

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Ph: (907)-334-2239
Fax: (907)-334-2285

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

In the Matter of)	
)	
[REDACTED] ,)	OHA Case No. 11-FH-40
)	
Claimant.)	Division Case No. [REDACTED]
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was receiving Adult Public Assistance benefits in January 2011. (Ex. 1) On January 3, 2011, the Division of Public Assistance (Division) sent the Claimant written notice that he would no longer receive Adult Public Assistance benefits after January 2011, i.e. he would not receive Adult Public Assistance benefits beginning with the month of February 2011. (Ex. 5) The Division received the Claimant's Fair Hearing request on January 20, 2011. (Exs. 6.1 – 6.2)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on April 5, 2011. The Claimant attended the hearing telephonically, represented himself and testified on his own behalf. **[REDACTED]**, Public Assistance Analyst with the Division, attended the hearing in person; he represented the Division and testified on the Division's behalf.

ISSUES

Was the Division correct to terminate the Claimant's Adult Public Assistance after January 2011 because he owned a commercial fishing permit allegedly worth more than \$2,000?

FINDINGS OF FACT

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

1. The Claimant applied for Adult Public Assistance benefits on December 14, 2010. (Ex. 2) The Claimant was approved for Adult Public Assistance benefits for the month of January 2011.¹ (Claimant testimony)
2. The Claimant's December 14, 2010 Adult Public Assistance application stated that the Claimant owned a commercial fishing permit. (Ex. 2.4) The Claimant's application stated the commercial fishing permit was worth \$5,000. *Id.*
3. A Division Eligibility Technician reviewed the Claimant's application; she telephoned the Claimant and spoke to him on December 28, 2010 about his commercial fishing permit. (Ex. 3) During that telephone conversation, the Claimant told the Eligibility technician that he had not used the commercial fishing permit, i.e. used it to produce income, for the past three years. *Id.*
4. The State of Alaska Commercial Fisheries Entry Commission² (Commission) records list the Claimant as the owner of a Kuskokwim Salmon Gillnet fishing permit. (Exs. 3.1, 4.1) That permit can be sold and its value, as of December 2010, was \$7,500. (Ex. 4.2; ██████ testimony) The lowest value the Commission's records show for a Kuskokwim Salmon Gillnet fishing permit in calendar year 2010 was \$5,600 during the months of March and April 2010. (Ex. 4.2)
5. On January 3, 2011, the Division sent the Claimant written notice his Adult Public Assistance case was closed "because your countable resources are over the [Adult Public Assistance] program limit. You will not receive an [Adult Public Assistance] payment after JANUARY 2011." (Ex. 5) The Division's January 3, 2011 notice informed the Claimant that the specific reason it was closing his Adult Public Assistance case was because it valued his fishing permit at \$7,000, which exceeded the \$2,000 resource limit for the Adult Public Assistance program. *Id.*
6. The Claimant has not used his permit for the past two to three years. (Claimant testimony) He cannot afford the gas to run his boat. (Claimant testimony). He has sold his boat, net, and motor. *Id.* He has seen similar permits listed for sale with sales prices from \$4,000 to \$6,000. *Id.* There are buyers looking for fishing permits, however, the Claimant wants to keep his permit and is not interested in selling it. *Id.*

PRINCIPLES OF LAW

¹ The record does not show the exact date the Claimant was approved to receive Adult Public Assistance benefits.

² The State of Alaska Commercial Fisheries Entry Commission is the state agency responsible for regulating the issuance and transfer of commercial fishing permits. AS 16.43.100. Fishing permits may only be transferred with Commission approval. AS 16.43.170.

A party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence. *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (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).

Adult Public Assistance is a cash benefit program provided to financially eligible persons who are “aged, blind, or disabled.” AS 47.25.430.

Financial eligibility is determined, in part, by an applicant’s resources (personal and real property). 7 AAC 40.270(a). An individual applicant who owns more than \$2,000 in “non-excludable resources” is not eligible to receive Adult Public Assistance benefits. 7 AAC 40.270(a)(1). The Adult Public Assistance regulations define a resource as “any real or personal property that an applicant . . . owns and can convert to cash to be used for his or her support and maintenance.” 7 AAC 40.260(a).

The value of a limited entry fishing permit is not counted (i.e. excluded) as a resource “if the holder of the permit uses the permit to produce income; if it is not used to produce income or is for sale, the fair market value less any amount owed by the holder is included as a resource.” 7 AAC 40.280(a)(17).

ANALYSIS

This case involves a termination of benefits. The Division, as the party seeking to change the status quo, has the burden of proof by a preponderance of the evidence. The relevant facts in this case are not disputed. They are as follows:

1. The Claimant owns a commercial Kuskokwim Salmon Gillnet fishing permit. He is not using the permit, i.e. using it to produce income, and as of December 2010 had not used the permit for the past two to three years. The permit can be sold, and there are buyers for the permit, but the Claimant does not want to sell it. *See* Findings of Fact 3, 4, and 6 above.
2. The Claimant’s Kuskokwim Salmon Gillnet fishing permit is worth at least \$4,000 based upon the following:
 - a. The Claimant’s December 14, 2010 Adult Public Assistance application stated the permit was worth \$5,000. *See* Finding of Fact 2 above.
 - b. The Claimant testified that he had seen similar fishing permits listed for sale for prices between \$4,000 and \$6,000. *See* Finding of Fact 6 above.
 - c. State of Alaska Commercial Fisheries Entry Commission (Commission) records show the lowest value for a Kuskokwim Salmon Gillnet fishing permit in 2010 was \$5,600 (during the months March and April), and that the value in December

2010, the month of Claimant's application, was \$7,500. *See* Finding of Fact 4 above.

These facts, as stated above, demonstrate that that the Claimant's Kuskokwim Salmon Gillnet fishing permit is a resource for the purposes of the Adult Public Assistance program, because it is "personal property that an applicant . . . owns and can convert to cash to be used for his or her support and maintenance." 7 AAC 40.260(a). The permit is not excluded from being counted as a resource because the Claimant is not and has not been using the permit to generate income. 7 AAC 40.280(a)(17).

The Claimant therefore owns a fishing permit that is a countable resource for the purposes of determining his eligibility for Adult Public Assistance purposes. The value of the fishing permit is at least \$4,000. Because the fishing permit's \$4,000 value exceeds the \$2,000 resource limit for Adult Public Assistance benefits, the Claimant, pursuant to 7 AAC 40.270(a)(1), is not financially eligible for Adult Public Assistance benefits.

The Division has therefore met its burden of proof, by a preponderance of the evidence, and demonstrated that it was correct to terminate the Claimant's Adult Public Assistance benefits after January 2011.

CONCLUSIONS OF LAW

1. The Claimant's commercial Kuskokwim Salmon Gillnet fishing permit was a countable resource for the purposes of determining the Claimant's financial eligibility for Adult Public Assistance benefits. *See* 7 AAC 40.260(a) and 7 AAC 40.280(a)(17).
2. Because the Claimant's commercial Kuskowim Salmon Gillnet fishing permit was worth at least \$4,000 at the time of the Claimant's December 14, 2010 Adult Public Assistance renewal application, the Claimant was not financially eligible for Adult Public Assistance benefits. *See* 7 AAC 40.270(a)(1).

DECISION

The Division was correct when it, on January 3, 2011, notified the Claimant his Adult Public Assistance benefits would be terminated after January 2011 because he owned a commercial fishing permit worth more than \$2,000.

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. 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. To appeal, 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

DATED this 23rd day of May, 2011.

/Signed/
Larry Pederson
Hearing Authority

Certificate of Service

I certify that on this 23rd day of May, 2011, true and correct copies of the foregoing were sent to:
Claimant by U.S.P.S First Class Certified Mail, Return Receipt Requested
and to the following by secure e-mail:

[REDACTED], Public Assistance Analyst
[REDACTED], Public Assistance Analyst
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training
[REDACTED], Administrative Assistant II
[REDACTED], Eligibility Technician I

J. Albert Levitre, Jr.
Law Office Assistant I