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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-533  
 )  
 Claimant. ) Division Case No.  
 [REDACTED] )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) submitted a recertification application to the Division of Public Assistance (Division) for Food Stamp benefits on June 30, 2008. (Ex. 2) On July 31, 2008, Division personnel had a discussion with the Claimant's husband regarding excess resources. At that time, Claimant's husband requested a fair hearing. (Ex. 3.1). On August 1, 2008, the Division sent the Claimant notice her recertification for all Food Stamp benefits was denied due to excess resources. (Ex. 4) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held September 3, 2008. The Claimant attended the hearing telephonically and represented herself. [REDACTED], Public Assistance Analyst with the Division, attended in person to represent the Division.

**ISSUES**

The Division argues the value of Claimant's Ford Escape is over \$2,000 and should be considered a resource when determining Food Stamp benefits.

The Claimant argues the Ford Escape should not be considered to have any value because it is not in working order.

The issue is:

Was the Division correct to deny the Claimant's Food Stamp recertification application because she owned countable resources worth over \$2,000?

### **FINDINGS OF FACT**

1. The Claimant submitted a recertification application for Food Stamp benefits on June 30, 2008, that application was signed on June 22, 2008. Claimant is [REDACTED] years of age (DOB [REDACTED]). (Ex. 2).
2. After the agency processed the Application, the Division interviewed the Claimant's husband on July 31, 2008. During the interview with Division personnel, he admitted the household owned an unlicensed [REDACTED] which, at that time, was parked and not drivable. The Claimant's husband valued that vehicle at \$2,700.00. (Ex. 3). The household had two bank accounts with a total of \$52.71 in value. The household also owned additional vehicles, but those vehicles are not at issue.
3. Division personal discussed the household's resources with Claimant's husband at that interview on July 31, 2008. At that time, Division personal advised him the household had excess resources. The Claimant's husband requested a hearing. (Ex. 3.1) The Division sent the Claimant a denial notice on August 1, 2008. (Ex. 4).
4. If drivable, the [REDACTED] has a value of \$5,725.00 pursuant to National Automobile Dealers Association (NADA). The Claimant testified at hearing it would cost a total maximum of \$3,350.00 to repair the vehicle. (Approximately \$250.00 - \$350.00 would make the vehicle drivable by repairing the rear end; \$3,000.00 would repair the body damage.) Subtracting \$3,350.00, the cost of repairs, from \$5,725.00, the NADA value, leaves a remainder of \$2,375.00. The Claimant testified she does not have enough money to repair the vehicle. She has not tried to sell the vehicle in its current condition.

### **PRINCIPLES OF LAW**

This case involves the denial of a recertification application for Food Stamp benefits. When a Food Stamp application is denied, the individual reapplying has the burden of proof.<sup>1</sup> Because of the manner in which the Food Stamp program is administered, each recertification application involves an independent and new eligibility determination. See, *Banks v. Black*, 700 F.2d 292, 296-297 (6<sup>th</sup> Cir. 1983). Therefore the Claimant has the burden of proof by a preponderance of the evidence.<sup>2</sup>

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<sup>1</sup> "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)

<sup>2</sup> Preponderance of the evidence is defined as follows:

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.

A vehicle, either licensed or unlicensed, is considered a resource. 7 CFR 273(c)(2). However, vehicles owned by the household but used for certain purposes, such as income-producing or transporting a disabled household member, are excluded from the resource limit. 7 CFR 273(e)(3). The remainder of the vehicles owned by the household are then non-excluded vehicles and are counted as a resource.

Federal Regulation 7 CFR 273.8 (f) states the following regarding determining the value of non-excluded vehicles:

(1) The State agency must:

(i) Individually evaluate the fair market value of each licensed vehicle that is not excluded under paragraph (e)(3) of this section;

(ii) Count in full toward the household's resource level, regardless of any encumbrances on the vehicle, that portion of the fair market value that exceeds \$4,650 beginning October 1, 1996;

(iii) Evaluate such licensed vehicles as well as all unlicensed vehicles for their equity value (fair market value less encumbrances), unless specifically exempt from the equity value test; and

(iv) Count as a resource only the greater of the two amounts if the vehicle has a countable fair market value of more than \$4,650 after October 1, 1996, and also has a countable equity value.

State agencies are responsible for establishing methodologies for determining the fair market value of vehicles. 7 CFR 273.8(f)(3).

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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 (5<sup>th</sup> Ed. 1979)

## ANALYSIS

The issue is did the Division err when it denied the Claimant's Food Stamp application because she owned countable resources worth over \$2,000.00? The parties agree the Claimant's Ford Escape is a non-excluded resource pursuant to 7 CFR 273.8(e). The Division's original decision to terminate Claimant's Food Stamp benefits was made based on the household reporting the value of the Ford Escape being \$2,700.00. The Division's initial decision was based on information provided by the household. Based on the household's \$2,700.00 value of the [REDACTED], the household had a resource over \$2,000.00, that resource was non-excludable, therefore, the household's resources were over the \$2,000.00 resource limit.

The Division later made its own determination regarding the value of the vehicle. There were no encumbrances on the vehicle. The Division took the NADA value of the vehicle, subtracted the cost of the repairs, and determined the fair market value to be \$2,375.00. The Division is responsible for establishing the fair market value of the vehicle. 7 CFR 273.8(f)(3). The Division use of its methodology in this case is fair.

The Division's calculations were also favorable to the Claimant, as it excluded the \$3,000.00 cost of body work from the value of the vehicle, despite the fact the body work had no effect on the drivability of the vehicle. The Division's calculation of the vehicle's value is also lower then the value given by the Claimant's husband.

Based on the Division's \$2,375.00 value of the [REDACTED], the household had a resource over \$2,000.00, that resource was non-excludable, therefore, the household's resources were over the \$2,000.00 resource limit. Accordingly, the Claimant did not meet the required burden of proof.

The Division was therefore correct to deny the Claimant's June 30, 2008, Food Stamp recertification application because she had resources in excess of the \$2,000.00 limit.

## CONCLUSIONS OF LAW

The Claimant owned resources in excess of \$2,000.00. Therefore, the Division was correct when it denied her June 30, 2008 Food Stamp recertification application.

## DECISION

The Division was correct when it denied the Claimant's June 30, 2008 recertification 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.


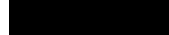
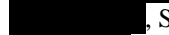

DATED this \_\_\_\_\_ day of September, 2008.

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

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Al Levitre  
Law Office Assistant I