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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-262
)
 Claimant.) DPA Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was a recipient of the Food Stamp Program (Ex. 1). On June 23, 2010 the Claimant prepared and signed an Eligibility Review Form for recertification of his Food Stamp benefits (Exs. 2.0 – 2.5). The Claimant’s Eligibility Review Form (recertification application) was received by the State of Alaska Division of Public Assistance (DPA or Division) on July 12, 2010 (Ex. 2.0). On July 19, 2010 the Division mailed a notice to the Claimant stating that his recertification application for Food Stamp benefits had been denied due to excess resources (Ex. 4). On August 2, 2010 the Claimant requested a hearing to contest the Division’s denial of his Food Stamp recertification application (Ex. 5.1).

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

A hearing was held on September 1, 2010 before Hearing Examiner Claire Steffens.¹ The Claimant participated in the hearing by telephone, represented himself, and testified on his own behalf. [REDACTED] also participated by telephone and testified on behalf of the Claimant. [REDACTED], a Public Assistance Analyst employed by the Division, attended the hearing in person to represent and testify on behalf of the Division.

¹ 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.

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 July 19, 2010, it denied the Claimant's Food Stamp recertification application dated June 23, 2010, based on the assertion that the value of the Claimant's non-exempt resources exceeded the applicable maximum resource limit for the Food Stamp Program?

SUMMARY OF DECISION

The Claimant's household's Sea Ray boat is an exempt (non-countable) resource, for purposes of the Food Stamp Program, pursuant to 7 CFR § 272.7(f) and Alaska Food Stamp Manual Section 602-2 C(1)(a), and also pursuant to 7 CFR § 273.8(e) and Alaska Food Stamp Manual Section 602-2 B. Accordingly, the Division was not correct when, on July 19, 2010, it denied the Claimant's Food Stamp recertification application dated June 23, 2010, based on the assertion that the value of the Claimant's non-exempt resources exceeded the applicable maximum resource limit for the Food Stamp Program.

FINDINGS OF FACT

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

1. The Claimant applied for Food Stamp Program benefits on February 12, 2010 (Exs. 1, 3.1). On March 1, 2010 the Claimant participated in an eligibility interview (Ex. 3.1). During that eligibility interview the Claimant valued a 1977 25 foot Sea Ray boat, owned by his household, at \$13,125.00 in its "as is" condition. *Id.* This boat is hereafter referred to simply as "the boat."
2. The Claimant's February 12, 2010 application for Food Stamp benefits was subsequently approved by the Division (Ex. 1, DPA Hearing Representative's testimony).
3. An e-mail from DPA fee agent [REDACTED] to a DPA eligibility technician, dated March 10, 2010, identified the boat as being owned by [REDACTED] and not by the Claimant (Ex. 3.3).
4. On June 23, 2010 the Claimant and [REDACTED] prepared and signed a Food Stamp Program Eligibility Review Form (recertification application) (Exs. 2.0 – 2.5). This recertification application was received by the Division on July 12, 2010 (Ex. 2.0). Neither the Claimant nor [REDACTED] had reached 60 years of age at the time their recertification application was submitted (Ex. 1).
5. On July 16, 2010 the Claimant participated in an eligibility interview with regard to his Food Stamp Program Eligibility Review Form (recertification application) (Ex. 3.0). The Division's notes regarding the eligibility interview state in relevant part that "[REDACTED] has [a] 77

Sea Ray boat that is still for sale / value \$5,000.00” (Ex. 3.0 - emphasis added). The Division’s notes also indicate that a call placed to collateral contact “██████████” confirmed that “██████████ has a boat that was her husband’s” (Ex. 3.0 – emphasis added).

6. On July 19, 2010 the Division notified the Claimant that his application for recertification of Food Stamp benefits had been denied due to excess resources (Ex. 4). The denial notice stated in relevant part as follows:

Your Food Stamp recertification application received on July 12, 2010 is denied . . . because of the reason checked below.

* * * * *

4. Your resources exceed the limit for the Food Stamp Program. \$5,000.00 is the value of your countable resources. \$2,000.00 is the resource limit for the Food Stamp Program. This action is based on Food Stamp Manual Section 602-2.

* * * * *

You have \$5,000.00 in resources from your Sea Ray boat. You are allowed \$2,000.00 in resources.

7. On August 2, 2010 the Claimant submitted a Fair Hearing Request (Ex. 5.1).

8. At the hearing of September 1, 2010 the Claimant credibly testified in relevant part that:

a. ██████████ is the Claimant’s friend and house-mate. The boat at issue was originally the property of ██████████’s former husband, who died in May 2007. ██████████ inherited the boat from her former husband when he died.

b. Before the boat became the property of the Claimant, it had been left out for the winter without being properly winterized. This damaged the boat’s main engine as well as its “kicker” (auxiliary or trolling engine).

c. The boat has never run since the Claimant has owned it. The motor is “shot;” he believes that the engine block is cracked. Someone stole the carburetor from the engine. The electrical system is “fried.” Finally, the boat has no battery.

d. He believes that it would cost about \$10,000.00 to repower the boat (i.e. to have the engine replaced or rebuilt to an operable condition). He would have to pay money to a mechanic to get a more exact estimate of the cost of the necessary repairs. Unfortunately, he does not have the money to pay for such an estimate, much less the money to pay the cost of the actual repairs themselves.

e. He has had the boat for sale since March 2010. The boat has been appraised for tax purposes at \$13,125.00. He has a “For Sale” sign on the boat for \$15,000.00. He

would like to sell the boat for at least \$5,000.00. However, he thinks the fair market value of the boat may be zero (nothing) because the boat does not run and so far no one has offered to buy it. Also, there are currently many other boats for sale in Seward, which is driving prices down.

f. To date he has advertised the boat for sale using a “For Sale” sign, and by word-of-mouth. Although the “For Sale” sign on the boat says \$15,000.00, the Claimant has orally told people to “make him an offer” (i.e. he has indicated that he would sell the boat for less than \$15,000.00). Many people have asked about the boat, but to date nobody has made an offer.

g. The only way to ascertain the true fair market value of the boat would be to have an assessment or appraisal performed by a marine surveyor. However, that would cost money and he can’t afford to pay for an appraisal.

9. At the hearing of September 1, 2010 [REDACTED] credibly testified in relevant part that:

a. She is an Alaska native and has a history of subsistence fishing. Prior to May 2007 the boat at issue was used by she and her former husband for subsistence fishing.

b. The boat was put in storage following her husband’s death in May 2007. She hired someone to winterize the boat prior to putting it in storage.

c. She took the boat out of storage in 2009 so she could once again use it for subsistence fishing. However, at that time she discovered that the boat had not been properly winterized and was not useable.

d. She has not tried to get the boat repaired because to date she has not had enough money to do so.

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.² This matter involves the denial of a Food Stamp Program recertification application. Because of the manner in which the Food Stamp Program is administered, each recertification application is considered a new and independent eligibility determination.³ Accordingly, the Claimant is considered to be attempting to change the status quo or existing state of affairs by re-applying for Food Stamp benefits. The Claimant therefore bears the burden of proof in this case.

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

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

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.⁴ 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.⁵

II. The Food Stamp Program – in General.

The Food Stamp program was established by the federal Food Stamp Act of 1977, codified at 7 USC Sections 2011 – 2029. The United States Department of Agriculture’s Food and Nutrition Service has promulgated regulations to implement the Food Stamp Act. These regulations are codified primarily at 7 CFR Sections 271-274.

The Food Stamp Program has been delegated to the states for administration. 7 CFR Section 271.4. The Department of Health and Social Services (DHSS) administers the Food Stamp program in Alaska. AS 47.25.975. DHSS has promulgated regulations which adopt the federal regulations (with certain minor variations as allowed by federal law). 7 CFR Section 272.7; 7 AAC Sections 46.010 - .990.

III. Relevant Food Stamp Program Regulations Concerning Resources.

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 \$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, personal property, licensed and unlicensed vehicles, buildings, land, recreational properties, and any other property, provided that these resources are not

⁴ 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).

⁵ *Black’s Law Dictionary* at 1064 (West Publishing, 5th 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”).

specifically excluded under paragraph (e) of this section. The value of nonexempt resources, except for licensed vehicles as specified in paragraph (f) of this section, 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:

* * * * *

(3)(i) Licensed vehicles ⁶ that meet the following conditions
(G) The value of the vehicle is inaccessible, in accordance with paragraph (e)(18) of this section, because its sale would produce an estimated return of not more than \$1,500.

* * * * *

(8) Resources having a cash value which is not accessible to the household

* * * * *

(11) Resources which are excluded for food stamp purposes by express provision of Federal statute.

* * * * *

(18) The State agency must develop clear and uniform standards for identifying kinds of resources that, as a practical matter, the household is unable to sell for any significant return because the household's interest is relatively slight or the costs of selling the household's interest would be relatively great. The State agency must so identify a resource if its sale or other disposition is unlikely to produce any significant amount of funds for the support of the household or the cost of selling the resource would be relatively great The determination of whether any part of the value of a vehicle is included as a resource must be made in accordance with the provisions of paragraphs (e)(3) and (f) of this section. The State agency may require verification of the value of a

⁶ With certain exceptions not applicable here, powered vessels (boats with engines) must be registered with the State of Alaska Division of Motor Vehicles. See A.S. 05.25.055; see also 2 AAC 70.005 - 2 AAC 70.990. Accordingly, the Claimant's household's boat is a "licensed vehicle" pursuant to the applicable Food Stamp regulations.

resource to be excluded if the information provided by the household is questionable. The State agencies must use the following definitions in developing these standards: (i) “Significant return” means any return, after estimating costs of sale or disposition, and taking into account the ownership interest of the household, that the State agency determines are more than \$1,500; and (ii) “Any significant amount of funds” means funds amounting to more than \$1,500.

* * * * *

7 C.F.R. § 272.7, titled “Procedures for Program Administration in Alaska,” states in relevant part as follows:

(f) Vehicles. . . . Vehicles necessary for subsistence hunting and fishing shall not be counted as a household resource.

Alaska Food Stamp Manual Section 602-2 B, titled “Exempt Resources,” provides in relevant part as follows:

* * * * *

20. Vehicles. Most vehicles are exempt as addressed at [Alaska Food Stamp Manual Section] 602-2 C [below].

* * * * *

25. Resources Excluded by Federal Law

30. Resources That Cannot Be Sold For A Significant Return. Non-liquid resources with an equity value of \$1,500.00 or less are exempt

* * * * *

Alaska Food Stamp Manual Section 602-2 C, entitled “Vehicles”, provides in relevant part as follows:

Most vehicles are exempt based on their use by the household. If a vehicle is not exempt, its equity value counts in the resource determination.

A vehicle is any passenger car or other motorized vehicle used to provide transportation of persons or goods. This includes cars, trucks, recreational vehicles (RVs), boats, snow machines, all-terrain vehicles (ATVs), motorcycles, airplanes, or other motorized vehicles.

1. Exempt Vehicles. Most vehicles are NOT counted if they are intended to be used for one of the following reasons a. For family transportation to meet the household's basic needs, such as getting food, medical care or other essentials. This includes vehicles used: For subsistence hunting and fishing

* * * * *

ANALYSIS

I. Introduction; Definition of Issues; Burden of Proof.

The issue in this case, as framed by the Division's denial notice dated July 19, 2010, is whether or not the Division was correct to deny the Claimant's Food Stamp recertification application dated June 23, 2010, based on the assertion that the value of the Claimant's non-exempt resources exceeded the applicable maximum resource limit for the Food Stamp Program. The Claimant's household's Sea Ray boat is the sole asset upon which the Division based its over-resource determination. Accordingly, there are actually two sub-issues to be determined:

1. Is the Claimant's household's Sea Ray boat a non-exempt resource?
2. If so, does the value of the Sea Ray boat exceed the applicable maximum resource limit for the Food Stamp Program?

These two issues will be addressed separately in the order stated above. Because this case arises in the context of a recertification application, the Claimant has the burden of proof on all factual issues by a preponderance of the evidence (see Principles of Law at page 4, above).

II. Is the Sea Ray Boat an Exempt Resource or a Countable (Non-Exempt) Resource?

The first issue relevant to the Claimant's Food Stamp eligibility is whether the Claimant's household's Sea Ray boat is an exempt resource or a countable (non-exempt) resource.

Pursuant to 7 CFR § 273.8(c)(2), "resources" include "licensed and unlicensed vehicles." The Claimant's household's Sea Ray boat is included within the definition of "vehicles." See Alaska Food Stamp Manual Section 602-2 C, set forth in the Principles of Law at page 6, above. Accordingly, the Claimant's household's boat is a "resource." The next question is whether the boat is an exempt resource or a non-exempt (countable) resource.

A. Is the Boat Exempt Based on Past Subsistence Use?

It was not contested that the Claimant's household's boat was previously used for subsistence fishing, and would be used for subsistence fishing again if the household could afford to fix it (see Findings of Fact at Paragraph 9). These facts suggest one possible basis for excluding the boat from the Claimant's countable assets.

7 CFR § 273.8(e)(11) excludes from the definition of resources “[r]esources which are excluded for food stamp purposes by express provision of Federal statute” (see Principles of Law at page 5, above). 7 CFR § 272.7(f) expressly states in relevant part that [v]ehicles necessary for subsistence hunting and fishing *shall not be counted as a household resource*” (emphasis added). In addition, Alaska Food Stamp Manual Section 602-2 C(1)(a) states in relevant part that “[m]ost vehicles are NOT counted if they are *intended to be used* for one of the following reasons family transportation to meet the household’s basic needs, such as getting food This includes vehicles used: [f]or *subsistence hunting and fishing*” (emphasis added).

██████████ testified unequivocally that the Sea Ray boat had previously been used for subsistence fishing, and that it would still be used for subsistence fishing if it ran (see Findings of Fact at Paragraph 9). This testimony was not contested by the Division.

The Division argues, however, that the placing of the boat for sale somehow interrupted or superseded ██████████’s prior intent to use the boat for subsistence purposes (see the Division’s Position Statement at page 2, Paragraph 3). However, the Division has cited no legal authority in support of this interpretation. Further, research indicates that none of the reported court decisions interpreting 7 CFR § 273.8 have espoused such an interpretation of the regulation. Finally, such an interpretation could have absurd results, in that a subsistence fisher could never put an old subsistence-use boat for sale, in order to upgrade or replace that boat, without losing Food Stamp eligibility. There is nothing in the relevant federal regulations or state policy manual indicating that such an effect was intended. Accordingly, the Division’s interpretation of the applicable regulations is unreasonable in this regard.⁷

In summary, the uncontradicted testimony was that the Sea Ray boat was previously used for subsistence fishing, and that ██████████ intended to use the boat for subsistence fishing. The only reason the boat is not currently being used for subsistence fishing is that its engine is damaged and needs to be replaced. Under these circumstances, the Claimant’s household’s Sea Ray boat is an exempt (non-countable) resource, for purposes of the Food Stamp Program, pursuant to 7 CFR § 272.7(f) and Alaska Food Stamp Manual Section 602-2 C(1)(a).

B. Is the Boat Exempt Because it Cannot be Sold For a Significant Return?

The Claimant asserted at the hearing that the boat had essentially no value in its present state because nobody would buy it unless its engine was replaced. If true, this would clearly support a finding that the boat is an exempt resource pursuant to 7 CFR § 273.8(e) and Alaska Food Stamp Manual Section 602-2 B because its sale would produce an estimated return of not more than \$1,500. The Division asserts, however, that the boat is worth either \$15,000.00, or \$13,125.00, or \$5,000.00, because these are the values which were placed on the boat by the Claimant at various times prior to the hearing. See the Division’s Position Statement at page 2, Paragraph 3;

⁷ Under the reasonable basis standard, an agency’s position on “legal questions involving agency expertise or fundamental policy questions” will be upheld if the agency’s interpretation is reasonable. *Burke v. Houston Nana, L.L.C.*, 222 P.3d 851 (Alaska 2010). However, the Division’s interpretation of 7 CFR § 272.7(f) and Alaska Food Stamp Manual Section 602-2 is unreasonable with regard to the effect of the placing of a subsistence asset for sale, as discussed above.

see also Findings of Fact at Paragraphs 8(e-f). Which valuation is best supported by the evidence?

Ordinarily the value which an applicant for public benefits places on an asset *at the time of application* might be considered more credible than the value placed on the asset *following denial of the application* for the simple reason that a valuation given *after* receipt of a denial notice might, either consciously or unconsciously, be based on the maximum resource limit disclosed by the Division in its denial notice. However, in this case, the boat values provided by the Claimant at the time of application have been “tested” by the sale process. The Claimant testified that he has had the boat for sale since March 2010, but that he had not received a single offer on the boat. This testimony was not rebutted by the Division.

Because the Claimant’s household’s boat was up for sale for a period of five to six months without receiving a single offer to purchase, and because the boat would likely need \$10,000.00 worth of mechanical work in order to be useable, it is more likely that the boat is worth \$1,500.00 or less (as asserted by the Claimant) than it is that the boat is worth \$5,000.00 or more (as asserted by the Division). Accordingly, the Claimant has proven, by a preponderance of the evidence, that the boat is an exempt resource pursuant to 7 CFR § 273.8(e) and Alaska Food Stamp Manual Section 602-2 B. The Division was therefore not correct when, on July 19, 2010, it denied the Claimant’s Food Stamp recertification application dated June 23, 2010, based on the assertion that the value of the Claimant’s non-exempt resources exceeded the applicable maximum resource limit for the Food Stamp Program.⁸

CONCLUSIONS OF LAW

1. The Claimant satisfied his burden and proved, by a preponderance of the evidence, that the Division erred in determining that the Claimant’s household’s Sea Ray boat was a countable (non-exempt) resource for purposes of the Food Stamp Program.
2. The Claimant’s household’s Sea Ray boat is an exempt (non-countable) resource, for purposes of the Food Stamp Program, pursuant to 7 CFR § 272.7(f) and Alaska Food Stamp Manual Section 602-2 C(1)(a); and also pursuant to 7 CFR § 273.8(e) and Alaska Food Stamp Manual Section 602-2 B.
3. Accordingly, the Division was not correct when, on July 19, 2010, it denied the Claimant’s Food Stamp recertification application dated June 23, 2010, based on the assertion that the value of the Claimant’s non-exempt resources exceeded the applicable maximum resource limit for the Food Stamp Program.

DECISION

The Division was not correct when, on July 19, 2010, it denied the Claimant’s Food Stamp recertification application dated June 23, 2010, based on the assertion that the value of the

⁸ Because the Sea Ray boat is an exempt resource, it is not necessary to proceed to the second step of the analysis (i.e. to determine whether the fair market value of the Sea Ray boat exceeded the \$2,000.00 non-exempt resource limit as of the date of the eligibility interview).

Claimant's non-exempt resources exceeded the applicable maximum resource limit for the Food Stamp Program.

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 27th day of September, 2010.

(signed)

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 27th day of September 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

(signed)

J. Albert Levitre, Jr.
Law Office Assistant I