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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-322
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) filed an application for Food Stamp benefits on August 31, 2010. (Exs. 7.0 – 7.9) On September 22, 2010, the Division of Public Assistance (Division) Eligibility Technician handling the Claimant’s application verbally informed him that his application was denied. (Ex. 7.10) The Claimant requested a fair hearing on September 23, 2010. (Exs. 8.0, 8.3) The Division sent the Claimant written notice his August 31, 2010 application was denied on September 28, 2010. (Ex. 9.0)

This office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant’s hearing started on October 20, 2010 before Hearing Examiner Patricia Huna. The hearing was continued until November 17, 2010. This case was then administratively reassigned to Hearing Examiner Larry Pederson, who reviewed the entire record, including the recording of the October 20, 2010 hearing, and conducted the November 17, 2010 hearing.

The Claimant appeared telephonically on both hearing dates; he represented himself and testified on his own behalf. [REDACTED], Public Assistance Analyst with the Division, attended both hearing dates in person; she represented the Division and testified on its behalf.

STATEMENT OF ISSUES

The Division initially denied the Claimant’s August 31, 2010 Food Stamp application because it determined the Claimant owned countable resources, specifically his 4 Wheeler, that caused him to exceed the \$2,000 resource limit for the Food Stamp and Family Medicaid programs. (Ex. 9.0) The September 28, 2010 denial notice sent to the Claimant states that “\$2,006.00 is the amount of your resources countable for the Food Stamp Program.” *Id.* The notice then continues to state “although you were unsure about the exact amount of your four Wheeler, I used the \$2000 for it’s worth as we agreed it was worth at least that much.” *Id.*

The Division subsequently sent the Claimant an undated corrective notice stating his August 31, 2010 Food Stamp application was denied because it valued his countable resources as being \$2,581.69: this amount included his 2005 Grizzly ATV (the 4 Wheeler) which the Division valued as worth \$2,575.69 after estimated repair costs of \$724.31 were deducted from its low retail value of \$3,300.00.¹ (Ex. 9.3)

The Claimant argued that his 4 Wheeler was a 2004 model, not a 2005 model, and that it had a value of zero, because it was inoperable and required substantial repairs.

The resulting issue is:

Was the Division correct to deny the Claimant's August 31, 2010 Food Stamp application because he allegedly owned countable resources worth more than \$2,000, specifically his four Wheeler?

FINDINGS OF FACT

1. The Claimant applied for Food Stamp benefits on July 7, 2010. (Exs. 2.0 – 2.5) That application contains the following information:

- a. The Claimant listed a 2005 660 Grizzly 4 Wheeler as an asset worth \$6,000.00. (Ex. 2.1)
- b. The Claimant owned a truck and a snow machine which the Claimant explicitly wrote did not run. *Id.*
- c. The July 7, 2010 application does not state that the 4 Wheeler did not run. *Id.*
- d. The 4 Wheeler was used for hunting and recreation. *Id.*
- e. The Claimant heats his home with propane. (Ex. 2.2)

The Claimant signed the July 7, 2010 application certifying that all the information contained in the application was true and correct under penalty of perjury. (Ex. 2.3)

2. The Claimant participated in a Food Stamp intake interview with a Division Eligibility Technician on July 14, 2010, where he reported that none of his vehicles were in running order. (Ex. 3.0 – 3.1) During that interview, he stated he did not use the 4 Wheeler for subsistence purposes. (Ex. 3.1)

¹ The Division's corrective notice does not contain a date indicating when it was sent to the Claimant. (Ex. 9.3) However, the corrective notice contains a date in the upper right hand corner that shows it was printed for the record in this case on October 10, 2011 by the Agency Representative [REDACTED]. *Id.* According, the corrective notice was sent sometime between September 28, 2010, the date of the original denial notice, and October 11, 2010.

3. The Division valued the Claimant's four Wheeler at \$4,000.00 and sent the Claimant a notice on July 16, 2010 that informed him his July 7, 2010 Food Stamp application was denied, in part, because he owned a four Wheeler worth \$4,000.00. (Ex. 4)

4. The Claimant requested a fair hearing challenging the denial of his July 7, 2010 Food Stamp application. (Ex. 5) The Claimant, however, did not appear for his August 12, 2010 fair hearing and the case was dismissed as having been abandoned. (Ex. 6)

5. The Claimant submitted a new application for Food Stamp benefits on August 31, 2010 for his one person household. (Exs. 7.0 – 7.9) At the time of his application, he was 51 years old. (Ex. 7.1)

6. The Claimant's August 31, 2010 Food Stamp application stated that he owned a 2004 660 Griz (4 Wheeler). (Ex. 7.4) The application stated the 4 Wheeler did not run; the portion of the form that asks for an estimated value for the 4 Wheeler was left blank. *Id.*

7. On September 22, 2010, the Claimant spoke to a Division Eligibility Technician about his application. (Ex. 7.10) The Claimant informed the Eligibility Technician that he did not know exactly what his 4 Wheeler was worth, but that it was worth more than \$2,000.00. *Id.* The Claimant estimated the repair costs for the 4 Wheeler was \$300.00. *Id.*

8. The Claimant, on September 28, 2010, received a repair estimate of \$724.31 for repairing the 4 Wheeler. (Ex. 9.1) The Claimant obtained this estimate by providing a verbal description of the 4 Wheeler's condition to the repair shop; the Claimant was not able to have the repair shop actually examine the 4 Wheeler because he could not afford to have the 4 Wheeler taken to the repair shop for a physical inspection. (Claimant testimony)

9. The NADA Guide low retail value for a 2004 Yamaha 4 wheel Grizzly ATV, as of October 7, 2010, was \$2,840.00. (Ex. 8.1) The NADA Guide low retail value for a 2005 Yamaha 4 wheel Grizzly ATV, as of October 7, 2010, was \$3,300.00. (Ex. 8.1)

10. The Claimant testified as follows:

- a. The 4 Wheeler was a 2004 model, not a 2005 model.
- b. He does not know the exact value of the 4 Wheeler, but he believes that the 4 Wheeler is worth "exactly zero" until it is fixed.
- c. The last time the 4 Wheeler ran was approximately a year and a half before the November 17, 2010 hearing.
- d. He believes the \$724.31 repair estimate was low.
- e. He used the 4 Wheeler solely for hunting and gathering firewood.

11. The Claimant had received Food Stamp benefits in the past. (Ex. 3.1) During that benefit period, his 4 Wheeler was not counted as a resource because it had been exempted because the Division had determined it was used for subsistence purposes. *Id.*

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, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). “Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the [triers of fact] that the asserted facts are probably true.” *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495 (Alaska 2003).

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 none of the household members has reached the age of 60 years, may not own countable resources worth in excess of \$2,000. 7 CFR 273.8(b).

The Food Stamp program rules on countable resources are contained in federal regulation 7 CFR 273.8. Vehicles, both licensed and unlicensed, are generally counted as resources. 7 CFR 273.8(c)(2). One licensed vehicle per each adult household member is exempted from being counted as a resource. 7 CFR 273.8(f)((2)(ii). Vehicles that have an equity value of \$1,500 or less are not counted as a resource. 7 CFR 273.8(e)(3)(i)(G). Assets that cannot be sold for a profit of more than \$1,500.00, after the costs of sale, are also not countable as resources. 7 CFR 273.8(e)(18).

If a vehicle is used for subsistence hunting and fishing purposes or for hauling firewood when the firewood is the primary fuel source for the household, then the vehicle is also exempt from being counted as a resource. 7 CFR 273.8(e)(3)(i)(F); Alaska Food Stamp Manual Section 602-2(C)(1).

ANALYSIS

The issue in this case is whether the Division was correct when it denied the Claimant’s application for Food Stamp benefits. As an applicant, the Claimant has the burden of proof by a preponderance of the evidence.

It must first be noted the Claimant under the age of 60 years. Consequently, if he owns more than \$2,000 in countable resources, he is not eligible for Food Stamp benefits. 7 CFR 273.8(b).

In this case, the Claimant’s resource at issue is his 4 Wheeler. If this vehicle is properly counted as a resource, and it is worth more than \$2,000.00, the Claimant is not eligible for Food Stamp benefits. As a result, it is first necessary to determine whether the Claimant’s 4 Wheeler is a countable resource.

The Division in the past exempted the Claimant's 4 Wheeler from being a countable resource because it was determined to have been used for subsistence purposes. *See* Finding of Fact 11 above. If the Claimant uses the 4 Wheeler for subsistence purposes or to haul firewood, when the firewood was his primary heat source, the 4 Wheeler would continue to be exempted from being counted as a resource. 7 CFR 273.8(e)(3)(i)(F); Alaska Food Stamp Manual Section 602-2(C)(1).

The Claimant in his July 14, 2010, interview indicated that he did not use his 4 Wheeler for subsistence purposes. *See* Finding of Fact 2 above. In addition, although the Claimant testified he has used the 4 Wheeler to haul firewood, his July 7, 2010 application indicates that he heats his home with propane. *See* Finding of Fact 1(e) above. Because the Claimant does not use the 4 Wheeler for subsistence purposes, and because propane, not firewood, is his heat source, the 4 Wheeler does not qualify as an exempt resource for those reasons. *See* 7 CFR 273.8(e)(3)(i)(F); Alaska Food Stamp Manual Section 602-2(C)(1).

The next step in this analysis is to determine the value of the 4 Wheeler. If the value of the 4 Wheeler is \$1,500.00 or less, it is not counted as a resource. 7 CFR 273.8(e)(3)(i)(G); 7 CFR 273.8(e)(18). The Claimant's argument on this point is that the 4 Wheeler is not worth anything because it is inoperable without repairs. However, in order to determine the value of the 4 Wheeler, it is necessary to review the factual evidence in this case as follows:

1. The Claimant listed the 4 Wheeler as a 2005 model worth \$6,000.00 on his July 7, 2010 Food Stamp application. He did not indicate it was not running, whereas he specifically indicated that his truck and snow machine were not running. *See* Finding of Fact 1 (a) – (c) above.
2. During his July 14, 2010 Food Stamp intake interview, the Claimant stated none of his vehicles were running. *See* Finding of Fact 2 above.
3. On his August 31, 2010 application, the Claimant listed the 4 Wheeler as a 2004 model with no specified value. *See* Finding of Fact 6 above.
4. On September 22, 2010, the Claimant told the Division Eligibility Technician that the 4 Wheeler was worth over \$2,000.00. *See* Finding of Fact 7 above.
5. During the November 17, 2010 hearing, the Claimant testified the 4 Wheeler had been inoperable for approximately a year and a half. *See* Finding of Fact 10(c) above.
6. The Claimant obtained a quote for the 4 Wheeler repair of \$724.31, without an actual inspection of the 4 Wheeler, based solely on his verbal description of the vehicle's condition. *See* Finding of Fact 8 above.
7. The NADA Guide low retail value for a 2004 Yamaha 4 wheel ATV Grizzly, as of October 7, 2010, was \$2,840.00. *See* Finding of Fact 9 above. The value for a 2005 model was \$3,300.00. *Id.*

The Claimant has the burden of proof in this case. A review of the factual discrepancies in the Claimant's own statements about the value of the 4 Wheeler shows that he did not meet it, as discussed below.

The Claimant presented a moving target regarding the value of the 4 Wheeler. He first stated on his July 7, 2010 Food Stamp application that the 4 Wheeler was worth \$6,000.00. On that application, he stated that his truck and snow machine were not running, but did not make the same statement with regard to the 4 Wheeler. The logical inference is that the 4 Wheeler was operational. Then, during his July 14, 2010 Food Stamp application interview, the Claimant stated the 4 Wheeler did not run. Finally, the Claimant, who should be the most knowledgeable person about his 4 Wheeler, stated on his July 7, 2010 Food Stamp application that it was a 2005 model. The model year then changed to a 2004 on his August 31, 2010 Food Stamp application. The substantial discrepancies in the Claimant's testimony regarding the value of the 4 Wheeler make him not credible regarding the 4 Wheeler's value.

In contrast, the Division showed the low retail value of a 2004 model for the Claimant's 4 Wheeler was \$2,840.00, whereas the value of the 2005 model was \$3,300.00. Giving the Claimant the benefit of the doubt on the model year, this establishes the retail value of the Claimant's 4 Wheeler was \$2,840.00. Then, giving the Claimant the benefit of the doubt on his testimony that (a) the 4 Wheeler was not running and (b) needed repairs worth \$724.31, the value of the 4 Wheeler, after deduction of the repair costs, is \$2,115.69. This figure is arrived by again giving the Claimant the benefit of the doubt, because the repair estimate was not based upon an actual examination of the 4 Wheeler by the person preparing the estimate, but rather based upon the Claimant's verbal description of the 4 Wheeler's condition to the estimator, i.e. the estimate is speculative and self-serving based solely upon the Claimant's self reporting.

Because the value of the 4 Wheeler has been found to be \$2,115.69, the 4 Wheeler was not exempt from being counted as a resource. This is because its value exceeded \$1,500.00. 7 CFR 273.8(e)(3)(i)(G); 7 CFR 273.8(e)(18).

A Food Stamp applicant, pursuant to federal Food Stamp regulation 7 CFR 273.8(b), is not eligible to receive Food Stamp benefits if he owns countable resources worth more than \$2,000.00. As shown above, the 4 Wheeler is a countable resource. It is worth over \$2,000.00. Consequently, the Claimant's ownership of his 4 Wheeler makes him not eligible to receive Food Stamp benefits.

The Claimant had the burden of proof in this case. He had to either establish that the 4 Wheeler was not a countable resource, or that its value was not worth more than \$2,000.00. He did not meet his burden of proof. The Division was therefore correct when it denied the Claimant's August 31, 2010 application for Food Stamp benefits.

CONCLUSIONS OF LAW

1. The Claimant had the burden of proof to establish that his 4 Wheeler was exempt from being counted as a resource for the Food Stamp program. He did not meet his burden of proof. His 4 Wheeler is a countable resource.
2. The Claimant had the burden of proof to establish that his 4 Wheeler was not worth more than \$2,000.00. He did not meet his burden of proof. His 4 Wheeler is valued at \$2,115.69 at the time of his August 31, 2010 application.
3. As a result, the Claimant was not financially eligible for Food Stamp benefits, pursuant to federal Food Stamp regulation 7 CFR 273.8(b), because he owned countable resources, worth more than \$2,000.00.
4. The Division was therefore correct when it denied the Claimant's August 31, 2010 application for Food Stamp benefits.

DECISION

The Division was correct to deny the Claimant's August 31, 2010 application for Food Stamp benefits.

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 20th day of December 2010.

/Signed/
Larry Pederson
Hearing Authority

Certificate of Service

I certify that on this 20th day of December 2010, true and correct copies of the foregoing were sent to:

Claimant by U.S.P.S., Certified Mail, and by email
and to the following by e-mail:

[REDACTED], Public Assistance Analyst
[REDACTED], Director
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training
[REDACTED], Administrative Assistant II
[REDACTED], Eligibility Technician I
[REDACTED], Chief of Field Services

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