

Office of Hearings and Appeals
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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

In the Matter of)
)
 [REDACTED])
)
 Claimant.)
)
 _____)

OHA Case No. 09-FH-556
Division Case No. [REDACTED]

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a recipient of Food Stamp benefits. She reapplied for benefits on October 2, 2009. (Ex. 3.1) On October 12, 2009, the Department of Health and Social Services, Division of Public Assistance (Division) sent Claimant notice her Food Stamps benefit application was denied. (Ex. 5) On October 13, 2009, the Division received Claimant's request for a fair hearing. (Ex. 6.1)

This office has jurisdiction of the Claimant's appeal pursuant to 7 AAC 49.010.

Pursuant to the Claimant's request, a hearing was held on December 9, 2009. During the hearing, communication with the Claimant was lost, and the hearing was continued until January 20, 2010. The participants were the same on both days. Claimant was present telephonically, representing and testifying on her behalf. [REDACTED], a Public Assistance Analyst, was present in person, representing and testifying for the Division.

After the hearing, this case was reassigned to Hearing Authority Patricia Huna-Jines, who reviewed the entire record and listened to a recording of the hearing from both dates, before issuing this decision.¹

¹ Pursuant to 7 CFR 273.15, this Office (the Office of Hearings and Appeals) is required to issue a decision in Food Stamp cases no later than 60 days after the date that the Division receives a claimant or recipient's request for a hearing. This Office cannot prepare its decision until after the hearing is actually held. In this case, because of the Division's delay in calendaring the Claimant's hearing, the 60 days period within which this

ISSUE

Was the Division correct to deny Claimant's October 2, 2009 Food Stamp benefit application and impose a six month penalty because she improperly transferred assets?²

FINDINGS OF FACT

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

1. In August of 2007, Claimant and her daughter purchased property in Fairbanks. At that time, the property was secured by a mortgage for \$54,000.00. (Ex. 4.2) Claimant's daughter is not part of Claimant's household.
2. Claimant was a recipient of Food Stamp benefits when on September 9, 2009, the Division sent notice to Claimant that her Food Stamp case was closed and she would not be receiving benefits after September 30, 2009, because her countable resources were over the limit of \$2,000.00. (Ex. 2)
3. It is uncertain why the Division did not identify the Fairbanks property as a resource until September of 2009. (Ex. 4) In September of 2009, Claimant provided documentation showing the owners still owed \$48,521.00. At that time, the Division considered the Claimant to have a resource of \$5,479.00. ($\$54,000.00 - \$48,521.00 = \$5,479.00$) (Ex. 4)
4. On September 24, 2009, Claimant transferred her property interest, via a notarized quit claim deed, to the co-owner of the property, her daughter. Documentation indicates the daughter paid \$10.00. (3.11 and 4.3)
5. On October 2, 2009, the Claimant signed and submitted a Food Stamp application to the Division. (Ex. 3.1)
6. On October 12, 2009, the Division sent notice her Food Stamp application was denied and a penalty would be imposed. The notice stated in part:

Office is required to issue its decision expired three days after the second hearing date, which was January 20, 2010. It was therefore impossible for this Office to issue its decision within the 60 day period specified by regulation. Accordingly, even though this decision was issued within eight calendar days of the close of the hearing, it is technically late.

² Initially, in the Division's position statement, the penalty proposed to be imposed was for nine months. However, the Division changed its position during the hearing and proposes to impose a penalty for six months. See, Finding of Fact number 8.

[W]e received the documents showing you sold your property at [REDACTED] to [REDACTED] for \$10; since the equity in this property was \$5,479, you sold it for less than fair market value. Because of this, your Food Stamp Application is denied, and our household will be ineligible for Food Stamps for 9 months, through 6/30/2010.

7. Claimant testified at the December 9, 2009, hearing that the property was substantially lower than the purchase price. She further testified she had an appraiser come to her property, but that person had not yet provided at appraisal. She did not provide any appraisal at the January 20, 2010 hearing.

8. At the hearing, the Division recognized that because the property was jointly owned by someone not in Claimant's household, the household's share of the equity was only half of \$5,479.00. Thus, the Division asserts, Claimant's transfer of resource penalty should be based on \$2,739.50. The Division argues the resulting penalty would restrict Claimant from receiving Food Stamp benefits from October 2, 2009 to April 30, 2010.

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)

Food Stamp recertification applications involve new and independent eligibility determinations, and the Claimant therefore has the burden of proof in those proceedings. *Banks v. Block*, 700 F.2d 292, 296-297 (6th Cir. 1983).³

Food Stamp Federal regulations regarding transfer of resources state the following:

(h) Transfer of resources.

³ Federal Regulation 7 CFR 273.14(a) sets forth the Division's authority on processing recertification applications. That regulation states the following:

[N]o household may participate beyond the expiration of the certification period assigned in accordance with 273.10(f) without a determination of eligibility for a new period. The State agency must establish procedures for notifying households of expiration dates, providing application forms, scheduling interviews, and recertifying eligible households prior to the expiration of certification periods. Households must apply for recertification and comply with interview and verification requirements.

(1) At the time of application, households shall be asked to provide information regarding any resources which any household member (or ineligible alien or disqualified person whose resources are being considered available to the household) had transferred within the 3-month period immediately preceding the date of application. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamp benefits shall be disqualified from participation in the program for up to 1 year from the date of the discovery of the transfer. This disqualification period shall be applied *if the resources are transferred knowingly in the 3-month period prior to application* or if they are transferred knowingly after the household is determined eligible for benefits. . . .

7 CFR 273.8(h)(Emphasis added)

The length of the disqualification period is based upon “the amount by which nonexempt transferred resources, when added to other countable resources, exceeds the allowable resource limits.” 7 CFR 273.8(h)(4)

“The maximum allowable resources, including both liquid and nonliquid assets, of all members of the household shall not exceed \$2,000 for the household” unless a member of the household is age 60 or over, then such resources shall not exceed \$3,000.00. 7 CFR 273.8(a)

The period of disqualification for \$250.00 - \$999.99 in excess over the resource limit is 3 months. 7 CFR 273.8(h)(4) The period of disqualification shall begin in the month of application. 7 CFR 273.8(h)(3)

ANALYSIS

The issue in this case is whether the Division was correct to deny Claimant’s October 2, 2009, Food Stamp benefit application and impose a six month penalty because she improperly transferred assets.

Claimant’s October 2, 2009 application involved a new and independent eligibility determination, and therefore, the Claimant has the burden of proof in this case by a preponderance of the evidence. *Banks v. Block*, 700 F.2d 292, 296-297 (6th Cir. 1983).

The Claimant transferred the property in question on September 24, 2009, substantially less than three months prior to her October 2, 2009 application, indeed, only eight days elapsed between the transfer and the application. The transfer was made by a notarized quit claim deed, therefore, it was made knowingly.

The Division asserts the transfer was made for the purpose of qualifying for Food Stamp benefits. On September 9, 2009, Claimant's Food Stamp benefits were terminated because of her ownership in the property. On September 24, 2009, Claimant transferred that ownership interest. She gave no reason for transferring that property. Therefore, the Claimant has failed to meet her burden of proof that the transfer was for no other reason than to qualify for Food Stamp benefits.

Because Claimant's transfer in the property was made knowingly for the purpose of qualifying for Food Stamp benefits, and that transfer was made within 3-months immediately preceding the date of application, the Division was correct to impose of penalty pursuant to 7 CFR 273.8(h).

The Division asserts Claimant's equity interest in the property was \$2,739.50, which is half interest in the purchase price minus the outstanding mortgage balance. (See, Finding of Fact 3 and 8). The Claimant argued the value of the property was substantially less than this amount. She provided no evidence to substantiate her claim. At the December 9, 2009 hearing, she stated she had an appraiser look at the property but he had not yet provided a value. However, at the January 20, 2009 hearing, she still did not provide an appraisal. Based on Claimant's lack of evidence, she has failed to meet her burden of proof that her equity in the property was less than \$2,739.50.

The length of the disqualification period is based upon "the amount by which nonexempt transferred resources, when added to other countable resources, exceeds the allowable resource limits." 7 CFR 273.8(h)(4) Because the Claimant's equity interest in the property was \$2,739.50, the amount in excess of the \$2,000.00 Food Stamp program resource limit is \$739.50. Therefore, pursuant to 7 CFR 273.8(h)(4) the disqualifying period is three months. The period of disqualification shall begin in the month of application. 7 CFR 273.8(h)(3)

CONCLUSIONS OF LAW

The Claimant failed to meet her burden of proof by a preponderance of the evidence that the Division erred in denying her October 2, 2009 application for the Food Stamp benefits and imposing a penalty because she improperly transferred assets with equity in the amount of \$2,739.50.

Pursuant to 7 CFR 273.8(h)(4), the disqualifying period is three months because the amount in excess of the \$2,000.00 Food Stamp program resource limit is \$739.50.

DECISION

The Division's decision to deny Claimant's October 2, 2009 Food Stamp application is affirmed. The Division shall impose a three month penalty.

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, the Claimant must send a written request directly to:

Director of the Division of Public Assistance
Department of Health and Social Services
P.O. Box 110640
Juneau, Alaska 99811-0640

An appeal request must be sent within fifteen (15) days from the date of receipt of this decision. Filing an appeal with the Director could result in the reversal of this decision.


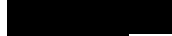
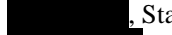
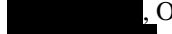
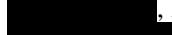

DATED this 27th day of January, 2010.

Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 27th day of January, 2010, 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.

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

Al Levitre
Law Office Assistant I