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

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|---|---|--|
| In the Matter of  | ) |  |
|   | ) |  |
|  | ) | OHA Case No. 08-FH-788   |
|   | ) |  |
| Claimant.   | ) | Division Case No. 0"  |
| _____   | ) |  |

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

 (Claimant) was receiving Food Stamps and Adult Public Assistance. (Ex. 1) On September 19, 2008, the Division of Public Assistance (Division) sent Claimant written notice her Adult Public Assistance case would close on September 30, 2008, and her benefits would be converted to Family Medicaid. (Ex. 2.2) On September 22, 2009 the Division sent her written notice her Family Medicaid and Food Stamps cases were to close effective October 31, 2009 due to excess resources. (Ex. 2.3 & 2.5) The Claimant requested a fair hearing on her Medicaid benefits case on October 30, 2008. (Ex. 5.0) This fair hearing request was later extended to her Food Stamp benefits. (Agency Position Statement) This Office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was scheduled for December 23, 2008. Claimant requested a continuance, and the hearing was rescheduled and held on April 8, 2009. Claimant attended telephonically and represented and testified on her own behalf. , Public Assistance Analyst with the Division, attended in person. She represented the Division and testified on its behalf.

## ISSUE

Was the Division correct to terminate Claimant and her household from Family Medicaid and Food Stamp benefits because of excess resources?

## FINDINGS OF FACT

The following facts are established by a preponderance of the evidence.

1. The Claimant was receiving Food Stamps and Adult Public Assistance. (Ex. 1). Claimant went through a review with the Social Security Administration and was determined no longer disabled and therefore no longer eligible for Social Security Disability benefits. Therefore, on September 18, 2008, the Division terminated her Adult Public Assistance benefits effective September 30, 2008. (Ex. 2) The Division extended Family Medicaid benefits to her, effective October 1, 2008. (Ex. 2.2)
2. The Division stated in a September 18, 2008 note that Claimant had \$28,190.41 in a bank account for a business she was opening. (Ex. 2)
3. The money in her account came from a Small Business Administration Loan and two grants. (Ex. 2) One grant was from the Mental Health Trust and the other was from the Division of Vocational Rehabilitation. (Ex. 2) The Claimant received the Small Business Administration Loan in February of 2008 in the amount of \$50,000.00. (Ex. 2.4 & Claimant testimony) She is required to pay this loan back, and is making payments in the amount of \$645.00 per month. (Claimant testimony) She received the two grants in July and May of 2008. (Claimant testimony) The Mental Health Trust awarded her \$5,700.00 and the Division of Vocational Rehabilitation awarded her \$13,000.00. (Ex. 2.4) She is not required to pay back the two grants. (Claimant testimony)
4. The money Claimant received was to be used in business ventures only. (Ex. 2) However, Claimant did draw from the bank account in September of 2008 for personal reasons after her Social Security benefits were terminated. (Ex. 2 & Claimant testimony) She has used the entire amount of the grant money, as she had to provide receipts to the grantors. (Ex. 2.4)
5. On September 22, 2009, the Division sent Claimant written notice her Family Medicaid and Food Stamps cases were to close effective October 31, 2009 due to excess resources. (Ex. 2.3 & 2.5) The Division reasoned that “loans are exempt income when they are initially received, but money from the loans that is retained is a countable resource. There are no exemptions for working capital and resources.” (Ex. 2.1 & 2.3)
6. Claimant testified she needs the balance from her bank account for working capital and would have to close her business if she had to have resources of \$2,000.00 or less.

## **PRINCIPLES OF LAW**

“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). The standard of proof in an administrative proceeding is a “preponderance of the evidence,” unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Com’n*, 711 P.2d 1170, 1183 (Alaska 1986). “Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the triers of fact that the asserted facts are probably true.” *Robinson v. Municipality of Anchorage*, 69, P.3d 489, 493 (Alaska 2003).

Alaska Regulation 7 AAC 100.136(a) states in pertinent part: “A household is not eligible for Family Medicaid if the household has nonexempt resources, as determined under 7 AAC [100.138](#) and 7 AAC [100.140](#), with a total value, as determined under 7 AAC [100.144](#), in excess of \$2,000...”

7 AAC 100.138 provides a list of resources exempt from the restrictions of 7 AAC 100.136(a). “Cash on hand or in an account is an exempt resource if it was received as (1) an educational, personal, commercial, or other loan for which the borrower has an obligation, and expresses intent, to repay.” 7 AAC 100.138(q)(1)

To be eligible for the Food Stamp Program, a household may not have more than \$2,000 in countable resources. 7 CFR § 273.8(b). There are a number of excluded resources listed in 7 CFR § 273.8(e). The only one closely related is 7 CFR § 273.8(e)(8). That section states that if a resource having a cash value is not accessible to the household, it is excluded from being a “countable resource.”

## **DISCUSSION**

The issue in this case is whether the Division was correct to terminate Claimant and her household from Family Medicaid and Food Stamp benefits because of excess resources. Because the Division seeks to terminate Claimant’s Family Medicaid and Food Stamp benefits, it is attempting to change the status quo. Accordingly, the Division has the burden of proof by a preponderance of the evidence. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Com’n*, 711 P.2d 1170, 1183 (Alaska 1986).

### **Family Medicaid**

Because Claimant has \$28,190.41 in her business account, she has over \$2,000.00 in resources, and therefore, would not be eligible for Family Medicaid benefits unless her resources are exempt. 7 AAC 100.136(a) Claimant’s cash in an account is an exempt resource if it was received as a commercial loan for which she has an obligation to repay and expresses intent to repay. 7 AAC 100.138(q)(1) Claimant received the cash in her account from two grants and one loan from the Small Business Administration. The cash from the grants had been spent, and receipts provided. Therefore, the remainder of the

cash in Claimant's account is from the loan. This loan was a commercial loan to assist in the start of her business. She has an obligation to pay this loan and is demonstrating an intent to repay it by making monthly payments on \$645.00. Therefore, Claimant's cash in her account is an exempt resource pursuant to 7 AAC 100.138(q)(1). Because it is an exempt resource, it does not apply to the \$2,000.00 restriction of 7 AAC 100.144. Therefore, the Division has failed to meet her burden of proof that Claimant is not eligible for Family Medicaid benefits.

#### Food Stamps

Because Claimant has \$28,190.41 in her business account, she has over \$2,000.00 in resources, and therefore, would not be eligible for Food Stamp benefits unless her resources are exempt. If a resource has a cash value that is not accessible to the household, it is excluded. 7 CFR § 273.8(e)(8) However, Claimant has used the money in the bank account for personal purposes. Therefore, the exclusion in 7 CFR § 273.8(e)(8) does not apply in this case. There are no other exclusions from resources that apply in this case. Therefore, the Division has met its burden of proof that Claimant exceeded the \$2,000.00 countable resource limit, and therefore, is not eligible for Food Stamp benefits.

### **CONCLUSIONS OF LAW**

1. The Division has failed to meet its burden of proof by a preponderance of evidence in demonstrating that Claimant's money in her bank account is an excess resource pursuant to 7 AAC 100.136(a). Therefore, the Division acted improperly in terminating Claimant's Family Medicaid effective October 31, 2009.
2. The Division has met its burden of proof by a preponderance of evidence that Claimant's money in her bank account is an excess resource pursuant to 7 CFR § 273.8(b). Therefore, the Division acted properly in terminating Claimant's Food Stamp benefits effective October 31, 2009.

### **DECISION**

1. The Division was not correct when it terminated the Claimant's Family Medicaid benefits effective October 31, 2009.
2. The Division was correct when it terminated the Claimant's Food Stamp benefits as of October 31, 2009.

**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 6th day of August 2009.


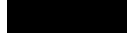
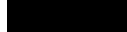
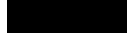
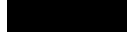

Patricia Huna-Jines  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 6<sup>th</sup> day of August 2009, true and correct copies of the foregoing were sent to:

Claimant by First Class Mail, Certified, Return Receipt Requested.

And to the following by email:

, Fair Hearing Representative  
, Director  
, Director's Office  
, Policy & Program Development  
, Policy & Program Development  
, Staff Development & Training

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Al Levitre, Law Office Assistant I