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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-924
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

ERRATA

A decision was issued in this matter on March 26, 2009. There was an omission in the final Decision on page 6. The final Decision only addressed the Food Stamp Program. The final Decision should have also addressed the Temporary Assistance and Medicaid Programs. The final Decision on page 6 should read:

The Division's denial of Claimant's Food Stamps, Medicaid, and Temporary Assistance was in error and therefore, the Division's denial of all three programs is reversed.

DATED this ____ day of April, 2009.

Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this __ day of April, 2009, true and correct copies of the foregoing document were sent to the Claimant via certified mail, return receipt requested, and to the remainder of the service list by e-mail, as follows:

Claimant
[REDACTED], Director
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training
Office of Fair Hearing Representative
[REDACTED], Administrative Assistant II
[REDACTED], Eligibility Technician I

Al Levitre
Law Office Assistant I

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In the Matter of)
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 [REDACTED],) OHA Case No. 08-FH-924
)
 Claimant.) Division Case No. [REDACTED]
)
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FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Alaska Temporary Assistance, Medicaid, and Food Stamp benefits on December 1, 2008. (Ex. 1) On December 5, 2008, the Division of Public Assistance (Division) sent the Claimant notice his application for all three public assistance benefit programs was denied. (Ex. 2.16) The Claimant requested a fair hearing on February 14, 2008. (Ex. 3.1) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held on January 21, 2009. The Claimant attended the hearing telephonically and represented himself. [REDACTED], Public Assistance Analyst with the Division, attended in person to represent and testify on behalf of the Division.

ISSUES

Was the Division correct to deny the Claimant's December 1, 2008, Food Stamp, Temporary Assistance, and Medicaid application because he owned countable resources worth over \$2,000?

FINDINGS OF FACT

1. The Claimant applied for Temporary Assistance, Medicaid and Food Stamp benefits with the Division on December 1, 2008. (Ex. 1). The Claimant's household

consists of himself, his wife, and his minor child. (Ex. 1). In this application, the only property the Claimant disclosed was his house. (Ex. 2.8).

2. During a December 4, 2008 interview with Division personnel, the Claimant admitted owning three pieces of property. He had a home on one lot. The other two pieces of property were two adjoining lots that were separate from the Claimant's home lot. Division personnel discussed the two adjoining lots with the Claimant and wrote the following in notes: "The land from [REDACTED] was purchased by PI's brother and given to them. He said the value is \$40,000." (Ex. 2).

3. On December 5, 2008, Division personnel again discussed the two lots with the Claimant. The notes Division personnel wrote regarding that conversation state: "PI said the land is in his name. PI said his brother paid 20,000 for the land, said it is worth 40,000 and owes his brother 20,000. FMV 40000 less 20000 = 20000 equity." (Ex. 4.1).

4. On December 5, 2008, the Division denied Claimant's application because he was over the resource limit. The denial notice stated the following: "Based on our phone conversation about your land, you are over the resource limit for our programs. The land that your brother bought for \$20,000 that is valued for \$40,000 and is in your name does not adjoin your property that you now live on and are making payments on." (Ex. 2.17).

5. At the time of Claimant's application, Claimant had owned property consisting of two adjoining lots that were separate from the land his home was on. The following evidence describes the value and equity in the property.

a. An undated document labeled "Escrow Instructions" demonstrate four pieces of property were purchased from [REDACTED], by various family members of the Claimant, including the Claimant's brother, [REDACTED]. Claimant and his wife purchased two lots with a combined purchase price of \$19,500.00. The combined purchase price of all lots was \$39,000.00. (Ex. B).

b. Bank records of [REDACTED], indicate \$39,000.00 was transferred to the escrow service on August 31, 2007. (Ex. C). Claimant testified at the hearing that his brother paid for all four lots and the plan was for Claimant to pay his brother for the price of his two lots.

c. At the time of Claimant's application to the Division, Claimant and his wife had title to the two pieces of adjoining property. The Alaska Recorder's Office indicates the deed to the property from [REDACTED] to the Claimant and his wife was recorded on September 25, 2007. (Ex. 2.15).

d. Claimant entered a Payment Agreement with his brother, [REDACTED], on September 12, 2007. The agreement stated: "I [REDACTED] agree to pay sum of \$19500.00 for a lot at [REDACTED] Subdivision to [REDACTED] By December 31, 2008. If the sum is not paid in full by the date stated above, I relinquish all my rights, title and interest to the land. The lot will then go back to

██████████ name.” This agreement was not notarized or witnessed. In addition, the copy provided does not indicate it was recorded. (Ex. A, p. 2).

e. Claimant testified at hearing he was never able to pay his brother for the property. He suffered a workers’ compensation injury and has not been working. His workers compensation benefits ended in September of 2008. (See also, Ex. 2.2).

f. Claimant testified at hearing that since the purchase in 2007, the property has decreased in value. He believes the property is worth \$15,000.00.

PRINCIPLES OF LAW

Burden of Proof and Standard of Proof

“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).

Food Stamps

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). The value of a resource is its equity value. 7 CFR 273.8(b)(2). The equity value is the fair market value less encumbrances. 7 CFR 273.8(b)(2).

Temporary Assistance

The Temporary Assistance program also has a resource limit of \$2,000. 7 AAC 45.280.

The department will determine the value of an available nonexempt resource by determining the applicant’s or recipient’s equity in that resource. Equity value is equal to the dollar amount that results from subtracting all legitimate debt secured by legal encumbrance on the title to the property from the fair market value of the property. For purposes of this subsection “legal encumbrance” means a security interest or lien that is enforceable by a legal action.

7 AAC 45.310

Medicaid

A household is not eligible for Family Medicaid if the household has nonexempt resources in excess of \$2000.00. 7 AAC 100.130

The department will determine the value of an available nonexempt resource by determining the applicant's or recipient's equity in that resource. Equity value is equal to the dollar amount that results from subtracting all legitimate debt secured by legal encumbrance on the title to the property from the fair market value of the property.

7 AAC 100.144.

An equitable mortgage is “[a] transaction that has the intent but not the form of a mortgage, and that a court of equity will treat as a mortgage.” *Allen v. Vaughn*, 161 P.3d 1209, 1215 fn. 22. An equitable mortgage was recognized in the State of Alaska in 1968 and has been relied on since. *Id.*¹

ANALYSIS

The issue in this case is whether or not the Division was correct when it denied the Claimant's application for Food Stamps, Temporary Assistance, and Medicaid benefits because he owned countable resources worth over \$2,000.

This case involves the denial of an application for benefits. Therefore, the applicant (Claimant) has the burden of proof because he is the party attempting to change the existing status quo by submitting an application to obtain benefits. This burden of proof is by a preponderance of the evidence.

All three benefit programs have a resource limit of \$2,000. 7 CFR 273.8(b)(Food Stamps); 7 AAC 45.280(Temporary Assistance); 7 AAC 100.130 (Medicaid) All three programs also have very similar definitions for determining the equity value of a piece of real property owned by an applicant at the time of application on December 1, 2008.

In all three programs, the first step in determining the equity value of the property is arriving at the fair market value of the property. 7 CFR 273.8(b)(2) (Food Stamps); 7 AAC 45.310 (Temporary Assistance); 7 AAC 100.144 (Medicaid).

¹ See also, *Dworkin v. First Nat. Bank of Fairbanks*, 444 P.2d 777 (Alaska 1968). “There can be no doubt * * * that where one party advances money to another upon the faith of a verbal agreement by the latter to secure its payment by a mortgage upon certain lands, but which is never executed, or which, if executed, is so defective or informal as to fail in effectuating the purpose of its execution, equity will impress upon the land intended to be mortgaged a lien in favor of the creditor who advanced the money for the security and satisfaction of his debt.”

The Claimant testified he believes the property is worth \$15,000.00, because the value has been reduced since its purchase in 2007. The Claimant has offered no proof to substantiate his claim.

Less weight is given to the two notes Division personnel wrote after discussion with Claimant on December 4 and 5, 2008. These notes state Claimant reported the property value at \$40,000. (Ex. 2 & 3). However, Claimant's property of two lots was purchased for \$19,500.00 in August 2007 and paid for by Claimant's brother. These two lots were purchased during the same transaction that Claimant's brothers purchased two other adjoining lots for \$39,000.00. (Ex. B).

Confusion could have arisen during the December 4th and 5th conversations regarding whether Claimant was speaking about the entire value of the four lot purchase, or merely the value of Claimant's two lots. However, given the date of purchase was just a little over a year from the date of Claimant's interview with Division personnel, it is unlikely Claimant's lots purchased for \$19,500 doubled in value to \$40,000 during that time. Therefore, when Claimant was discussing the value of the lots, a reasonable inference is the value of the entire four lot purchase as being \$40,000.

The property was purchased a little over a year ago for \$19,500.00. This is a good indication of the present value. Therefore, the value of the property is established at \$19,500.00.

The next step in determining equity is determining the amount of any encumbrances. Claimant entered into an agreement agreeing to pay his brother \$19,500.00 for the property at issue. The Agreement then stated if the Claimant failed to pay by a specific date, the Claimant's brother would then own the property. (Ex. A). This language demonstrates an intent to have a mortgage but does not contain formalities such as notarization, witnesses, or recordation. The Alaska Supreme Court has recognized a document that demonstrates an intent of a mortgage, even if it is not notarized, witnessed, or recorded, as an equitable mortgage. *Allen v. Vaughn*, 161 P.3d 1209 (Alaska 2007). Therefore, the Payment Agreement is an equitable mortgage pursuant to *Allen*.

Since the equitable mortgage is recognized as a mortgage, it is an encumbrance on the land. Therefore, the Payment Agreement Claimant entered with his brother on September 12, 2007 is an encumbrance in the amount of \$19,500. (Ex. A)

By his own admission, Claimant has not paid his brother any money for the property. Therefore, his brother has an enforceable encumbrance against Claimant's property in the amount of \$19,500.00.

The encumbrance on the property is \$19,500.00. The fair market value of the property is \$19,500.00. After subtracting the amount of the encumbrance from the fair market value, the Claimant has no equity value in the property. Therefore, Claimant's ownership in the property did not put him over the \$2000.00 resource limit for the Food Stamps,

Temporary Assistance, and Medicaid programs. Accordingly the Division erred when it denied Claimant's application because he owned property that put him over the resource limit.

CONCLUSIONS OF LAW

1. The Claimant has met his burden of proof by a preponderance of evidence that he had no equity value in the real property that is the subject of this decision.
2. The Claimant has met his burden of proof by a preponderance of evidence that the Division was incorrect to deny his December 1, 2008 application for benefits based on a determination that the real property caused Claimant to be over the resource limit for the Food Stamp, Medicaid, and Temporary Assistance programs.

DECISION

The Division's denial of Claimant's Food Stamp Benefits was in error and therefore, the Division's denial is reversed.

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 March, 2009.

Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this __ day of March, 2009, true and correct copies of the foregoing document were sent to the Claimant via certified mail, return receipt

requested, and to the remainder of the service list by e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested.

[REDACTED], Director
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training
Office of Fair Hearing Representative
[REDACTED], Administrative Assistant II
[REDACTED], Eligibility Technician I

Al Levitre
Law Office Assistant I