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

In the Matter of	)	
	)	
<b>[REDACTED]</b> ,	)	OHA Case No. 10-FH-209
	)	
Claimant.	)	Division Case No. <b>[REDACTED]</b>
_____	)	

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

**[REDACTED]** (Claimant) submitted an application for the Food Stamp Program on May 13, 2010. (Ex. 2). On June 18, 2010, the Division of Public Assistance (Division) sent notice denying Claimant's application because the household resources were over the program limit. (Ex. 6) Claimant requested a fair hearing on June 7, 2010. (Ex. 7).

This office has jurisdiction pursuant to 7 AAC 49.010.

The hearing was held on August 10, 2010. The Claimant attended the hearing in person, represented herself and testified on her own behalf. **[REDACTED]**, Public Assistance Analyst with the Division, attended the hearing in person representing and testifying for the Division. Claimant was given an opportunity to provide additional documentation and arguments. The record remained open until September 7, 2010 in order to give the parties adequate response time.

**ISSUE**

A custodial bank account for Claimant's son exists in Claimant's name. The Division argues the account should be included when calculating resources in determining eligibility for the Food Stamp Program. Claimant argues the account is a trust account for her son, and designated for a specific use, and therefore should not be included when calculating resources. The issue is:

Was the Division correct when on June 2, 2010, it determined the household not eligible for Food Stamp benefits because it counted a "custodial account" as a resource which placed the household was over the resource limit for the Food Stamp Program?

## **FINDINGS OF FACT**

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

1. Claimant submitted an application for Food Stamp benefits on May 13, 2010. (Ex. 2.1)
2. There is a bank account in Claimant's name with a balance of over \$7,000.00. (Ex. 4.2)
3. This bank account was created and maintained in response to a custody order signed by the court on September 14, 2007. (Ex. 3.0-3.8) That order stated in pertinent part:

The mother will apply for and place the child's Alaska Permanent Fund Dividend into a custodial account for the child, or purchase savings bonds or open an investment type account. The funds will be put aside for future education except for exceptional expenses such as certain expensive sports programs or school trips. Ms. [REDACTED] will provide Mr. [REDACTED] with passwords for on-line access to review the account, or if this is not available, she will provide the year-end statement in January of each year.

(Ex. 3.6)

4. Claimant has borrowed funds from the account to pay for her own schooling and to assist in the payment of her son's airline ticket to visit his father. (Ex. 5.1 & testimony of Claimant at hearing)

## **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, 495 (Alaska 2003)

The Food Stamp Program has a limit on the amount of resources a recipient can own. For households which do not have a member 60 years or older, such resources shall not exceed \$2,000.00. 7 CFR 273.8(b).

There are exclusions to this resource limit, including:

Resources having a cash value which is not accessible to the household, such as but not limited to, irrevocable trust funds, security deposits on rental property or utilities, property in probate, and real property which the household is making a good faith effort to sell at a reasonable price and

which has not been sold. . . . Any funds in a trust or transferred to a trust, and the income produced by that trust to the extent it is not available to the household, shall be considered inaccessible to the household if:

(i) The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;

(ii) The trustee administering the funds is either:

(A) A court, or an institution, corporation, or organization which is not under the direction or ownership of any household member, or (B) an individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meet the requirements of this paragraph;

(iii) Trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member; and

(iv) The funds held in irrevocable trust are either:

(A) Established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust, or (B) established from non-household funds by a nonhousehold member.

7 CFR 273.8(e)(8)

### ANALYSIS

The issue in this case is whether the Division was correct when on June 2, 2010, it determined the household was not eligible for Food Stamp benefits because the household was over the resource limit for the Food Stamp Program.

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

The Food Stamp Program expressly limits resources which are “not accessible to the household.” 7 CFR 273.8(e)(8). Claimant argues that the account in question is a trust which is not accessible to the household. It must be determined whether the bank account at issue in this case is accessible to the household.

The Superior Court ordered the Claimant to maintain a bank account for her child. (Ex. 3.6) That order stated the funds in that account “will be put aside for future education except for exceptional expenses such as certain expensive sports programs or school trips.” (Ex. 3.6) By allowing the funds to be used for “exceptional expenses” the order allowed the funds to be used for more than just future education. The phrase “exceptional expenses” made the funds accessible to the household. The court order gives examples as to the use of money such as for expensive sports programs.

The Court order makes clear funds are accessible to the household without court, co-parental, or any other approval or burden. This is demonstrated by the fact Claimant used the custodial account for her own purposes.

Because the account was “accessible to the household” it cannot be excluded as a resource under the Food Stamp Program. Because the Food Stamp Program has a resource limit of \$2,000.00 and the amount of money in the account is over \$2,000.00, Claimant’s household was over the resource limit. Therefore, the Division was correct to deny Claimant’s Food Stamp application for being over the resource limit.

### **CONCLUSIONS OF LAW**

1. The custodial account is accessible to the household.
2. Therefore, the custodial account is a countable resource for purposes of determining eligibility for the Food Stamp Program.
3. Because the custodial account exceeds the \$2,000.00 resource limit for the Food Stamp Program, Claimant’s household is over the resource limit.

### **DECISION**

The Division was correct to determine Claimant’s household not eligible for the Food Stamp Program on June 2, 2010 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 28th day of September, 2010.

/signed/  
Patricia Huna  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 28th day of September 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:

[REDACTED], Fair Hearing Representative  
[REDACTED], DPA Director  
[REDACTED], DPA Director's Office  
[REDACTED], DPA director's Office  
[REDACTED], Chief of Field Services  
[REDACTED], Policy & Program Development  
[REDACTED], Staff Development & Training

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J. Albert Levitre, Jr.  
Law Office Assistant I