

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC ASSISTANCE

SARAH PALIN, GOVERNOR

P.O. BOX 110640
JUNEAU, ALASKA 99811-0640
PHONE: (907) 465-3347
FAX: (907) 465-5154

November 13, 2008

[REDACTED]

Re: OHA Case # 08-FH-454
Program Type: Adult Public Assistance, Medicaid and Food Stamps
Agency Case # [REDACTED]

Dear [REDACTED]:

This is in response to your request for a Director's review of your October 7, 2008 fair hearing decision. Your request was received in my office on October 15, 2008.

At issue is whether your Adult Public Assistance, Medicaid, and Food Stamp cases were correctly closed because your countable resources (assets) exceeded program limits.

To qualify for Adult Public Assistance and Medicaid your assets must be below \$2,000, and for food stamp benefits your household's assets must be below \$3,000. The information in the hearing record substantiates that the \$20,000 you received from the sale of your home, which you kept and deposited into a joint bank that you have with your daughter, is over the amount allowed for the programs.

I am upholding the Hearing Authority's decision that our agency appropriately closed your Adult Public Assistance, Medicaid, and Food Stamp cases effective June 30, 2008.

This decision has been reached based upon a review of the hearing record, fair hearing exhibits, the Hearing Authority's decision, and applicable laws and regulations.

[REDACTED]
November 13, 2008

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If for any reason you are not satisfied with this decision, you may appeal to the Superior Court within 30 days.

Sincerely,

Ellie Fitzjarrald
Director

cc: Larry Pederson, Hearing Authority
[REDACTED], Program and Policy Development
[REDACTED], Staff Development and Training
[REDACTED], Fair Hearing Representative
Case File
Hearing File

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Ph: (907)-334-2239
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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

In the Matter of)
)
 [REDACTED],) OHA Case No. 08-FH-454
)
 Claimant.) Division Case No. [REDACTED]
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a recipient of Adult Public Assistance, Medicaid, and Food Stamps. On June 19, 2008, the Claimant informed the Division of Public Assistance (Division) she had sold her home and deposited \$20,000.00 of the sales proceeds into a bank account. (Ex. 2) On June 20, 2008, the Division sent the Claimant notice her benefits were terminated due to excess resources effective After June 30, 2008. (Ex. 2.6) The Claimant requested a fair hearing on June 23, 2008. (Ex. 3) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held on August 13, 2008. The Claimant attended the hearing telephonically and represented herself. Assisting the Claimant was [REDACTED], Care Coordinator of the [REDACTED] Senior Center. [REDACTED], Public Assistance Analyst with the Division, attended in person to represent the Division.

ISSUES

Was the Division correct to terminate the Claimant's Adult Public Assistance, Food Stamps, and Medicaid benefits because she owned countable resources in excess of program requirements?

FINDINGS OF FACT

1. The Claimant was a recipient of Adult Public Assistance, Food Stamps, and Medicaid benefits. She is [REDACTED] years old (birth date [REDACTED]).
2. On May 21, 2008, the Division requested information regarding the disposition of Claimant's home, as she reported to the Division she was paying rent. Prior to that time, she had lived in a home she owned. (Ex. 2.0).
3. On June 19, 2008, the Claimant brought to the Division, a copy of a \$25,925.79 check from the title company dated April 25, 2008. This check was from the sale of her home. (Ex. 2.1).
4. The Claimant reported to the Division that she had deposited \$20,000.00 from the sale of her home into a banking account jointly owned by her and her daughter on April 25, 2008. (Ex. 2.1- 2.4). According to the Claimant, her daughter is the primary owner of the account, and she is the secondary owner. The Claimant can withdraw money out of that account at any time.
5. The Claimant told the Division she did not wish to purchase another home. (Ex. 2.5). Based on the Claimant's ownership of the money from the sale of her home, the Division closed her Adult Public Assistance, Food Stamps and Medicaid case, and sent the Claimant notice on June 20, 2008. (Ex. 2.6).

PRINCIPLES OF LAW

This case involves the closure of existing benefits. When benefits are terminated, the Division has the burden of proof¹ by a preponderance of the evidence.²

The Food Stamp program has a resource limit of \$3,000 for a household whose members are age 60 years of age or older. 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.

The Adult Public Assistance program has a resource limit of \$2,000 for a single person. 7 AAC 40.270(a)(1). Resources are measured on the first day of each month. 7 AAC 40.270(b).

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.

The Medicaid program for a person over the age of 65 has the same resource rules as the Adult Public Assistance program. 7 AAC 100.400(13)-(15). In addition, a person who is receiving Adult Public Assistance is automatically eligible for Medicaid benefits. 7 AAC 100.002(b)(1) and (d)(1); 7 AAC 100.410(b).

ANALYSIS

The issue is did the Division err when it terminated the Claimant's Adult Public Assistance and Medicaid benefits because she owned countable resources worth over \$2,000.00 and did the Division err with it terminated her Food Stamp benefits because she owned countable resources worth over \$3,000.00. The Claimant owns \$20,000.00 in resources. Specifically, she deposited \$20,000.00 of her house sale proceeds into a joint account with her daughter and she has access to these funds at any time. She is clearly over the \$2000.00 resource limit of the Adult Public Assistance program and the \$3000.00 resource limit of the Food Stamp program. Therefore, she no longer qualifies for either program. Since she does not qualify for the Adult Public Assistance program, and since her eligibility for Medicaid was based on her eligibility for Adult Public Assistance, she also does not qualify for Medicaid. The Division was correct to terminate the Claimant's Adult Public Assistance, Medicaid and Food Stamp benefits.

CONCLUSIONS OF LAW

1. The Claimant owned resources in excess of \$2,000.00. Therefore, the Division was correct when it terminated her Adult Public Assistance and Medicaid benefits.
2. The Claimant owned resources in excess of \$3,000.00. Therefore, the Division was correct when it terminated her Food Stamp benefits.

DECISION

The Division was correct when it terminated the Claimant's Adult Public Assistance, Medicaid, and 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.


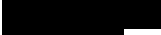
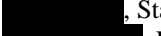

DATED this ____ day of October, 2008.

Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this __ day of October, 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