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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-238
)
 Claimant.) DPA Case No. [REDACTED]
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a recipient of Adult Public Assistance (APA), APA-related Medicaid, and Food Stamp ¹ benefits (Ex. 1). On June 25, 2010 the State of Alaska Division of Public Assistance (DPA or Division) mailed to the Claimant a notice stating that her APA, APA-related Medicaid, and Food Stamp cases were being closed, and that her APA, APA-related Medicaid, and Food Stamp benefits were being terminated after July 31, 2010, based on imposition of an asset transfer penalty (Exs. 6.0, 6.1). The Claimant requested a hearing with regard to the Division's action on July 22, 2010 (Exs. 7.0, 7.3, 7.4).

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

The Claimant's hearing was held on September 15, 2010 before Hearing Examiner Jay Durych. The Claimant was represented by attorney [REDACTED]; he participated by telephone from Juneau, Alaska. The Claimant participated by telephone and testified on her own behalf. The Claimant's daughter, [REDACTED], also participated by telephone but did not testify. DPA Public Assistance Analyst [REDACTED] appeared in person to represent and testify on behalf of the Division. All testimony and exhibits offered by the parties were received into evidence. At the end of the hearing the record was held open until October 15, 2010 for the parties' submission of post-hearing filings. On October 15, 2010 the record was closed and the case became ripe for decision.

¹ In 2008 Congress amended the Food Stamp Act. *See* Food, Conservation, and Energy Act of 2008, Public Law No. 110-246 Section 4001, 122 Statutes at Large 1651, 1853. The 2008 amendment changed the official name of the Food Stamp Program to the Supplemental Nutrition Assistance Program ("SNAP"). However, at this time the program is still commonly referred to as the "Food Stamp Program."

ISSUES

1. Was the Division correct when on June 25, 2010 it mailed to the Claimant a notice stating that her APA case was being closed, and that her APA benefits were being terminated after July 31, 2010, based on imposition of an asset transfer penalty and/or based on the assertion that the Claimant was over-resource? If the Division was correct to impose an asset transfer penalty, were the start date and duration of the penalty imposed correct?
2. Was the Division correct when on June 25, 2010 it mailed to the Claimant a notice stating that her Food Stamp case was being closed, and that her Food Stamp benefits were being terminated after July 31, 2010, based on imposition of an asset transfer penalty? If the Division was correct to impose an asset transfer penalty, were the start date and duration of the penalty imposed correct?

SUMMARY OF DECISION

The Division's termination of the Claimant's APA benefits, *on the basis of a prohibited transfer of resources*, was improper because the Division did not first conduct an "undue hardship" determination as required by Alaska Adult Public Assistance Manual Section 433-1D. The Division's termination of the Claimant's APA benefits, *based on the assertion that the Claimant was over-resource*, was improper because the Division's termination notice did not cite any regulation which would support a termination on that basis as required by 7 AAC 49.070.

The Division's termination of the Claimant's Food Stamp benefits, on the basis of a prohibited transfer of resources, was correct because the Claimant (1) knowingly transferred resources, (2) for the purpose of qualifying or attempting to qualify for Food Stamp benefits, (3) within three months of the date of application.

FINDINGS OF FACT

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

1. The Claimant was a recipient of Adult Public Assistance (APA), APA-related Medicaid, and Food Stamp benefits at all times relevant hereto (Ex. 1). She is not married (Ex. 4.2), and she is the only member of her household for APA and Food Stamp purposes (Ex. 1).
2. On July 28, 2003 the Claimant signed four (4) bills of sale pursuant to which she transferred various farm animals and items of farming equipment to [REDACTED] (Exs. 4.4 – 4.7).
3. On June 2, 2005 the Claimant signed a warranty deed conveying her interest in certain real property located in the Talkeetna Recording District to [REDACTED] (Exs. 4.2, 4.3). The warranty deed recited that the Claimant was retaining a one percent (1%) interest in certain property (Ex. 4.2). The copy of the deed provided by the Claimant does not bear recording marks (Exs. 4.2, 4.3).
4. On February 27, 2007 the Claimant's daughter, [REDACTED], signed letter or memo which states in relevant part that "I, [REDACTED], as (99%) ninety-nine percent owner of 180(+) acres

including the house and considerable outlying buildings have no plans to sell this ranch at this time” (Ex. 4.1).

5. On June 29, 2009 [REDACTED] signed a quitclaim deed conveying her interest in the real property described in Paragraph 3, above to [REDACTED] “and/or” [REDACTED] (Exs. 4.14, 4.15). The deed was recorded on April 19, 2010 (Ex. 4.14).

6. On September 18, 2009 the Claimant and [REDACTED] signed a document which they titled a “Lease/Purchase Agreement” (Exs. 4.9 – 4.11). Pursuant to this agreement, Mr. [REDACTED] agreed to purchase certain real property from the Claimant. *Id.* The agreement states that a legal description of the property conveyed was attached to the agreement. *Id.* However, the copy of the document contained in the record of this case does not include the legal description referred to. *Id.*

7. In exchange for the Claimant’s conveyance of the property subject to the “Lease/Purchase Agreement” (Exs. 4.9 – 4.11), Mr. [REDACTED] agreed to pay to the Claimant a total of \$80,000.00, payable as follows:

a. A down payment of \$10,000.00, which the agreement recites was paid on January 15, 2009 (Ex. 4.9).

b. Monthly payments of \$950.00 per month beginning in September 2009 and continuing monthly until the \$70,000.00 balance is paid in full (Ex. 4.9).

8. The “Lease/Purchase Agreement” (Exs. 4.9 – 4.11) was recorded some time in 2010; the exact date of recordation does not appear on those pages of the document which were provided by the Claimant and included in the record in this case.

9. On September 24, 2009 the Claimant signed a quitclaim deed conveying her interest in certain real property to [REDACTED] “and” [REDACTED] (Ex. 4.12). The real property described in this deed is referred to in the deed as “[REDACTED] Ranch” and is a 40.8 acre portion of the larger parcel described in Paragraph 3, above (Ex. 4.13). This deed also conveyed the Claimant’s interest in “the Lease/Purchase Agreement with [REDACTED]” (Ex. 4.12). The deed was recorded on April 19, 2010 (Ex. 4.12).

10. On June 24, 2010 the Division accessed a computer interface containing information from the United States Social Security Administration (SSA) concerning the Claimant’s eligibility for Supplemental Security Income (SSI) (Ex. 5.2). The computer interface indicated that the Claimant’s SSI benefits had been terminated, effective June 21, 2010, based on *excess resources* (Exs. 5.2, 5.3; *see also* Ex. 5.0). Notably, the record *does not* indicate that SSA terminated the Claimant’s SSI benefits based on a *transfer of assets*. *Id.*

11. On June 25, 2010 the Division mailed to the Claimant a notice stating that her APA and APA-related Medicaid cases were being closed, and that her APA and APA-related Medicaid benefits were being terminated after July 31, 2010, based on imposition of an asset transfer penalty (Ex. 6.0). That notice stated in relevant part as follows:

Your APA and Medicaid case closed because of reason number 4 below.

* * * * *

4. You no longer meet the disability requirements for APA and Medicaid.² This action is based on APA Manual Sections 424 and 425.

* * * * *

And 433.1 [So in original]. The 40 acres you had a lease/purchase agreement on is considered a resource for the APA/Medicaid Program. Your quit claim deed to yours of the contract for \$10.00 is considered a transfer of resources for less than fair market value which causes disqualification. The contract was for \$80,000.00 that was transferred to your sons the same month. You took a loss of uncompensated value [of] \$80,000.00, or \$70,000.00 if you received the initial \$10,000.00. SSI found you over resource with the contract and with the quit claim deed for uncompensated value also made you ineligible for SSI. We follow Social Security's lead on this policy. Your disqualification period is 36 months with August 2010 being the first month of the disqualification period.

12. On June 25, 2010 the Division also mailed to the Claimant a notice stating that her Food Stamp case was being closed, and that her Food Stamp benefits were being terminated after July 31, 2010, based on imposition of an asset transfer penalty (Ex. 6.1). The notice stated in relevant part as follows:

Your Food Stamp case is closed The reason your case is closed is checked below:

* * * * *

4. The Food Stamp Manual section that supports this action is Section 602-2E.

* * * * *

The contract you had with [REDACTED] was considered an exempt resource. Once you made the decision to quit claim it to your sons for under the value \$80,000.00 you became disqualified for the Food Stamp Program. Your disqualification [period] is 12 months.

13. At the hearing of September 15, 2010 the Claimant testified in relevant part as follows:

a. The property at issue is located in the northern Susitna River valley approximately 60 miles north of Wasilla. The property is not easily accessible.

² At the hearing, prior to the taking of evidence, the parties confirmed that Medicaid benefits were no longer at issue in this case. See also the Division's Position Statement at page 3, paragraph 6.

- b. In 2003 the Claimant transferred a 99% interest in the property to her daughter [REDACTED]. At that time the property was subject to a mortgage of approximately \$183,000.00.
- c. The Claimant never owned a fee simple interest in the original 180 acre parcel. The rights sold to her by her seller/grantor were only the agricultural rights to the 180 acre parcel.
- d. In 2009, this property was assessed by the Matanuska-Susitna Borough as having a total tax value of \$171, 000.00. This figure included a valuation of \$45,000.00 for the land itself; the remaining \$126,000.00 was allocated as the value of the house situated on this land.
- e. In September 2009 the Claimant transferred her remaining 1% interest in the 40 acre parcel to [REDACTED]. She transferred her interest in the 40 acre parcel only because the property was being foreclosed on by the Matanuska-Susitna Borough, and the Claimant was not financially able to bring her payments current so as to stop the foreclosure.
- f. [REDACTED] was a person whom the Claimant had known well for a long time. He owned and lived on an adjacent parcel of property which had no legal road access. For these reasons, he offered to purchase the Claimant's interest in the forty acre parcel for "ten times" its fair market value.
- g. The sale agreement states that the sale price for the Claimant's interest in the 40 acre parcel was \$80,000.00. However, the sale price was not stated correctly in the sale agreement. The actual sale price agreed to by the parties was \$8,000.00, not \$80,000.00.
- h. Everyone involved in the conveyance understood that all the Claimant owned and had the right to convey was a 1% interest in the agricultural rights of the subject property. Agricultural rights are only worth about \$200.00 per acre. Thus, the forty acre parcel that was transferred was worth a maximum of \$8,000.00 (40 acres X \$200.00 per acre = \$8,000.00).
- i. It was the Claimant's understanding that all outstanding property taxes needed to be paid before any interest in the real property could be transferred. Accordingly, the past-due property taxes were paid from money advanced by the purchaser ([REDACTED]), with the money paid being credited toward the purchase price. The purchaser actually made this payment in July 2009.
- j. The amount initially paid by [REDACTED] was approximately \$5,000.00. This money was paid to the Matanuska-Susitna Borough for property taxes owed. Later, in July 2009, [REDACTED] made a \$10,000.00 payment to the Claimant's sons, [REDACTED] and [REDACTED], who in turn paid this money to the mortgage holder's attorneys.
- k. The Claimant did not receive any money directly from the property transfer. However, her sons received a financial benefit, and in turn her family took care of her.
- l. The Claimant never attempted to sell her agricultural interests on the open market. However, she did talk to a realtor. The realtor basically informed her that her 1% agricultural interest was not saleable.

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

“Ordinarily the party seeking a change in the status quo has the burden of proof.” *State of Alaska Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). Here, the Division is deemed to be seeking a change in the status quo because it has terminated the Claimant’s previously-existing benefits. Accordingly, the Division bears the burden of proof in this case.

The regulations applicable to this case do not adopt a specific standard of proof. The “preponderance of the evidence” standard is the default standard of proof in administrative proceedings. *Amerada Hess Pipeline v. Alaska Public Utilities Commission*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Accordingly, the “preponderance of the evidence” standard is the standard of proof applicable in this case. Preponderance of the evidence is defined as “[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.” *Black’s Law Dictionary* 1064 (West Publishing, Fifth Edition, 1979).

II. The Adult Public Assistance Program – Resource Limits and Asset Transfer Penalties.

7 AAC 40.260, titled “Resources,” provides in relevant part as follows:

- (a) In this chapter, "resources" means any real or personal property that an applicant . . . owns and can convert to cash to be used for his or her support and maintenance.
- (b) Any cash or other property received from the sale, exchange, or other disposition of a resource retains the character of a resource.

7 AAC 40.270, titled “Resource Limits,” provides in relevant part as follows:

- (a) To be eligible for assistance, an applicant . . . must have non-excludable resources which do not exceed (1) \$2,000 for an individual

7 AAC 40.280, titled “Resource Exclusions,” lists a number of assets which are excluded from the APA’s definition of countable resources. However, none of these exclusions appear to apply here.

7 AAC 40.295, titled “Denial of Assistance for Voluntary Transfer of Resources,” provides in relevant part as follows:

- (a) The division may deny assistance for a maximum of 36 months to an applicant who, within 36 months before applying for assistance, makes a voluntary assignment or transfer of a resource in order to qualify for assistance. If the transfer is made for less than fair market value, it is presumed that the transfer was made intentionally and for the purpose of qualifying for assistance. The individual who made the transfer may rebut the presumed intent and purpose of the transfer by providing evidence satisfactory

to the division that the transfer was made unintentionally or for a different purpose. Evidence to support a determination that the individual made the transfer unintentionally or for a different purpose may include any of the following:

* * * * *

(4) evidence that the individual did not believe the transfer would affect the eligibility of the assistance unit;

(5) evidence that the individual believed that the compensation received was approximately equal to the equity value of the resource;

(6) evidence that the individual received property or services approximately equal to the equity value of the resource in exchange for the resource, regardless of whether the property received in exchange would be considered an excludable resource under 7 AAC 40.280;

(7) evidence that, if the transfer had not occurred, the transferred resource would not have caused the assistance unit's countable resources as determined under 7 AAC 45.270 - 7 AAC 40.290 to exceed the resource limit under 7 AAC 45.270 in the month following the transfer;

* * * * *

(b) A transfer is grounds for denial of assistance under (a) of this section if the transfer is (1) not one approved by the Social Security Administration (SSA) . . . and (2) one that would make an applicant ineligible for SSI benefits under 42 U.S.C. 1382b(c),³ as revised as of December 14, 1999, which is adopted by reference.

* * * * *

(d) The division will establish the period for which assistance is denied under (a) of this section by determining the uncompensated value of the resource disposed of and dividing that amount by the amount of maximum monthly assistance payable under 7 AAC 40.370(c). The resulting quotient, rounded, in case of a fraction, to the nearest whole number, represents the number of months for which the applicant is ineligible for assistance, up to a maximum of 36 months.

(e) For purposes of this section, (1) "fair market value" of a resource means the equity value that would be assigned to the resource if the resource were available to the

³ The federal statute and subsection cited, 42 U.S.C. 1382b(c), deals with disqualification due to a Social Security applicant or recipient's transfer / disposal of resources for less than fair market value. The requirements for a finding of disposal of resources for less than fair market value under the federal statute are very similar to, if not identical to, the requirements of 7 AAC 40.295. Accordingly, the reference in 7 AAC 40.295 to 42 U.S.C. 1382b(c) is circular and adds no additional substantive requirement to the state regulation.

applicant in the month following the transfer of the resource; (2) "transfer" includes assignment.

Alaska Adult Public Assistance Manual Section 433-1 D, titled "Undue Hardship," provides in relevant part as follows:

The transfer of resource disqualification period may be waived if it appears the individual will suffer an undue hardship as a result of not getting APA benefits. *If none of the other exceptions apply, the case worker must determine whether benefits are payable based on undue hardship before applying a transfer of resource disqualification period.* [Emphasis added].

Alaska Adult Public Assistance Manual Section 433-1E provides in relevant part as follows:

Use the uncompensated equity value of the transferred resource to determine the disqualification period. The disqualification period may not exceed 36 months. It begins on the first day of the month following the month of the transfer, and continues without interruption until the end of the disqualification period.

To calculate the disqualification period, divide the uncompensated equity value by the individual's or couple's applicable maximum payment standard. The result, rounded to the nearest whole number, is the individual's or couple's period of ineligibility.

III. The Food Stamp Program – Resource Limits and Asset Transfer Penalties.

7 CFR § 273.8, titled "Resource Eligibility Standards," provides in relevant part as follows:

* * * * *

(b) Maximum allowable resources. The maximum allowable resources . . . of all members of the household shall not exceed \$2,000 for the household, except that, for households including one or more disabled members or 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) buildings, land . . . provided that these resources are not specifically excluded under paragraph (e) of this section. The value of nonexempt resources . . . shall be its equity value. The equity value is the fair market value less encumbrances.

* * * * *

(h) Transfer of resources.

(1) Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamp benefits shall be disqualified from participation in the program for up to 1 year from the date of

the discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the 3 month period prior to application or if they are transferred knowingly after the household is determined eligible for benefits.

(2) Eligibility for the program will not be affected by the following transfers: (i) Resources which would not otherwise affect eligibility (ii) Resources which are sold or traded at, or near, fair market value; (iii) Resources which are transferred between members of the same household . . . and (iv) Resources which are transferred for reasons other than qualifying or attempting to qualify for food stamp benefits

(3) The period of disqualification shall begin in the month of application. If the household is participating at the time of the discovery of the transfer, a notice of adverse action explaining the reason for and length of the disqualification shall be sent. The period of disqualification shall be made effective with the first allotment to be issued after the notice of adverse action period has expired, unless the household has requested a fair hearing and continued benefits.

(4) The length of the disqualification period shall be based on the amount by which nonexempt transferred resources, when added to other countable resources, exceeds the allowable resource limits. The following chart will be used to determine the period of disqualification. [The chart provides that a transfer of \$5,000.00 or more above resource limit results in a 12 month disqualification period].

ANALYSIS

Introduction.

The primary issue raised as to both the Claimant's APA benefits and her Food Stamp benefits is whether the Division was correct to terminate those benefits after July 31, 2010, by imposing an asset transfer penalty, based on the assertion that the Claimant's asset transfer of September 18, 2009 was done knowingly for the purpose of making her financially eligible for benefits.

The primary factual issues in this case, (chief among which are the value of the real property transferred by the Claimant, and the Claimant's intent in making the transfer), are very similar under both the APA and Food Stamp programs. However, each of these programs has its own set of regulations, and each of the two program's regulations, though similar, vary in many ways. Accordingly, it is necessary to analyze the asset transfer separately under each program.

The Division is attempting to change the status quo by terminating the Claimant's previously-existing benefits. Accordingly, the Division bears the burden of proving, by a preponderance of the evidence, those facts necessary to support its termination decision.

I. Analysis Under the Adult Public Assistance Program.

The Division's notice of termination of APA benefits (Ex. 6.0) asserts two related but independent bases for termination of benefits (*see also* Findings of Fact at Paragraph 11, above):

1. The Division's first basis of termination was that the Claimant's "quit claim deed . . . of the [lease/purchase agreement] for \$10.00 is considered a transfer of resources for less than fair market value which causes disqualification You took a loss of uncompensated value [of] \$80,000.00, or \$70,000.00 if you received the initial \$10,000.00." *See* Ex. 6.0.
2. The Division's second basis of termination was that the Social Security Administration "found [the Claimant] over resource" and thus "ineligible for SSI," and the Division "follow[s] Social Security's lead on this policy."

The Claimant's response to both of these points is that, even though the transfer may have been at below market value, the value of the property interest conveyed by the Claimant was less than the \$2,000.00 resource limit (see counsel's argument at hearing). Thus, the Claimant asserts, the Division could not properly have terminated her benefits either for being over-resource or for making a prohibited asset transfer.

Different regulations apply to the "transfer of resources" and the "over-resource" arguments, respectively. Accordingly, these issues must be analyzed separately.

A. Was the Division Correct to Terminate the Claimant's APA Benefits Based on a Prohibited Transfer of Resources?

Alaska Adult Public Assistance Manual Section 433-1 D, titled "Undue Hardship," provides in relevant part as follows:

The transfer of resource disqualification period may be waived if it appears the individual will suffer an undue hardship as a result of not getting APA benefits. *If none of the other exceptions apply, the case worker must determine whether benefits are payable based on undue hardship before applying a transfer of resource disqualification period.* [Emphasis added].

Based on its plain language ("must"), the "undue hardship" determination required by Alaska Adult Public Assistance Manual Section 433-1 D is not optional. Rather, it is a *mandatory prerequisite* to termination of APA benefits based on a transfer of resources.

In this case, the Division's notice (Ex. 6.0) did not advise the Claimant of the "undue hardship" exception or request information so that the Division could determine if the exemption was applicable. There is no evidence in the record whatsoever that the Division ever considered whether termination of the Claimant's APA benefits would pose an undue hardship. Further, the Division never asserted that it had done so.

The undue hardship determination required by Manual Section 433-1D is a procedural safeguard required by the Division's own policy manual. Compliance with its requirements must be proven as part of the Division's case. However, the Division did not carry its burden and did not prove, by a preponderance of the evidence, that it performed an undue hardship determination. Accordingly, the Division's termination of the Claimant's APA benefits, *on the basis of a prohibited transfer of resources*, was incorrect because the Division did not first conduct an "undue hardship" determination.

B. Was the Division Correct to Terminate the Claimant's APA Benefits Based on the Assertion That the Claimant was Over-Resource?

The Division's second basis of benefit termination under the APA Program was that the Social Security Administration (SSA) "found [the Claimant] over resource" and thus "ineligible for SSI," and that this determination was binding on the Division because DPA "follow[s] Social Security's lead on this policy" (Ex. 6.0).

It is true that SSA terminated the Claimant's SSI benefits, effective June 21, 2010, based on excess resources (Exs. 5.2, 5.3; *see also* Ex. 5.0). However, the regulation on which the Division relies for the proposition that it is required to follow SSA's determination, 7 AAC 40.295(b), *does not apply to resource determinations*. Rather, the regulation, titled "Denial of Assistance for Voluntary Transfer of Resources," requires *only* that the Division "follow SSA's lead" with regard to denials or terminations *due to transfers of resources*. 7 AAC 40.295(b) *does not* allow the Division to "ride piggy-back" on an SSA determination that an applicant or recipient is *over-resource*. The same is true of Adult Public Assistance Manual Section 433-1F, the only relevant provision cited in the Division's APA termination notice (Ex. 6.0).

7 AAC 40.030(a) requires that "[a]n applicant [for APA benefits] meet the eligibility requirements of the SSI program contained in Title XVI of the Social Security Act, as amended (42 U.S.C. 1381 - 1383) and in 20 C.F.R. Part 416, and the eligibility requirements set forth in this chapter." This regulation, *if cited in the Division's termination notice*, might have been sufficient authority to allow DPA to terminate the Claimant's benefits based on SSA's prior over-resource determination. However, the Division did not cite 7 AAC 40.030(a), or any of the federal statutes and regulations referenced therein, in its APA benefit termination notice.

Alaska Fair Hearing regulation 7 AAC 49.070 states in relevant part that, "unless otherwise specified in applicable federal regulations, written notice to the client *must* detail the reasons for the proposed adverse action, *including the statute, regulation, or policy upon which that action is based*." [Emphasis added]. The Division's APA termination notice (Ex. 6.0) indicates that a determination of excess resources was one of two alternate bases for termination of benefits. However, the Division did not cite any authority in its notice which would support a termination of benefits based on excess resources. Accordingly, as a matter of law, the Division was not correct to terminate the Claimant's APA benefits based on the assertion that the Claimant was over-resource.

II. Analysis Under the Food Stamp Program.

The regulations governing Food Stamp Program disqualification due to transfers of assets are set forth at 7 CFR § 273.8(h) (see Principles of Law, above). 7 CFR § 273.8(h) basically disqualifies

households which have (1) knowingly transferred resources, (2) for the purpose of qualifying or attempting to qualify for Food Stamp benefits, (3) within three months of the date of application or during the recertification period. The disqualification applies if resources were transferred during a certification period or within the three month period prior to the application date (i.e. this is the “look-back period”). *Id.*

The length of the disqualification period varies depending on the value of the resources transferred; the maximum disqualification period is one year. *Id.* Pursuant to 7 CFR 273.8(h)(3), the disqualification period begins “in the month of application,” or, “if the household is [receiving benefits] at the time of the discovery of the transfer . . . the period of disqualification shall be made effective with the first allotment to be issued after the notice of adverse action period has expired, unless the household has requested a fair hearing and continued benefits.”

Initially, the Claimant’s “Lease/Purchase Agreement” (Exs. 4.9 – 4.11) is dated September 18, 2009. The Claimant applied for Food Stamp benefits less than one month later on October 15, 2009 (Ex. 1). Accordingly, it is clear that the property transfer occurred within the three month period specified by 7 CFR § 273.8(h). There is also no question that the Claimant intended to transfer the property interest at issue (i.e. that her transfer was knowing or voluntary) (Claimant hearing testimony).

However, there are a number of circumstances which, if present, essentially constitute affirmative defenses to an asset transfer disqualification claim. Pursuant to 7 CFR § 273.8(h)(2), the only exceptions / defenses which could potentially apply on the facts of this case are as follows:

1. If the value of the assets / resources transferred was sufficiently low that their value, when added to the Claimant’s other countable / non-exempt resources, was less than \$2,000.00 (the maximum resource limit applicable to the Claimant’s household);
2. If the assets / resources were sold or traded at or near fair market value;
3. If the assets / resources were transferred between members of the same household; or
4. If the assets / resources were transferred for a reason *other than* attempting to qualify for Food Stamp benefits.

These exemptions will be examined below in the order stated.

A. Was the Value of the Property Interest Conveyed by The Claimant Sufficiently Low That it Would not Have Caused the Claimant to Exceed the Applicable \$2,000.00 Maximum Resource Limit?

In the present case, the only two evidentiary sources from which a value can be placed on the property interest transferred are (1) the Claimant’s testimony; and (2) the values recited in the transactional documents themselves.

The Claimant testified that the only interest she conveyed to [REDACTED] was a 1% interest in the agricultural rights of the 40 acre parcel. She testified that agricultural rights are only worth about

\$200.00 per acre. If this is so, then 100% of the agricultural rights to the 40 acre parcel she transferred would have been worth a maximum of \$8,000.00 (i.e. 40 acres multiplied by \$200.00 per acre = \$8,000.00). However, the Claimant only had a 1% interest in the agricultural rights. The Claimant's 1% interest in the agricultural rights would therefore have been worth 1% of \$8,000.00, or \$80.00.

The transactional documents, on the other hand, indicate a much higher value. In exchange for the Claimant's conveyance of the property subject to the "Lease/Purchase Agreement" (Exs. 4.9 – 4.11), ██████████ agreed to pay to the Claimant a total of \$80,000.00.

The \$80,000.00 value stated in the transactional documents is more credible than the \$80.00 value which the Claimant's testimony indicated the property interest was worth. First, in this case the Claimant has a motive for valuing the property interest at less than \$2,000.00; that motive is to qualify for Food Stamp benefits. For this reason her testimony, unless corroborated by other evidence, is less credible than other valuation sources.

Second, even though the Claimant testified that she had a close personal relationship with ██████████ ██████████, the lease/purchase agreement signed by the parties is a legally binding document. It is unlikely that ██████████ would have agreed to legally obligate himself to payment of \$80,000.00 if he did not believe that the Claimant's property interest was worth roughly that amount.

Third, the Claimant testified that ██████████ actually paid an initial \$5,000.00 to the Matanuska-Susitna Borough on the Claimant's behalf for property taxes owed, and that, later, in July 2009, ██████████ ██████████ made a \$10,000.00 payment to the Claimant's sons, ██████████ and ██████████, who in turn paid this money to the mortgage holder's attorneys. Thus, based on the Claimant's own testimony, she received, or her sons received on her behalf, a total of at least \$15,000.00.

Accordingly, the preponderance of the evidence indicates that the value of the property interest conveyed by the Claimant was worth approximately \$80,000.00. The exception for transfers of less than the \$2,000.00 exempt amount therefore does not apply in this case.

B. Did the Claimant Receive Fair Market Value in Return for her Transfer?

As demonstrated in the preceding section, it is more likely than not that the fair market value of the property interest conveyed by the Claimant was approximately \$80,000.00. In this section, the issue is whether the Claimant actually *received* the approximate value of the property in exchange for her transfer of the property – i.e. did the Claimant actually receive something worth \$80,000.00 in return for her conveyance?

The Claimant testified that she did not receive any money directly from the property transfer. She stated that her sons received a financial benefit, and that in turn her family took care of her. As noted in the preceding section, ██████████ did pay a total of \$15,000.00 on the Claimant's behalf. However, there is no evidence that the Claimant received \$80,000.00 or more in return for her transfer of the resource. Accordingly, the preponderance of the evidence indicates that the Claimant did not receive anything having a value approaching \$80,000.00 in return for her transfer of the property interest. The "equal return value" exception therefore does not apply in this case.

C. Was the Property Interest Transferred Between Members of the Same Household?

The Claimant was living in [REDACTED], Alaska at the time of the Division's termination of benefits (Exs. 1, 7.3). The purchaser of the Claimant's property interest, [REDACTED], lives next to the [REDACTED] Ranch property in the upper Susitna River Valley (Claimant testimony). Further, the Claimant never asserted that [REDACTED] was part of her household for Food Stamp purposes. Accordingly, the preponderance of the evidence indicates that the Claimant's property interest was not transferred to another member of her household. The "intra-household transfer" exception thus does not apply.

D. Was the Claimant's Property Interest Transferred for a Reason Other Than Attempting to Qualify for Food Stamp Benefits?

The Claimant testified that she transferred her remaining 1% interest in the 40 acre parcel at issue to [REDACTED] in September 2009 only because the property was being foreclosed on by the Matanuska-Susitna Borough. No other evidence of any pending foreclosure is present in the record.

It is possible that a pending foreclosure may have been *one reason* for the Claimant's property transfer. However, the Claimant's "Lease/Purchase Agreement" (Exs. 4.9 – 4.11) is dated September 18, 2009; the Claimant applied for Food Stamp benefits less than one month later on October 15, 2009 (Ex. 1). Because of the timing of the transfer, and the fact (discussed above) that the Claimant did not receive equal value in return for her transfer of the property interest, it is more probable than not that the *primary reason* behind the Claimant's property transfer was a desire to qualify for Food Stamp benefits.

E. Did DPA Properly Determine the Length and Start Date of the Disqualification Period?

The Division determined that the length of the Claimant's Food Stamp disqualification period was 12 months, and that the 12 month disqualification period would begin on August 1, 2010 (Ex. 6.1).

Pursuant to 7 CFR 273.8(h)(1) and (h)(4), a transfer of \$5,000.00 or more above the applicable resource limit results in a 12 month disqualification period. The \$80,000.00 resource transferred by the Claimant was worth approximately \$78,000.00 more than the \$2,000.00 exempt property allowance. Thus, pursuant to 7 CFR 273.8(h)(4), a one year disqualification period applies here.

Pursuant to 7 CFR 273.8(h)(3), where the disqualifying transfer is discovered while the household is receiving benefits, the period of disqualification is "effective with the first allotment to be issued after the notice of adverse action period has expired, unless the household has requested a fair hearing and continued benefits."

Here, the transfer itself occurred on September 18, 2010 (Ex. 4.9). The earliest indication in the record that the Division was aware of the transfer is a memo dated May 27, 2010 (Ex. 2.1), which memo indicates that the Division was first informed of the transfer on an unspecified date in December 2009. This was while the Claimant was already receiving benefits (Ex. 1).

The Division mailed the Claimant's Food Stamp termination notice on June 25, 2010 and terminated her Food Stamp benefits effective after July 31, 2010 (Exs. 6.0, 6.1). The first allotment which would

have been issued after the June 2010 notice of adverse action expired would have been for August 2010. Accordingly, had the Claimant *not* requested continued benefits pending issuance of this decision, the disqualification period would have begun on August 1, 2010. Because the Claimant *did* request continued benefits (Ex. 7.3), the disqualification period will begin in the month following the date of this decision.

CONCLUSIONS OF LAW

I. Adult Public Assistance Program.

1. The Division failed to prove, by a preponderance of the evidence, that it conducted an “undue hardship” determination, as required by Alaska Adult Public Assistance Manual Section 433-1D, prior to termination of the Claimant’s APA benefits. Accordingly, the Division was not correct to terminate the Claimant’s APA benefits on the basis of a prohibited transfer of resources.

2. The Division’s termination of the Claimant’s APA benefits, based on the assertion that the Claimant was over-resource, was improper because the Division’s termination notice did not cite any regulation which would support a termination on that basis as required by 7 AAC 49.070.

3. Accordingly, the Division was not correct when on June 25, 2010 it mailed to the Claimant a notice stating that her APA case was being closed, and that her APA benefits were being terminated after July 31, 2010, based on imposition of an asset transfer penalty and/or based on the assertion that the Claimant was over-resource.

II. Food Stamp Program.

1. The Division carried its burden and proved, by a preponderance of the evidence, that the Claimant knowingly transferred resources, for the purpose of qualifying or attempting to qualify for Food Stamp benefits, during the 3 month period prior to application.

2. The Claimant failed to prove by a preponderance of the evidence that any of the exceptions to the prohibition of transfer of resources apply under the circumstances of this case.

3. Pursuant to 7 CFR § 273.8(h), the Division was therefore correct when on June 25, 2010 it mailed to the Claimant a notice stating that her Food Stamp case was being closed, and that her Food Stamp benefits were being terminated, based on imposition of an asset transfer penalty.

4. Pursuant to 7 CFR § 273.8(h), the asset transfer disqualification period is for a period of 12 months beginning January 1, 2011.

DECISION

1. Pursuant to Alaska Adult Public Assistance Manual Section 433-1D, the Division was not correct when on June 25, 2010 it mailed to the Claimant a notice stating that her APA case was being closed and that her APA benefits were being terminated after July 31, 2010.

2. Pursuant to 7 CFR § 273.8(h), the Division was correct when on June 25, 2010 it mailed to the Claimant a notice stating that her Food Stamp case was being closed, and that her Food Stamp benefits were being terminated, based on imposition of an asset transfer penalty.

3. Pursuant to 7 CFR § 273.8(h), the asset transfer disqualification period is for a period of 12 months beginning January 1, 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. 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 17th day of December, 2010. (signed)

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 17th day of December 2010 true and correct copies of the foregoing document were sent to the Claimant via U.S.P.S. Mail, and to the remainder of the service list by e-mail, as follows:


Alaska Legal Services Corporation – Juneau Office
Counsel for Claimant
via Certified Mail, Return Receipt Requested

, DPA Hearing Representative
, Director, Division of Public Assistance
, Chief of Field Services
, Policy & Program Development
, Staff Development & Training
, Administrative Assistant II
, Eligibility Technician I

(signed)

J. Albert Levitre, Jr., Law Office Assistant I