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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-653
)
 Claimant.) Division Case No. [REDACTED]
)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant),¹ submitted a recertification application for the Food Stamp Program on October 22, 2009. (Ex. 2). On November 17, 2009, the Division of Public Assistance (Division) sent notice denying Claimant's application because the household resources were over the program limit. (Ex. 4) Claimant requested a fair hearing on December 7, 2009. (Ex. 5.1). On January 26, 2010, the Division determined Claimant eligible for Food Stamps as a one person household because Claimant was receiving Adult Public Assistance and the real property does not count as a resource for her. However, the Division still determined Claimant's husband's resources were over the program limit and therefore not eligible for Food Stamp benefits. (Ex. 9)

This office has jurisdiction pursuant to 7 AAC 49.010.²

¹ Both [REDACTED] and her husband [REDACTED] filed the recertification application. However, Ms. [REDACTED] name is identified as the recipient in the Division case file. Mr. [REDACTED] testified that Ms. [REDACTED] would have difficulty representing the household at the hearing and represented the household during the entire hearing process.

² Because of the Division's delay in calendaring the Claimant's hearing, this Office (Office of Hearings and Appeals) is not able to issue this decision within the time frame required by 7 CFR 273.15. This regulation requires this Office 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, the hearing request was received on December 7, 2009, and the hearing was scheduled by the Division personnel for February 11, 2010, but continued until March 4, 2010. (The time period for issuing the decision was extended by the amount of time incurred because of the continuance.) Thus, *this decision was due on February 26, 2010, six days prior to the final hearing date.* It was therefore not possible for this Office to issue its decision within the 60 day period specified by regulation. Accordingly, even though this decision was issued fourteen calendar days after the close of the hearing, it technically is late.

The hearing started on February 11, 2010. The Claimant's husband's telephone was not working properly and he requested a continuance. The hearing was rescheduled and held on March 4, 2010. The husband attended the hearing in person, represented himself and testified on his own behalf. [REDACTED] and [REDACTED] friends of the husband, also testified on the household's behalf. [REDACTED] Public Assistance Analyst with the Division, attended the hearing in person representing and testifying for the Division.

ISSUE

Was the Division correct when on November 17, 2009, it determined the household not eligible for Food Stamp benefits because the household was not making a good faith effort to sell the disputed real property (which was over the program limit) at a reasonable price?

FINDINGS OF FACT

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

1. Claimant and spouse, as a household, signed and submitted a recertification application for Food Stamp benefits on October 22, 2009. (Ex. 2-2.5) Both Claimant and her spouse are over 60 years of age. (Ex. 1)
2. The Division sent Claimant notice on November 17, 2009, denying the reapplication. (Ex. 4). The household would no longer receive Food Stamp benefits after October 31, 2009. The notice stated the denial was because "the resource we counted was land parcel at [REDACTED] (with out the home that burned down value) and the land parcel with the residential cabin (the adjoining lot)." (Ex. 4). The Claimant and her husband are owners of both parcels. (Ex. 3.2 - 3.3)
3. At hearing, the only property in dispute was the adjoining lot with the residential cabin (disputed property). This property is a separate piece of property and is across the road from [REDACTED]. The [REDACTED] property was the household residence until the home was destroyed by fire. At the time of the recertification application, the household was not living on either property. However, the Division considered the [REDACTED] property exempt.
4. The Division attributed the value of the disputed property to be \$74,300.00, which is the tax assessment on the property. (Ex. 3, 3.2 & 6) Claimant's husband testified at hearing the value of the property is closer to \$100,000.00. The household currently owes approximately \$4,000.00 on the property. (Ex. 8)
5. The household has had the disputed property for sale many years. (Testimony of Claimant's husband, [REDACTED], and [REDACTED]) The Claimant's husband has posted two "For Sale" signs on the property. (Testimony of Claimant's husband, [REDACTED], and [REDACTED]) The property is on a cul de sac which adjoins a road that is busy in the summer. (Testimony of Claimant's husband, [REDACTED] and [REDACTED]) There have been no serious offers on the property in approximately two to three years. (Testimony of Claimant's husband)

6. On January 26, 2010, the Division opened the Claimant's Food Stamp case as a one person household and issued benefits for Claimant only, starting November 2009. Since Claimant is receiving Adult Public Assistance, the real property does not count as a resource for her, but still counts as a resource for her husband. Therefore, Claimant's husband is not eligible for Food Stamp benefits. (Ex. 9)

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)

The Food Stamp program has a limit on the amount of resources a recipient can own. "For household including a member or members age 60 or over, such resources shall not exceed \$3,000.00." 7 CFR 273.8(b)

There are exclusions to this resource limit, including, "real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. The State agency may verify that the property is for sale and that the household has not declined a reasonable offer. Verification may be obtained through a collateral contact or documentation, such as an advertisement for public sale in a newspaper for general circulation or a listing with a real estate broker." 7 CFR 273.8(e)(8)

ANALYSIS

The issue in this case is whether the Division was correct when on November 17, 2009, it determined the Claimant's household not eligible for Food Stamp benefits because the household was not making a good faith effort to sell the disputed real property (which was over the program limit) at a reasonable price.

Because this case involves an application for benefits, the Claimant's husband is the party seeking to change the status quo, therefore he has the burden of proof by a preponderance of the evidence.

Although the parties dispute the value of the property, they do not dispute the fact the property in question is over the \$3,000.00 resource limit for the Food Stamp Program. 7 CFR 273.8(b) However, real property over the resource limit can be excluded if the owner is making a good faith effort to sell the property. 7 CFR 273.8(e)(8) Examples of a good faith sale to be advertisement for public sale in a newspaper for general circulation or a listing with a real estate broker. 7 CFR 273.8(e)(8). The Claimant's husband argues he is making a good faith effort to

sell the property, therefore, the property should be exempt. It is his burden to prove his argument.

The household has had the property for sale many years. There have been no serious offers on the property in approximately two to three years. All Claimant's husband has demonstrated was that he has posted two "For Sale" signs on the piece of property located in a cul de sac. The Claimant's husband argues this cul de sac adjoins a high traffic road. However, he also admits this high traffic only occurs in the summer, which is a short period of the year in Alaska. Therefore, the sale of this property does not have the same exposure as an advertisement in a newspaper for general circulation or a listing with a real estate broker. This is further demonstrated by the amount of time the property has been for sale.

The sale of this property does not have the same exposure as an advertisement in a newspaper for general circulation or a listing with a real estate broker. Therefore, the household is not making a good faith attempt to sell the property. Because the household is not making a good faith attempt to sell the property, the property cannot be excluded as an asset for the Food Stamp Program and therefore places the Claimant's husband over the resource limit for the Food Stamp Program.

CONCLUSIONS OF LAW

Claimant's household failed to meet the burden of proof by a preponderance of the evidence that there was an attempt in good faith to sell a piece of property which put the household over the program resource limit. Therefore, the Division's November 17, 2009 denial of the household's October 31, 2009 Food Stamp benefit recertification application was proper.

DECISION

The Division was correct to determine Claimant's household not eligible for the Food Stamp Program after October 31, 2009 because the household was over the program resource limit.

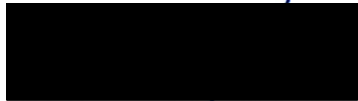
APPEAL RIGHTS

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, the Claimant must 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

An appeal 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 18th day of March, 2010.









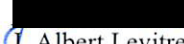
Patricia Huna
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 18th day of March 2010, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

A copy set via e-mail to the following:

-  Fair Hearing Representative
-  DPA Director
-  DPA Director's Office
-  DPA director's Office
-  Chief of Field Services
-  Policy & Program Development
-  Staff Development & Training

J. Albert Levitre, Jr.
Law Office Assistant I