19, 2008 application for Food Stamp benefits because her resources exceeded \$2,000.00. The Food Stamp program requires that an applicant's resources be measured on the date an applicant has her Food Stamp interview. 7 CFR 273.10(b).

The Claimant participated in her Food Stamp application interview on March 15, 2008. At that interview she claimed two bank accounts; one worth \$10,000.00 and one worth \$30,000.00. She also claimed a house valued at \$620,000.00 with a \$260,232 mortgage. Any of these three resources would exceed the \$2,000.00 limit. However, during the hearing, she stated she had very little money left in those accounts. The Claimant's statements regarding the values of these accounts during the application interview are the most credible.

The Claimant also has not offered any credible evidence indicating these bank accounts had a different value at the time of the interview. The record in the case remained open after the hearing to give her opportunity to submit evidence to the contrary; she failed to submit any evidence regarding the March 15, 2008 value of those accounts. The Claimant submitted documentation with regard to the value as of June 29, 2008. This

evidence is not relevant because it is the value of those accounts on March 15, 2008, that is at issue.

The Claimant's statements made at the March 15, 2008 interview are more credible because they were made contemporaneously, and the statements were possibly made prior to her knowledge of a resource limit. Therefore, the value of each of these accounts exceeded the \$2,000.00 resource limit at the time of the March 15, 2008 interview.

The value of Claimant's house, even excluding the mortgage liability, is also over the \$2,000.00 resource limit. These may have been excluded had she proven the house was inaccessible to her. 7 CFR 273.8. However, Claimant has failed to prove the house was inaccessible to her. Therefore, Claimant's home ownership made her over the resource limit to be eligible for the Food Stamp program.

The Division was therefore correct to deny the Claimant's February 19, 2008 Food Stamp application because she had excess resources.

CONCLUSIONS OF LAW

1. The Claimant's February 19, 2008 hearing request regarding Adult Public Assistance and Medicaid benefits did not comply with 7 AAC 49.040 and as a result was untimely.
2. The Claimant owned resources in excess of \$2,000.00. Therefore, the Division was correct when it denied her February 19, 2008 Food Stamp application.

DECISION

1. The Claimant's request for a fair hearing on the Division's denial of her application for Adult Public Assistance and Medicaid benefits is dismissed with prejudice.
2. The Division was correct when it denied the Claimant's February 19, 2008 application for Food Stamp benefits.

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 September, 2008.

Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this __ day of
September, 2008, true and correct
copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

, Director
, Policy & Program Development
, Staff Development & Training
, Fair Hearing Representative

Al Levitre
Law Office Assistant I