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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. 09-FH-559  
 )  
 Claimant. ) Division Case No. [REDACTED]  
\_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) applied for Food Stamp and Family Medicaid benefits on August 10, 2009. (Exs. 2.2 – 2.12) On August 27, 2009, the Division of Public Assistance (Division) sent the Claimant written notice his application was denied. (Exs. 4.0 – 4.1) The Claimant requested a fair hearing on October 17, 2009.<sup>1</sup> (Exs. 5.0 – 5.1)

A hearing was held, pursuant to Claimant’s request, on December 17, 2009.<sup>2</sup> The Claimant appeared telephonically; he represented himself and testified on his own behalf. [REDACTED], Public Assistance Analyst with the Division, attended in person; she represented the Division and testified on its behalf.

This office has jurisdiction pursuant to 7 AAC 49.010.

<sup>1</sup> The Claimant applied for Temporary Assistance, Food Stamp, and Family Medicaid benefits. (Exs. 2.2 – 2.12) However, he withdrew his Temporary Assistance application on or about August 26, 2009. (Ex. 3) This case therefore only deals with his application for Food Stamp and Family Medicaid benefits.

<sup>2</sup> Pursuant to 7 CFR 273.15(c)(1), this Office (the Office of Hearings and Appeals) is required to render a decision on Food Stamp cases no later than 60 days after the date that the Division receives a claimant or recipient’s request for a hearing. However, in this case the Division set the date of the Claimant’s hearing more than 60 days after the date that the Claimant requested a hearing. For this reason, and because the hearing officer cannot prepare a decision until after the hearing is actually held, this decision is technically late.

## STATEMENT OF ISSUES

The Division originally denied the Claimant's Food Stamp and Family Medicaid application because it determined the Claimant's various bank accounts and CDs were countable resources that caused him to exceed the \$2,000 resource limit for the Food Stamp and Family Medicaid programs. (Exs. 4.0 – 4.1) The Division subsequently reviewed the Claimant's financial information and, on December 14, 2009, rescinded its earlier denial notice and sent the Claimant written notice his application was denied for a different reason, because he had countable resources worth in excess of \$2,000, which totaled \$3,029.90, consisting of "\$529.90 in combined, non-exempt funds in [the household] checking and savings accounts and a 2004 Yamaha motorcycle valued at \$2500." (Ex. 32)

The two denial notices (August 27, 2009 - Exs. 4.0 – 4.1; December 14, 2009 – Ex. 32) were discussed at hearing. The Claimant consented to proceeding based upon the December 14, 2009 denial notice. The resulting issue is:

Was the Division correct to deny the Claimant's August 10, 2009 Food Stamp and Family Medicaid application because he allegedly owned countable resources worth over \$2,000, specifically \$529.90 in funds and a 2004 Yamaha motorcycle valued at \$2,500?

## FINDINGS OF FACT

1. The Claimant applied for Food Stamp and Family Medicaid benefits on August 10, 2009.<sup>3</sup> (Exs. 2.2 – 2.12) His household consists of himself, his wife, and their two minor children. (Ex. 1) Neither he nor his wife has reached the age of 60 years. *Id.*

2. The Claimant's application disclosed that he and his wife owned the following vehicles:

<u>Vehicle</u>	<u>Use</u>	<u>Value</u>	<u>Amount Owed</u>
2004 Hewes Craft Boat	Fishing	\$10,000	\$12,799
1998 Dodge Dakota	Transportation	\$2,500	- 0 -
2002 Suzuki Vitara	Work	\$1,800	- 0 -
2004 Yamaha Motorcycle	Transportation	\$2,500	- 0 -
1986 Yamaha Motorcycle	Transportation	\$500	- 0 -

(Ex. 2.5)

3. The Claimant and/or his wife also own several bank accounts, which included college savings plan certificates of deposit for their two minor daughters, and an annuity in the wife's name. (Exs. 2.5 – 2.6, 2.13 – 2.18, 2.21 – 2.28)

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<sup>3</sup> The application documents were signed by the Claimant on August 8, 2009. (Ex. 2.12) They contain Division date stamps of August 10, 2009 and August 14, 2009. (Exs. 2.1 – 2.12) This Decision uses August 10, 2009 to refer to the date of the application, which is the earliest date stamp showing on the application documents. (Ex. 2.12)

4. After its review of the Claimant's application, the Division denied the application because it found that the Claimant's household's countable funds, counting the various bank accounts, exceeded the \$2,000 countable resource limit for both the Food Stamp and Family Medicaid programs. (Exs. 4.0, 4.1) The Division did not address or consider the household vehicles when it denied the application. *Id.*

5. The Division subsequently examined the Claimant's funds, determined that the certificates of deposit and annuity were not countable resources, and on December 14, 2009 again denied the Claimant's application. (Ex. 32) The specific reason for the denial was because the Claimant's household countable resources exceeded the \$2,000 countable resource limit for both the Food Stamp and Family Medicaid programs. *Id.* The Division's December 14, 2009 denial notice stated that the household's countable resources consisted of "\$529.90 in combined, non-exempt funds in [the household's] checking and savings accounts and a 2004 Yamaha motorcycle valued at \$2500." *Id.*

6. The Division's December 14, 2009 denial notice (Ex. 32) did not specifically identify where the Division arrived at the figure of \$529.90, nor is it ascertainable based upon the bank statements contained in the record. However, the Claimant did not dispute the Division's figures for either the value of the countable funds (\$529.90), or the 2004 Yamaha motorcycle (\$2,500).

7. The Claimant uses his car for work purposes. (Claimant testimony) His wife uses the other car for transportation and for the children. *Id.* He uses the 2004 Yamaha motorcycle for transportation; however he is not currently using it for transportation due to icy road conditions. *Id.*

### **PRINCIPLES OF LAW**

This case involves the question of whether or not the Division was correct to deny the Claimant's application for Food Stamp and Family Medicaid benefits. Because this case involves the denial of an application, the Claimant has the burden of proof<sup>4</sup> by a preponderance of the evidence.<sup>5</sup>

Family Medicaid is a category of Medicaid coverage provided to financially eligible households containing dependent children. 7 AAC 100.002(a)(1). One of the financial eligibility criteria is that an applicant's household, where none of the household members has reached the age of 60 years, may not own countable resources worth in excess of \$2,000. 7 AAC 100.102(c)(1); 7 AAC 100.130(a).

The Family Medicaid program excludes motor vehicles from being counted for a resource if they are "necessary to meet the basic needs of anyone living in the home" or for transportation to and from

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<sup>4</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>5</sup> 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). Preponderance of the evidence is defined as "[e]vidence 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)

work or school, or are used to produce self-employment income. 7 AAC 100.138(m). Additionally, only resources with an equity value, i.e. where the fair market value of the resource is greater than the debt secured by the resource, are countable resources. 7 AAC 100.144(a).

Food Stamps is a federal program administered by the State. 7 CFR 271.4(a). Like Family Medicaid, one of the financial eligibility criteria is that an applicant's household, where none of the household members has reached the age of 60 years, may not own countable resources worth in excess of \$2,000. 7 CFR 273.8(b).

The Food Stamp program rules on countable resources are different from the Family Medicaid countable resource rules; they are contained in federal regulation 7 CFR 273.8. Vehicles, both licensed and unlicensed, are generally counted as resources. 7 CFR 273.8(c)(2). One licensed vehicle per each adult household member is exempted from being counted as a resource. 7 CFR 273.8(f)((2)(ii). Licensed vehicles that have an equity value of \$1,500 or less are not counted as a resource. 7 CFR 273.8(e)(3)(i)(G).

### ANALYSIS

The issue in this case is whether the Division was correct when it denied the Claimant's application for Food Stamp and Family Medicaid benefits. As an applicant, the Claimant has the burden of proof by a preponderance of the evidence.

It must first be noted the Claimant and his wife are the only adults in their household, and they are both under the age of 60 years. Consequently, if they own more than \$2,000 in countable resources, they are not eligible for either Food Stamp or Family Medicaid benefits. 7 AAC 100.130(a); 7 CFR 273.8(b).

In this case, the Claimant and his wife own two cars, which they use for transportation and work. (*See* Finding of Fact 2 above; Claimant testimony) They own a boat that has no equity; the Claimant values it at \$10,000 and it has a loan against it of \$12,799. *See* Finding of Fact 2 above. They own two motorcycles, one of which is valued at \$1,500 and the other at \$2,500. *Id.* The Division counted the one motorcycle valued at \$2,500 as a countable resource for both the Food Stamp and Medicaid programs. The Division did not count any of the other vehicles as being countable resources.

The Division exempted both of the cars owned by the Claimant and his wife from being counted as resources. This is because the Food Stamp program allows one exempt licensed vehicle per household adult. 7 CFR 273.8(f)((2)(ii). The Medicaid program allows exemptions for vehicles that are used to transportation for work, for school, or to meet basic household needs. 7 AAC 100.138(m). The two cars owned by the Claimant and his wife meet this exemption.

This leaves the boat and the two motorcycles. The two motorcycles are valued at \$1,500 and \$2,500 apiece. The Division did not count either the boat or the \$1,500 motorcycle as a resource. The only vehicle the Division counted as a resource was the motorcycle valued by the Claimant at \$2,500.

The dispositive issue in this case is therefore whether the Division correctly considered the \$2,500 motorcycle as being a countable resource for the Food Stamp and Medicaid programs. It should first be noted that \$2,500 is the value ascribed to the motorcycle by the Claimant. If the motorcycle is found to be a countable resource, its \$2,500 value, by itself, would make the Claimant ineligible for Food Stamp and Family Medicaid benefits.

Because the Division already exempted the Claimant's household's two cars from being counted, the only possible exemption categories for the motorcycle are necessary transport, work, or if its equity is less than \$1,500. The Claimant testified he uses his car for work. The Claimant's wife uses her car for transportation. The motorcycle's equity exceeds \$1,500 since it has a value of \$2,500 and has no debt on it. *See* Finding of Fact 2 above. This would provide the Claimant with only one exemption category for the motorcycle, transportation. However, the Claimant has a vehicle, already exempted, which he can use for transportation as well as work. Further, the motorcycle cannot be the Claimant's primary mode of transportation, due to the fact that it is only usable on a seasonal basis. The Claimant has not met his burden of proof to establish that the motorcycle was exempt from being counted as a resource. The Division was therefore correct when it counted the \$2,500 motorcycle as a countable resource.

The \$2,500 motorcycle caused the Claimant's household to exceed the \$2,000 countable resource limit for both the Food Stamp and Family Medicaid programs.<sup>6</sup> The Division was therefore correct when it denied the Claimant's August 10, 2009 application for Food Stamp and Family Medicaid benefits.

### **CONCLUSIONS OF LAW**

1. The Claimant had the burden of proof to establish that his motorcycle, valued at \$2,500, was exempt from being counted as a resource for the Food Stamp and Medicaid programs. He did not meet his burden of proof to show that the motorcycle fell within one of the resource exemption categories.
2. The Claimant was not financially eligible for Food Stamp and Family Medicaid benefits because he owned a motorcycle valued at \$2,500, which was not an exempt resource, at the time of his August 10, 2009 application.
2. The Division was therefore correct when it denied the Claimant's August 10, 2009 application for Food Stamp and Medicaid benefits.

### **DECISION**

The Division was correct to deny the Claimant's August 10, 2009 application for Food Stamp and Family Medicaid benefits.

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<sup>6</sup> It is not necessary to address the question of the \$529.90 identified by the Division as countable funds belonging to the Claimant (*See* Finding of Fact 5 above), because the motorcycle, by itself, causes the Claimant to exceed the \$2,000 resource limit.

**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 28th day of December, 2009.

/Signed/  
\_\_\_\_\_  
Larry Pederson  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 28th day of December 2009, true and correct copies of the foregoing were sent to: Claimant via Certified Mail, Return Receipt Requested. And to the following by email:

██████████, Division representative  
██████████, Director  
██████████, Director's Office  
██████████, Policy & Program Development  
██████████, Policy & Program Development  
██████████, Staff Development & Training

\_\_\_\_\_  
J. Albert Levitre, Jr. Law Office Assistant I