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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. 10-FH-39  
 )  
 Claimant. ) DPA Case No. [REDACTED]  
 )  
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**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) was a recipient of Food Stamp Program benefits (Ex. 2.0). On December 16, 2009 the Claimant submitted a Food Stamp Program Eligibility Review Form (recertification application) to the State of Alaska Department of Health and Social Services, Division of Public Assistance (DPA or Division) (Exs. 2.0 – 2.5). This recertification application was received by the Division on December 21, 2009 (Ex. 2.0). On February 2, 2010 the Division mailed to the Claimant a notice denying the Claimant’s Food Stamp recertification application because of excess resources (Ex. 6). The Claimant requested a fair hearing with regard to the DPA’s denial of her Food Stamp recertification application on February 1, 2010 (Ex. 5.1).

This Office has jurisdiction to decide this case pursuant to 7 AAC 49.010.

A hearing was held on March 17, 2010 before Hearing Examiner Patricia Huna.<sup>1</sup> The Claimant participated in the hearing by telephone, represented herself, and testified on her own behalf. [REDACTED], a Public Assistance Analyst employed by the Division, attended the hearing in person to represent and testify on behalf of the Division.

During the hearing the parties discussed whether the record from a prior Food Stamp case involving the Claimant (OHA Case No. 09-FH-556) should be incorporated into the record in this case. Both parties agreed that the record from the prior case should not be incorporated into the record in this

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<sup>1</sup> Following the hearing this case was reassigned to Hearing Examiner Jay Durych. He reviewed this Office’s hardcopy case file, and listened to the digital recording of the hearing held in this case, prior to preparing and issuing this decision.

case. Accordingly, the evidence from the prior case was not considered by the Hearing Examiner during the adjudication of this case.

All testimony and exhibits offered by the parties at the hearing were admitted into evidence. At the conclusion of the hearing, the record was closed and the case was submitted for decision.

### **ISSUE**

Was the Division correct when, on February 2, 2010, it denied the Claimant's Food Stamp recertification application dated December 16, 2009, based on the assertion that the Claimant's real property located in Delta Junction, Alaska is a countable resource for purposes of the Food Stamp Program?

### **FINDINGS OF FACT**

The following facts were proven by a preponderance of the evidence:

1. The Claimant was a recipient of Food Stamp Program benefits (Ex. 2.0). On December 16, 2009 the Claimant submitted a Food Stamp Program Eligibility Review Form (recertification application) to the Division (Exs. 2.0 – 2.5). This recertification application was received by the Division on December 21, 2009 (Ex. 2.0).
2. On her recertification application the Claimant declared that she and her husband owned land valued at \$8,000.00 (Ex. 2.1). The recertification application did not state the location of this land (Ex. 2.1).
3. On January 28, 2010 the Claimant was interviewed telephonically by an employee of the Division, as part of the recertification process, to determine eligibility (Ex. 3). During this interview the Claimant clarified that the real property that she owns with her husband that she declared on her recertification application is located in Delta Junction, Alaska (Ex. 3). The Claimant stated that this Delta Junction property had no utility service (electricity or water), no foundation, and sawdust for insulation, and was therefore not habitable in the winter (Ex. 3).
4. During the above telephonic interview of January 28, 2010 the Claimant also stated that because the property had no utility service and was therefore not habitable in the winter, her family was not living at the Delta Junction property at that time (Ex. 3). Rather, the Claimant and her family were residing on real property located in Wasilla, Alaska which the Claimant was renting from a daughter (Ex. 3).
5. On February 1, 2010 the Claimant contacted the Division by telephone to inquire as to the status of her Food Stamp recertification application (Ex. 5). The Claimant was informed that her recertification application was being denied because of excess resources (Ex. 5).
6. On February 1, 2010 the Claimant requested a fair hearing based on the Division's oral notification (discussed in the preceding paragraph) that her Food Stamp recertification application had been denied (Ex. 5.1).

7. On February 2, 2010 the Division mailed to the Claimant a notice (Ex. 6) titled “Food Stamps Denied – Over Resource.” The notice stated in relevant part as follows:

Your Food Stamp application received on December 21, 2009 is denied because your countable resources are over the Food Stamp Program limit.

\$2,000.00 is the Food Stamp resource limit for your household. \$8,120.00 is the amount of your resources countable for the Food Stamp Program.

This action is based on Food Stamp Manual Section 602-2 & 602-2B1.

[Claimant] – As we discussed by phone, the home / land that you currently own and are not residing on is a countable resource which the value is over the \$2,000.00 resource limit. As we discussed, if the home is unoccupied for reasons of employment . . . or being uninhabitable due to casualty or natural disaster, it could be an exempt resource and your family could continue to receive Food Stamp benefits. You indicated that the reason you are not living on the home / land is due to the house sitting directly on the ground with no foundation, no water or electricity. However, you intend to return to the home this summer . . . .

8. On February 2, 2010 the Claimant participated in a telephonic pre-hearing conference with an employee of the Division (Ex. 7). During this conference the Claimant stated that she was not living at the Delta Junction property because she was then attempting to regain employment in Wasilla. *Id.*

9. At the hearing of March 17, 2010 the Claimant testified in relevant part that:

a. The Delta Junction property is not habitable in the winter because it lacks basic utilities, has no foundation, and is poorly insulated. Accordingly, she is currently residing at the Wasilla property in a mobile home. She will be moving back to the Delta Junction property in the spring (of 2010).

b. She needs to live at the Wasilla residence so that she can maintain her employment.

c. She does not have enough money to pay for food for her family and/or electricity for their mobile home.

d. The Claimant testified that she owns the Wasilla property in co-tenancy with her daughter. However, the Claimant also testified that she had transferred title to this Wasilla property to her daughter and is actually renting the property from her daughter. Finally, the Claimant also testified that she had transferred the Wasilla property to her daughter as a security device so that her daughter would be protected in case the Claimant could not pay the rent (the Claimant stated that she had not been able to make a rent payment to her daughter for three (3) months).

## PRINCIPLES OF LAW

### I. Burden of Proof and Standard of Proof.

The party seeking a change in the status quo normally bears the burden of proof.<sup>2</sup> Because of the manner in which the Food Stamp Program is administered, each recertification application is considered a new and independent eligibility determination.<sup>3</sup> Accordingly, the Claimant is considered to be attempting to change the status quo or existing state of affairs by re-obtaining Food Stamp benefits, and the Claimant therefore bears the burden of proof in this case.

The regulations applicable to this case do not specify any particular standard of proof. Therefore, the “preponderance of the evidence” standard is the standard of proof applicable to this case.<sup>4</sup> This standard is met when the evidence, taken as a whole, shows that the facts sought to be proved are more probable than not or more likely than not.<sup>5</sup>

### II. The Food Stamp Program – In General.

The Food Stamp Act of 1977 is a federal program. The statutes comprising the Act are codified at 7 USC Sections 2011 – 2029. The federal regulations implementing the program are promulgated by the United States Department of Agriculture and are found primarily in the Code of Federal Regulations (CFRs) at 7 CFR Sections 271 – 274.

The Food Stamp Program is administered by the states. 7 CFR Section 271.4(a). The State of Alaska has adopted regulations to implement the Food Stamp Program. Those regulations are found in the Alaska Administrative Code (AAC) at 7 AAC Sections 46.010 – 7 AAC 46.990.

### III. Food Stamp Program Regulations Concerning Resource Limits.

7 CFR § 273.8 provides in relevant part as follows:

\* \* \* \* \*

(b) Maximum allowable resources. The maximum allowable resources, including both liquid and nonliquid assets, of all members of the household shall not exceed

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<sup>2</sup> *State of Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

<sup>3</sup> *See Banks v. Block*, 700 F.2d 292, 296 – 297 (6<sup>th</sup> Cir. 1983).

<sup>4</sup> A party in an administrative proceeding can assume that preponderance of the evidence is the applicable standard of proof unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170 (Alaska 1986).

<sup>5</sup> *Black’s Law Dictionary* at 1064 (West Publishing, 5<sup>th</sup> Edition, 1979); *see also Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495-496 (Alaska 2003) (“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”).

\$2,000 for the household, except that, for households including a member or members age 60 or over, such resources shall not exceed \$3,000.

(c) Definition of resources. In determining the resources of a household, the following shall be included and documented by the State agency in sufficient detail to permit verification . . . (2) Nonliquid resources [such as] . . . buildings, land, recreational properties, and any other property, provided that these resources are not specifically excluded under paragraph (e) of this section. The value of nonexempt resources, except for [inapplicable], shall be its equity value. The equity value is the fair market value less encumbrances.

\* \* \* \* \*

(e) Exclusions from resources. In determining the resources of a household, only the following shall be excluded: (1) The home and surrounding property . . . *the home and surrounding property shall remain exempt when temporarily unoccupied for reasons of employment . . . or uninhabitability caused by casualty or natural disaster, if the household intends to return . . .* [Emphasis added].

\* \* \* \* \*

Alaska Food Stamp Manual Section 602-2A provides in relevant part that “[t]he total value of all household resources *on the date of the interview* is used to determine the eligibility for that household.” [Emphasis added].

## ANALYSIS

### I. Introduction; Matter at Issue.

It should be noted initially that there was no dispute (1) that the value of the Claimant’s Delta Junction property is \$8,000.00; or (2) that the Food Stamp Program resource limit applicable to the Claimant’s household is \$2,000.00. Accordingly, the only issue is whether the Claimant’s Delta Junction property qualifies as an exempt resource pursuant to the Food Stamp Program regulations. If the property is exempt, then the value of the Claimant’s countable resources is under the \$2,000.00 program limit. If the property is not exempt, then the \$8,000.00 value of the property will cause the Claimant’s household to exceed the Food Stamp Program’s applicable \$2,000.00 countable resource limit. The Claimant has the burden of proving, by a preponderance of the evidence, that the Delta Junction property is an exempt resource (see Principles of Law at page 4, above).

### II. Is The Delta Junction Property an Exempt Resource?

Whether the Claimant’s Delta Junction property is a countable resource or an exempt resource is determined by the application of 7 CFR § 273.8(e). That regulation provides in relevant part as follows:

(e) Exclusions from resources. In determining the resources of a household, only the following shall be excluded: (1) The home and surrounding property . . . . *the home and surrounding property shall remain exempt when temporarily unoccupied for reasons of employment . . . . or uninhabitability caused by casualty or natural disaster, if the household intends to return . . . .* [Emphasis added].

Thus, pursuant to 7 CFR § 273.8(e), the Claimants' Delta Junction property is exempt, even if the Claimant was not residing there at the time of her eligibility interview on January 28, 2010, if either (1) the Delta Junction property was temporarily not occupied for reasons of employment, or (2) the Delta Junction property was not habitable because of casualty or natural disaster. Does either of these exemptions apply here?

The reasons stated by the Claimant for not residing at the Delta Junction property changed during the progress of this case. Prior to the denial of her recertification application, the Claimant advised the Division that her family was not residing at the Delta Junction property because it had no utility service and was therefore not habitable in the winter (Ex. 3). However, on February 2, 2010, after being informed by the Division of the reasons for its denial of benefits, the Claimant stated for the first time that she was not residing at the Delta Junction property because she was attempting to regain employment in Wasilla (Ex. 7).

At the hearing of March 17, 2010 the Claimant testified *both* that (1) she needs to live at the Wasilla residence so that she can maintain her employment there, *and* (2) that she will be moving back to the Delta Junction property in the spring (of 2010). However, it stands to reason that if the Claimant was really living in Wasilla to pursue employment, she would be staying in Wasilla *after* obtaining employment and would not be moving back to Delta Junction in three months or less. Accordingly, the Claimant's two stated reasons for residing in Wasilla instead of at the Delta Junction property are not consistent with each other.

Because the Claimant did not assert that she moved to Wasilla to pursue employment until *after* being informed by the Division that this would be a basis for exempting the Delta Junction property, the Claimant's testimony in that regard is less credible than her other statement (i.e. that she had moved to Wasilla because the Delta Junction property was not habitable in the winter). Accordingly, the preponderance of the evidence indicates that the Claimant moved to Wasilla because the Delta Junction property was not habitable, and not to pursue employment. Accordingly, the exemption for non-occupancy of a residence in order to pursue employment provided by 7 CFR § 273.8(e) does not apply.

On the other hand, the Claimant's testimony that her family had moved out of the Delta Junction property because it was not habitable in winter was consistent both before and after the denial of her recertification application (see Findings of Fact at paragraphs 3, 4, and 9(a), above). Accordingly, the Claimant's testimony that her family had moved out of the Delta Junction property because it was not habitable in winter is credible. Is this a basis for exempting the Delta Junction property as a countable resource?

Regulation 7 CFR § 273.8(e) exempts real property from being counted as a resource if the property is uninhabitable (not habitable). However, to qualify for the exemption provided by 7 CFR § 273.8(e), the property must be not habitable because of "casualty or natural disaster." In this case,

the Claimant's Delta Junction property is not habitable in winter because of a lack of utilities rather than because of any casualty or natural disaster. Accordingly, the Claimant's Delta Junction property also fails to qualify as an exempt resource on this basis.

### III. Summary.

The Claimant failed to carry her burden and did not prove, by a preponderance of the evidence, either (1) that the Delta Junction property was temporarily not occupied for reasons of employment, or (2) that the Delta Junction property was not habitable because of casualty or natural disaster. Accordingly, the Division was correct when, on February 2, 2010, it denied the Claimant's Food Stamp recertification application dated December 16, 2009, because the Claimant's real property located in Delta Junction, Alaska is a countable resource for purposes of the Food Stamp Program pursuant to 7 CFR § 273.8(e).

### **CONCLUSIONS OF LAW**

1. The Claimant failed to carry her burden and did not prove, by a preponderance of the evidence, either:

(a) That the Delta Junction property was temporarily not occupied for reasons of employment; or

(b) That the Delta Junction property was not habitable because of casualty or natural disaster.

2. Accordingly, the Division was correct when, on February 2, 2010, it denied the Claimant's Food Stamp recertification application dated December 16, 2009, because the Claimant's real property located in Delta Junction, Alaska is a countable resource for purposes of the Food Stamp Program pursuant to 7 CFR § 273.8(e).

### **DECISION**

The Division was correct when on February 2, 2010 it denied the Claimant's Food Stamp recertification application dated December 16, 2009 because the Claimant's real property located in Delta Junction, Alaska is a countable resource for purposes of the Food Stamp Program pursuant to 7 CFR § 273.8(e).

### **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 1st day of April, 2010.

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Jay Durych  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 1st day of April 2010 copies of the foregoing document were sent to the Claimant by U.S.P.S mail, and to the remainder of the service list by e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested.  
[REDACTED], DPA Fair Hearing Representative

[REDACTED], Director, Division of Public Assistance  
[REDACTED], Policy & Program Development  
[REDACTED], Staff Development & Training  
[REDACTED], Chief of Field Services  
[REDACTED], Administrative Assistant II  
[REDACTED], Eligibility Technician I

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J. Albert Levitre, Jr.  
Law Office Assistant I