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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. 11-FH-165
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was receiving Adult Public Assistance, Adult Public Assistance related Medicaid, and Food Stamp benefits in March 2011. (Ex. 1) On March 4, 2011, the Division of Public Assistance (Division) sent the Claimant notice that her Adult Public Assistance and Food Stamp cases were closed and that she would not receive Adult Public Assistance, Medicaid, or Food Stamp benefits after March 31, 2011. (Ex. 3) The Division received the Claimant's fair hearing request on April 12, 2011. (Exs. 4 – 4.1)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Division filed a petition to dismiss the Adult Public Assistance and Medicaid termination portion of the case on May 12, 2011. That petition was denied.¹

The Claimant's hearing was held on May 31 and June 29, 2011. The Claimant appeared telephonically on May 31, 2011 and in-person on June 29, 2011. The Claimant represented herself and testified on her own behalf. [REDACTED], Public Assistance Analyst with the Division, appeared in person; he represented the Division and testified on its behalf.

STATEMENT OF ISSUES

The Division argued that all of the Claimant's bank accounts, including those which she owned jointly with her grandson, were countable as resources for determining the Claimant's financial eligibility for Food Stamps and Adult Public Assistance. As a result, because the funds available in those bank

¹ The Division's petition was discussed at the June 29, 2011 portion of the hearing and orally denied for reasons stated on the record.

accounts exceeded the resource limits for both the Food Stamp program (\$3,000) and Adult Public Assistance program (\$2,000), the Division was required to terminate the Claimant's Food Stamp, Adult Public Assistance, and Adult Public Assistance related Medicaid benefits.

The Claimant argued that she was not legally allowed to access her grandson's funds except for his use and as a result, those funds should not be considered when determining her financial eligibility for Food Stamps and Adult Public Assistance. The Claimant further argued that even though she was the sole owner of one bank account, which was composed of her own funds, that she had saved that money for her grandson. As a result that account also ought not be considered when determining her financial eligibility for Food Stamps and Adult Public Assistance.

The resulting issues are:

1. Was the Division correct when it sent the Claimant notice on March 4, 2011 that her Food Stamp benefits would be terminated after March 31, 2011 because she allegedly owned countable resources worth more than \$3,000?
2. Was the Division correct when it sent the Claimant notice on March 4, 2011 that her Adult Public Assistance benefits and Adult Public Assistance related Medicaid benefits would be terminated after March 31, 2011 because she allegedly owned countable resources worth more than \$2,000?

FINDINGS OF FACT

1. The Claimant was a recipient of Adult Public Assistance benefits, Adult Public Assistance related Medicaid benefits, and Food Stamp benefits in March 2011. (Ex. 1) The Claimant is over 65 years old. *Id.* She resides with her minor grandson, and does not receive any benefits other than Food Stamps, Adult Public Assistance, and Adult Public Assistance related Medicaid benefits. (Claimant testimony; Ex. 1)

2. In November 2010, the Division conducted a quality assurance review with regard to the Claimant's Food Stamp case. (Ex. 2.1) On February 1, 2011, the Division issued a Quality Assessment report that found the Claimant was not eligible for Food Stamp benefits because she owned resources, specifically a number of bank accounts, with balances that exceeded the Food Stamp program's resource limits. *Id.*

3. On March 4, 2011, the Division sent the Claimant written notice that she would not receive Adult Public Assistance, Medicaid, and Food Stamp benefits after March 31, 2011. (Ex. 3) The notice stated that the termination of the Claimant's Adult Public Assistance, Medicaid, and Food Stamp benefits was because the Claimant owned three bank accounts with total balances that put her over the resource limits for Adult Public Assistance (\$2,000) and Food Stamp (\$3,000) benefits. *Id.*

4. As of March 1, 2011, the Claimant was an owner of the following bank accounts:

<u>Bank Acct No.</u>	<u>Ownership</u>	<u>Balance - March 1, 2011</u>
██████████ (Savings)	Jt. Owner w/ Grandson	\$ 3,957.99
██████████ (Savings)	Jt. Owner w/ Grandson	\$ 2,692.74
██████████ (Money Market)	Jt. Owner w/ Grandson	\$ 1,681.36
██████████ (Checking)	Jt. Owner w/ Son	\$ 776.97
██████████ (Money Market)	Sole Owner	\$14,017.30

(Exs. 6.3, 7.1 – 7.3; Claimant testimony)

5. At all times relevant to this case, the Claimant had legal and physical custody of her grandson, who is a minor. (Claimant testimony; Ex. 4.4)

6. On July 28, 2008, the Superior Court issued an Order that the Claimant’s grandson’s social security payments were to be “deposited[,] and preserved in an interest-bearing custodial savings account” by the Claimant and her son. (Ex. 4.2)

7. The Claimant’s grandson’s social security payments are deposited in account ██████████, which is jointly owned by the Claimant and her grandson. (Ex. 7.1) The Claimant has used funds from that account; however, those withdrawals were made to purchase items for her grandson. (Exs. 7.1 – 7.2; Claimant testimony)

8. The Claimant’s grandson’s savings are held in account ██████████, which is jointly owned by the Claimant and her grandson. (Exs. 5, 7.3) There were no withdrawals from that account between January 1, 2011 and March 31, 2011. (Ex. 7.3)

9. The Claimant’s grandson’s PFDs are deposited in account ██████████, which is jointly owned by the Claimant and her grandson. (Exs. 5, 7.3) There were no withdrawals from that account between January 1, 2011 and March 31, 2011. (Ex. 7.3)

10. Account ██████████ is owned solely by the Claimant. (Ex. 6.3) It consists of her own funds, which she has saved over the years for her grandson, and even though it is composed solely of the Claimant’s funds, she views it as her grandson’s money. (Claimant testimony) The Claimant withdrew \$2,000 from that account in March 2011; that withdrawal was not for her grandson’s use or benefit. (Claimant testimony; Ex. 6.3)

PRINCIPLES OF LAW

A party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence. *State, Alcoholic 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).

A. Food Stamps

Food Stamps is a federal program administered by the State. 7 CFR 271.4(a). The Code of Federal Regulations (CFR) contains the rules for determining if an applicant is eligible to receive Food Stamp benefits.

One of the financial eligibility criteria is that an applicant's household, where one of the household members has reached the age of 60 years, may not own countable resources worth in excess of \$3,000. 7 CFR 273.8(b). A Food Stamp household consists of those persons "who live together and customarily purchase food and prepare meals together for home consumption." 7 CFR 273.1(a)(3).

The Food Stamp program rules on countable resources are contained in federal regulation 7 CFR 273.8. Funds held in checking and savings accounts are countable resources. 7 CFR 273.8(c)(1). However, if funds are not "accessible" to the household, they are not countable resources. 7 CFR 273.8(e)(8).

A recent Food Stamp financial eligibility case before this Office involved a parent withdrawing funds, for her personal use, from her child's bank account that was restricted by court order. This Office held that because the parent had accessed the funds, they were countable as resources for Food Stamp eligibility purposes. *See* Decision in Case No.10-FH-209, issued September 28, 2010. That decision was appealed to the Superior Court, *Terra Smith v. State, Department of Health and Social Services*, Case No. 3AN-10-12367 Civil. The Superior Court reversed this Office's decision and held that because the account was restricted by court order, it was not "accessible" to the household regardless of the fact the parent had actually used the account funds for her own personal use. *Smith*, Order on Appeal dated July 14, 2011, p. 6.² The Superior Court's decision stated that "'[a]ccessible' also means that the person is legally authorized to do so.'" *Id.* The Superior Court then concluded the funds in the account were not "accessible" and hence not a countable resource for the purposes of determining Food Stamp financial eligibility. *Id.*

B. Adult Public Assistance

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).

² The Superior Court decision is not published online or otherwise available without going to the courthouse to view the Superior Court case file. A copy of the Superior Court decision is therefore attached hereto as Addendum A. This Office is not aware of any other Alaska Court decisions, either Superior Court or Supreme Court, which deal with this issue.

Funds held in trust for another person, whether it be a formal or informal trust, are not contained in the list of excludable resources contained in 7 AAC 40.280.

C. Adult Public Assistance Related Medicaid

The Medicaid program contains numerous coverage categories, each with their own eligibility requirements. *See* 7 AAC 100.002. A person who is over the age of 65, who is not receiving Supplemental Security Insurance benefits, is eligible for Medicaid benefits if she receives Adult Public Assistance benefits. 7 AAC 100.002 (d)(1); 7 AAC 100.410(b).

When the Division terminates a recipient's Medicaid coverage under one category, it is required to determine if the recipient is eligible for coverage under another Medicaid category: "[t]he agency must – . . . (b) Continue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible." 42 CFR 435.930.

Besides Adult Public Assistance related Medicaid coverage, Family Medicaid is the only other possible Medicaid coverage category for a person over the age of 65, who resides in her own home, who is not receiving Supplemental Security Income benefits, and who is not approved for home and community based waiver services. *See* 7 AAC 100.002 for the complete list of Medicaid coverage categories. Family Medicaid has a financial resource requirement that an applicant not own more than \$2,000 in countable resources. 7 AAC 100.130(a).

ANALYSIS

There are two issues in this case:

1. Was the Division correct to terminate the Claimant's Food Stamp benefits after March 31, 2011 because her household allegedly owned countable resources worth more than \$3,000?
2. Was the Division correct to terminate the Claimant's Adult Public Assistance benefits and Adult Public Assistance related Medicaid benefits after March 31, 2011 because her household allegedly owned countable resources worth more than \$2,000?

The Division has the burden of proof, by a preponderance of the evidence, with regard to both issues because it seeks to terminate the Claimant's benefits.

A. Undisputed Facts

1. The Claimant individually owns one bank account, composed of her own funds, which consists of funds which she has saved for her grandson. *See* Findings of Fact 4 and 10 above. That account, [REDACTED] (Money Market), had a balance of \$14,017.30 as of March 1, 2011. *See* Finding of Fact 4 above. She withdrew \$2,000 from that account in March 2011; that withdrawal was not for her grandson's use or benefit. *See* Finding of Fact 10 above.

2. The Claimant is the joint owner, along with her son, of a checking account with a balance of \$ 776.97 as of March 1, 2011. *See* Finding of Fact 4 above.
3. The Claimant is the joint owner, along with her grandson, of account [REDACTED] (Savings). *See* Finding of Fact 4 above. That account had a balance of \$3,957.99 as of March 1, 2011. *Id.* That account is composed of the grandson's social security checks and is subject to a court order which requires that the social security checks be "deposited[,] and preserved in an interest-bearing custodial savings account." *See* Findings of Fact 6 and 7 above. The Claimant has used funds from that account for purchases for her grandson. *See* Finding of Fact 7 above.
4. The Claimant is the joint owner, along with her grandson, of two accounts: [REDACTED] (Savings) with a balance of 2,692.74 as of March 1, 2011, and [REDACTED] (Money Market) with a balance of \$ 1,681.36 as of March 1, 2011. *See* Finding of Fact 7, 8 and 9 above. Those accounts are composed of the grandson's savings and PFDs. *See* Findings of Fact 8 and 9 above. There are no court orders in the record that restrict access to these funds.

B. Food Stamps

The issue here is whether the Claimant's bank accounts were "accessible" to her Food Stamp household. If the bank accounts were "accessible" funds, then they were countable assets for the purposes of determining her financial eligibility for Food Stamp benefits. *See* 7 CFR 273.8(c). If the bank accounts were not "accessible" then they were not countable assets for the purposes of determining her financial eligibility for Food Stamp benefits. *See* 7 CFR 273.8(e)(8).

1. Joint Accounts with Grandson

The undisputed facts, as recited above, show that the Claimant is the joint owner, along with her grandson, of three bank accounts. One of those accounts ([REDACTED]) contains the grandson's Social Security payments and is subject to a court order that requires the funds to be "preserved." The other two accounts ([REDACTED] and [REDACTED]) are not protected by a court order, but they are composed of the grandson's own funds, specifically his savings and his PFDs. Under the analysis set for by the Alaska Superior Court decision in *Smith*, none of these are "accessible" funds, because the funds are not the Claimant's and she faces a potential legal risk if she accesses those funds for her own use; they are therefore not countable as a resource for Food Stamp eligibility purposes.³

2. Joint Account with Son and Individual Account

³ This Decision does not decide the issue of whether the grandson's non-social security funds are countable as a household resource, merely that they are not countable as the Claimant's own resource.

The Claimant has two other bank accounts. One is a joint checking account with her son, with a balance of \$776.97 as of March 31, 2011. The other is owned only by the Claimant. It is composed of her money, which she has saved over the years for her grandson. It had a balance of \$14,017.30 as of March 1, 2011. It is clear that there are no impediments to the Claimant using the funds in her solely owned account. Indeed, the Claimant withdrew \$2,000 from that account in March 2011. Without even considering the joint checking account with her son, it is clear the Claimant's solely owned funds were worth well in excess of \$3,000 as of March 1, 2011. Even after the Claimant withdrew \$2,000 from that account in March 2011, those funds were worth well over \$3,000. Because there are no impediments to the Claimant using the funds in her solely owned bank account, these are "accessible" and constitute a countable resource worth well over \$3,000.

The Food Stamp regulations are clear. If a household containing a member who is over 60 years old, has more than \$3,000 in countable resources, the household is not eligible for Food Stamp benefits. 7 CFR 273.8(b). Because the Claimant had a countable resource, specifically her solely owned bank with a value of over \$3,000 in March 2011, she was not eligible for Food Stamp benefits.

The Division has therefore met its burden of proof in this case. It established the Claimant had a countable resource worth over \$3,000 and was not eligible to receive Food Stamp benefits. It was correct when it notified the Claimant on March 4, 2011 that her Food Stamp benefits would be terminated after March 31, 2011.

C. Adult Public Assistance and Adult Public Assistance related Medicaid

1. Adult Public Assistance

The issue here is identical to that presented in the Food Stamp eligibility portion of the case. The Adult Public Assistance regulations do not use the Food Stamp program's term "accessible" but they contain the virtually identical requirement that a countable resource is one which "an applicant . . . owns and can convert to cash to be used for his or her support and maintenance." 7 AAC 40.260(a). Therefore if the Claimant owns and can access the bank accounts, they are a countable resource for the purposes of determining her eligibility for Adult Public Assistance. If the bank accounts are countable and worth over \$2,000, then the Claimant is not eligible for Adult Public Assistance. 7 AAC 40.270(a)(1).

The *Smith* case, as discussed above, held that a bank account was not "accessible" if there was a court order restricting access to the account, or if the person was not legally authorized to access the account. While the *Smith* case dealt only with the Food Stamp program, its reasoning is equally applicable to the Adult Public Assistance program. As a result, as discussed in the Food Stamp portion of this Decision, the bank accounts the Claimant jointly owns with her grandson are not a countable resource for the purpose of determining the Claimant's eligibility for Adult Public Assistance.

The Claimant, however, as discussed above, is the sole owner of a bank account with a balance well over the \$2,000 Adult Public Assistance resource limit. It is a countable asset, because she is sole owner of it and can use it "for ... her support and maintenance." 7 AAC 40.260(a). Because the

Claimant is the sole owner of a bank account worth over \$2,000, she is not eligible for Adult Public Assistance benefits. *See* 7 AAC 40.270(a)(1).

The Division has met its burden of proof in this case. It established the Claimant had a countable resource worth over \$2,000 and was therefore not eligible for Adult Public Assistance benefits. It was correct when it notified the Claimant on March 4, 2011 that her Adult Public Assistance benefits would be terminated after March 31, 2011.

2. Adult Public Assistance related Medicaid

When the Division terminated the Claimant's Adult Public Assistance, it also terminated the Claimant's Medicaid benefits. The Claimant was receiving Adult Public Assistance related Medicaid. *See* Finding of Fact 1 above. A person who is over the age of 65, who is not receiving Supplemental Security Insurance benefits, is eligible for Medicaid benefits if she receives Adult Public Assistance benefits. 7 AAC 100.002 (d)(1); 7 AAC 100.410(b). As a result, when the Claimant lost her Adult Public Assistance benefits, she also lost her Medicaid benefits.

The Division is required to determine if the recipient is eligible for coverage under another Medicaid category when it terminates Medicaid coverage under one category: "[t]he agency must – . . . (b) Continue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible." 42 CFR 435.930.

There is no evidence in the record that the Claimant is receiving Supplemental Security Income benefits, or has been approved for Medicaid home and community based waiver services.

Other than Adult Public Assistance related Medicaid coverage, Family Medicaid is the only possible Medicaid coverage category for a person over the age of 65, who resides in her own home, who is not receiving Supplemental Security Income benefits, and who is not approved for home and community based waiver services. *See* 7 AAC 100.002 for the complete list of Medicaid coverage categories. However, Family Medicaid has a financial resource requirement that an applicant not own more than \$2,000 in countable resources. 7 AAC 100.130(a). As discussed above, the Claimant owns more than \$2,000 in countable resources. As a result, she is not eligible for Family Medicaid coverage.

The Division has therefore met its burden of proof in this case. It was correct when it notified the Claimant on March 4, 2011 that her Medicaid coverage would be terminated after March 31, 2011.

CONCLUSIONS OF LAW

1. The Claimant was the owner of countable resources on March 1, 2011 that exceeded the Food Stamp program's \$3,000 countable resource limit. As a result, the Claimant was not financially eligible to receive Food Stamp benefits.
2. The Claimant was the owner of countable resources on March 1, 2011 that exceeded the Adult Public Assistance program's \$2,000 countable resource limit. As a result, the Claimant was not

financially eligible to receive either Adult Public Assistance benefits or Adult Public Assistance related Medicaid benefits.

DECISION

1. The Division was correct when it sent the Claimant notice on March 4, 2011 that her Food Stamp benefits would be terminated after March 31, 2011.
2. The Division was correct when it sent the Claimant notice on March 4, 2011 that her Adult Public Assistance benefits and Adult Public Assistance related Medicaid benefits would be terminated after March 31, 2011.

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


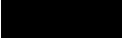
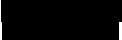
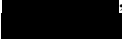
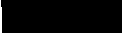
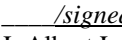
DATED this 9th day of August 2011.

/Signed/
Larry Pederson
Hearing Authority

Certificate of Service

I certify that on this 9th day of August, 2011, true and correct copies of the foregoing were sent to:

Claimant by Certified Mail, Return Receipt Requested
and to other listed persons by e-mail:

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

/signed/

J. Albert Levitre, Jr.
Law Office Assistant I

**INSERT ADDENDUM
WHEN MAKING PDF VERSION**