

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Ph: (907) 334-2239
Fax: (907) 334-2285

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

In the Matter of)
)
 [REDACTED],)
)
)
) OHA Case No. 09-FH-523
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. [REDACTED], (Claimant), completed and signed an Application for Services (Application) for Adult Public Assistance on July 20, 2009.¹ (Ex. 2.0-2.9) The Division of Public Assistance (Division) date stamped this Application on July 20, 2009. (Ex. 2.0) The Division denied Claimant's Application for Adult Public Assistance on September 9, 2009 because she had resources valued in excess of the maximum resource value allowed by the program. (Ex. 5.0)

On September 16, 2009, Claimant orally requested a Fair Hearing. (Exs. 6.0-6.1) The Office of Hearings and Appeals (Office) has jurisdiction under authority of 7 AAC 49.010 *et. seq.*

A Fair Hearing was held November 24, 2009. Claimant appeared in person and testified on her own behalf. Ms. [REDACTED], the Division's Public Assistance Analyst, appeared in person and testified on behalf of the Division.

At the Fair Hearing, the parties agreed to leave the hearing record open through 4:30 p.m. on November 24, 2009 because Claimant wanted to send, by fax, additional documents,

¹ Claimant also applied for Medicaid benefits. (Ex. 2.-0) The Division approved Claimant's eligibility for Medicaid on September 9, 2009 based on Claimant's receipt of Supplemental Security Income. (Ex. 5.1) Claimant's Medicaid is not at issue in this case and therefore will not be addressed further.

in support of her testimony. She stated that she had forgotten at home because she was in the process of moving from Anchorage to [REDACTED]. It was clear no further argument was to be submitted. The documents were to consist only of the proof of Claimant's license suspension and "web sheets" from the Kelly Blue Book, all of which Claimant estimated to be about 6 pages.

Claimant did not timely file proof her license was suspended and the Division objected to the late filing.² Claimant did not file any information from the Kelly Blue Book. Accordingly, the hearing record closed on November 24, 2009 at 4:30 p.m.

ISSUE

Was the Division correct to deny Claimant's July 20, 2009 Application for Adult Public Assistance because the value of her resources exceeded the allowed resource limit of \$2,000?

FINDINGS OF FACT

The following facts have been proved by a preponderance of the evidence:

1. Claimant, completed and signed an Application for Services (Application) requesting Adult Public Assistance benefits³ for herself⁴ on July 20, 2009. (Exs. 2.0-2.9) This Application was received by the Division on July 20, 2009. (Ex. 2.0)
2. On her Application, Claimant identified a bank account but did not disclose a dollar value for the account. (Ex. 2.4) Subsequently, at an eligibility interview on August 31, 2009, Claimant identified the account as a checking account valued at \$100.00. (Ex. 3.0)
3. Also on her Application, Claimant's disclosed she owned one vehicle, a 2000 [REDACTED] ([REDACTED]) with an estimated value of \$900 and free of indebtedness. (Ex. 2.4) Claimant offered no evidence at the fair hearing supporting her valuation of the [REDACTED] at \$900. (Claimant testimony)
4. On August 31, 2009, Claimant participated in an eligibility intake interview. (Ex. 3.0) During the interview, the Eligibility Technician determined the [REDACTED] was

² All post-hearing submissions from Claimant and the Division were untimely filed. Claimant's submissions were due Tuesday, November 24, 2009; she stated she was in the process of moving from Anchorage back to [REDACTED]. On Friday, November 27, 2009 when Claimant attempted to fax her submissions, the Office fax machine ran out of ink. Claimant's documents were received on Monday, November 30, 2009. Nonetheless, her submissions were due November 24, 2009 and thus were late. The Division's response was due December 1, 2009 and was not received until December 3, 2009, also late. All submitted documents were marked for identification purposes only. None were considered in rendering this Decision.

³ See footnote 1.

⁴ Claimant applied as an individual, one member household. (Ex. 2.1)

physically located in [REDACTED] and that Claimant had purchased it from her mother after her mother's passing. (Ex. 3.0) Claimant paid \$4,500 for the [REDACTED] with funds Claimant inherited from her mother's estate. (Ex. 3.0)

5. Also during the August 31, 2009 eligibility interview, the Eligibility Technician attributed a value of \$3,475 to the 2000 Suzuki [REDACTED] based on the NADA Guide. (Ex. 3.1) This amount was the "Rough Trade-In" value, the lowest of four values attributed by NADA to a 2000 [REDACTED]. (Ex. 3.1)

6. The Division attributed no resources other than the [REDACTED], valued at \$3,575,⁵ and the \$100 checking account to Claimant. (Ex. 5.0) It denied Claimant's Application because these two resources, combined, exceeded the \$2,000 Adult Public Assistance resource limit. (Ex. 5.0)

7. On September 9, 2009, the Division sent Claimant a notice that her application for Adult Public Assistance (APA) benefits had been denied because her "countable resources" exceeded the \$2,000 APA resource limit. (Ex. 5.0) In the notice, the Division explained it had attributed resources to Claimant consisting of the 2000 [REDACTED] valued at \$3,575.00 and \$100.00 as cash on hand. (Ex. 5.0)

8. On September 16, 2009, Claimant orally requested a fair hearing. (Ex. 6.0) Claimant asserted she wanted a fair hearing because the 2000 [REDACTED] was not worth \$3,475, and should not be counted as a resource because it was not immediately available to her as it was not in Alaska. (Ex. 6.0-6.1)

9. Claimant's fair hearing was held on November 24, 2009.

10. In support of her arguments, Claimant provided four exhibits at the hearing:

a) A State of Alaska handicap license plate expiring August 2011 [REDACTED]; (Ex. A)

b) A State of Alaska Certificate of Vehicle Title issued August 25, 2009 showing Claimant as owner of a 2000 [REDACTED] (no model shown), 4 door, with 49,000 miles and no lien; (Ex. B)

c) A photo of the [REDACTED] showing a plate "[REDACTED]" (without identification of a state) where a license plate might be, and showing the vehicle to appear in perfect condition with reflection from the sun off the paint of the vehicle; (Ex. C)

⁵ It is unclear why the Division increased its valuation of the [REDACTED] from \$3,475.00 to \$3,575.00. (Compare Exs. 5.0 with 3.0, 3.1) In Exhibit 3.0-3.1, a note pertaining to Claimant's eligibility interview, the Division adopted the NADA \$3,475.00 value but on Exhibit 5, the denial notice, the amount for the [REDACTED] is shown as \$3,575.00. This difference appears to be an immaterial typographic error, because Claimant's total countable resources are shown as \$3,575.00 in the denial notice. (Ex. 5).

d) A photo of the front left headlight area and bumper of a vehicle with license plate reading, partly, [REDACTED], which Claimant testified represented the 1981 [REDACTED] located in [REDACTED] AK. (Ex. D)

PRINCIPLES OF LAW

I. Burden 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).

II. Standard of Proof

The regulations applicable to this case do not specify any particular standard of proof. A preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Therefore, the standard of proof is the preponderance of the evidence.

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)

B. Resources

The Adult Public Assistance regulations are found at 7 AAC 40.020-40.900. An applicant for Adult Public Assistance must meet eligibility requirements concerning income and resources. 7 AAC 40.230. An unmarried individual applicant may not have resources valued in excess of \$2,000. 7 AAC 40.270(a)(1).

Resources include any personal property which an applicant “owns and can convert to cash” and any cash or property received for property which otherwise would be a resource. 7 AAC 40.260.

In determining if the \$2,000 maximum resource value has been exceeded, certain resources are excluded from the calculation. Resources whose value is subject to exclusion from the maximum resource limit are identified at 7 AAC 40.280.

Pertinent to this case is the exclusion for some motor vehicles which is found at 7 AAC 40.280(a)(3). This regulation states that in determining resources of an applicant, the Division excludes:

“any other motor vehicle is excluded to the extent that its retail market value does not exceed \$4,500.” (Regulation quoted in relevant part.)

ANALYSIS

I. Issue

Was the Division correct to deny Claimant’s July 20, 2009 Application for Adult Public Assistance because the value of her resources exceeded the limit allowed for eligibility?

II. Burden of Proof and Standard of Proof

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). Claimant is seeking to qualify for Adult Public Assistance benefits and therefore has the burden of proving by a preponderance of the evidence she is eligible.

III. Principle Facts

The Division included only the 2000 [REDACTED] car, valued at \$3,475.00 and the \$100 value of Claimant’s checking account in its determination of Claimant’s resources for purposes of eligibility for Adult Public Assistance benefits.

However, it appears the Division may have overlooked regulation 7 AAC 40.280(a)(3), which applies in this case. This regulation states that in determining resources of an applicant, the Division excludes:

any other motor vehicle is excluded to the extent that its retail market value does not exceed \$4,500.” (Regulation quoted in relevant part.)

Because the Division valued the [REDACTED] at less than \$4,500, it must be excluded as a resource pursuant to regulation 7 AAC 40.280(a)(3). Consequently, the only remaining resource which the Division included in its determination is the \$100 checking account. This does not exceed the \$2,000 resource limit for Adult Public Assistance eligibility.

Accordingly, Claimant met her burden of proof by a preponderance of the evidence and the Division erred in including the value of the [REDACTED] in its determination of Claimant’s resources for purposes of eligibility for Adult Public Assistance benefits.

CONCLUSIONS OF LAW

1. The Division should have excluded the [REDACTED] from its determination of Claimant’s resources, as provided by 7 AAC 40.280(a)(3).

2. Claimant met her burden of proving the Division erred in denying her July 20, 2009 Application for Adult Public Assistance on grounds that the value of her resources exceeded \$2,000.

DECISION

The Division was not correct to deny Claimant's eligibility for Adult Public Assistance because Claimant's resources exceeded the maximum resource value of \$2,000.

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 December, 2009.

/Signed/
Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this _____ day of December 2009, true and correct copies of the foregoing were sent to:

Claimant by U.S.P.S., by Certified Mail, Return Receipt Requested

and to other listed persons by e-mail:

_____, Director
_____, Policy & Program Development
_____, Staff Development & Training
_____, Administrative Assistant II
_____, Eligibility Technician I
_____, Fair Hearing Representative

J. Albert Levitre, Jr.
Law Office Assistant I