

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

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

In the Matter of)	
)	
[REDACTED] ,)	OHA Case No. 11-FH-141
)	
Claimant.)	Division Case No. [REDACTED]
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was an Adult Public Assistance and Medicaid recipient beginning in December 2010. (Ex. 1) He applied for Food Stamp benefits on February 22, 2011. (Exs. 2 – 2.6) On March 21, 2011, the Division sent him requests for information for both his Food Stamp application and his ongoing Adult Public Assistance and Medicaid case. (Exs. 6 – 6.1) The Claimant then requested a Fair Hearing on March 30, 2011. (Ex. 8) The Division subsequently notified the Claimant on April 7, 2011 that his Food Stamp application was denied. (Ex. 9.1) The Division also notified the Claimant, by means of two separate notices on April 7 and April 8 2011, that his Adult Public Assistance and Medicaid benefits would be terminated after April 30, 2011. (Exs. 9.2 – 9.3)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on May 17, August 3, and September 6, 2011. The Claimant appeared telephonically; he represented himself and testified on his own behalf. **[REDACTED]**, Public Assistance Analyst with the Division, appeared in person; he represented the Division and testified on its behalf. **[REDACTED]**, an Eligibility Technician III, employed by the Division, appeared telephonically on September 6, 2011, and testified at the Claimant's request.

ISSUES

1. Was the Division correct to deny the Claimant's February 22, 2011 Food Stamp application on April 7, 2011 because he did not comply with the Division's request for information?

2. Was the Division correct to terminate the Claimant's Adult Public Assistance and Medicaid benefits after April 30, 2011 because he did not comply with the Division's request for information?

SUMMARY OF DECISION

1. The Division was not correct to deny the Claimant's February 22, 2011 Food Stamp application on April 7, 2011 because he refused to provide the Division with a copy of his Trust documents. While the Claimant undisputedly did not provide the Division with a copy of his Trust documents, the Division's request was unnecessary because it already knew the information its review of the Trust documents sought to determine: the Trust's assets were not exempt from being counted, unless otherwise exempt, because the Claimant's Trust was **revocable** and the Claimant was the **Trustee** of the Trust.

If the Division had requested that the Claimant provide it with a list of the Trust assets, rather than the Trust documents, and the Claimant had refused to comply, then the Division would have been justified in denying the Claimant's Food Stamp application. However, because the Division did not ask for a list of the Trust assets, its denial of the Claimant's Food Stamp application was not correct.

2. The Division was not correct to terminate the Claimant's Adult Public Assistance and Medicaid benefits after April 30, 2011 because he refused to provide the Division with a copy of his Trust documents. While the Claimant undisputedly did not provide the Division with a copy of his Trust documents, the Division's request was unnecessary because it already knew the information its review of the Trust documents sought to determine: the Trust's assets were not exempt from being counted, unless otherwise exempt, because the Claimant's Trust was **revocable** and the Claimant was the **Trustee** of the Trust.

If the Division had requested that the Claimant provide it with a list of the Trust assets, rather than the Trust documents, and the Claimant had refused to comply, then the Division would have been justified in terminating the Claimant's Adult Public Assistance and Medicaid benefits. However, because the Division did not ask for a list of the Trust assets, its termination of the Claimant's Adult Public Assistance and Medicaid benefits was not correct.

FINDINGS OF FACT

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

1. The Claimant is under 65 years of age and resides by himself. (Ex. 1) He is disabled and receives Social Security Disability benefits. (Ex. 2.3) He is not a Supplemental Security Income recipient. *Id.*
2. The Claimant is the Trustee of a revocable trust entitled the "[REDACTED] Trust" ("Trust") (Ex. 34) The Claimant was the Settlor (creator) of the Trust and registered it in the Fairbanks, Alaska Superior Court on [REDACTED], 1987. (Ex 34.1) The Division received a copy of

the trust registration document on August 20, 2007, which showed the Claimant was both the Settlor (creator) of the Trust and its Trustee. (Ex. 34)

3. The Claimant applied for Adult Public Assistance and its associated Medicaid benefits on December 29, 2010. (Ex. 1) That application was approved. *Id.*

4. The Division received the Claimant's Food Stamp application on February 22, 2011. (Exs. 2 – 2.6) That application stated the Claimant owned a cabin and land. (Ex. 2.3) This cabin and land were conveyed to the Trust in 2006, were owned at the time of the application by the Claimant's Trust and were the Claimant's home. (Claimant testimony; Exs. A and C)

5. The Claimant's February 18, 2011 Food Stamp application was incomplete. It did not contain the signature page, the attestation as to the truthfulness of the application, or the information release. (Exs. 2 – 2.6) On March 3, 2011, the Division sent the Claimant notice his application was "being held" until he completed the application and provided verification of medical costs. (Ex. 3.1) The Division received the Claimant's completed signature page, which included the attestation to the truthfulness of the contents of the application, on March 7, 2011. (Ex. 4.1)

6. The Division was aware the Claimant was the owner of a trust. (Ex. 5) On March 18, 2011, it determined that it was necessary to determine the "terms/value of this trust . . . in order to determine continued eligibility for [the Adult Public Assistance and Medicaid] programs." *Id.* The Division also determined that it was necessary to obtain verification regarding the trust before making a decision on the Claimant's Food Stamp application. *Id.*

7. On March 21, 2011, the Division sent the Claimant written notice that it required "a copy of the trust document for [REDACTED] Trust" in order to determine his continued eligibility for Adult Public Assistance and Medicaid benefits. (Ex. 6) The deadline for providing the information was March 31, 2011. *Id.*

8. On March 21, 2011, the Division sent the Claimant written notice that it required "a copy of the trust documents for [REDACTED] Trust" in order to determine his eligibility for Food Stamp benefits. (Ex. 6.1) The deadline for providing the information was March 31, 2011. *Id.*

9. On March 24, 2011, the Claimant telephoned the Division Eligibility Technician who was working on his public assistance cases. (Ex. 7) The Eligibility Technician's notes regarding that telephone call state that she was aware that the Claimant's Trust was a revocable trust, and concluded that the Division "need[s] to determine that the trust does not contain any accessible resources." *Id.*

10. It is undisputed that the Claimant did not provide the Division with a copy of his Trust documents.

11. On April 7, 2011, the Division notified the Claimant that his Food Stamp application was denied because he did not provide the Division with a copy of his Trust documents. (Ex. 9.1)

12. The Division also notified the Claimant, by means of two separate notices on April 7 and April 8 2011, that his Adult Public Assistance and Medicaid benefits would be terminated after April 30, 2011 because he did not provide the Division with a copy of his Trust documents. (Exs. 9.2 – 9.3)

13. The Claimant was a credible witness. His testimony was direct, consistent and not evasive. His credible testimony established the following:

- a. In 2007, he provided the Division with a copy of the court documents showing the Trust had been registered with the court. He does not think he gave the Division a copy of the actual Trust document. The Trust document itself only contained authority for the Trust to acquire and dispose of property and designated beneficiaries in the event of his death. The Trust document did not contain a list of specific assets owned by the Trust. In order for the Trust to own assets, he had to first separately convey those assets into the Trust.
- b. In the years the Trust has been in existence and he has been receiving public assistance benefits, the first time the Division ever asked him about the Trust document itself was in 2010.
- c. The only property held in the Trust at the time relevant to this case was the Claimant's home and adjoining property in Kenai. *See Kenai Peninsula Borough real property records accessed on March 27, 2011. (Exs. A and C)* There were no bank accounts owned by the Trust. There had been vehicles and other property owned by the Trust in the past, however, they had been previously sold.
- d. He listed the Kenai real property (his home) in his public assistance application. He also informed Division staff repeatedly (“over and over and over over the phone”) that the only Trust assets were his Kenai real property.
- e. After the Division terminated his Adult Public Assistance and Medicaid and denied his Food Stamp application, he dissolved the Trust and conveyed the only items owned by the Trust, the Kenai real property, into his own name. *See Notice of Dissolution of Trust and Statutory Warranty Deed, both dated April 22, 2011. (Exs. 32 – 33)*
- f. The Division could have obtained a list of any assets owned by the Trust by searching public records.

14. On April 29, 2011, which was after the Division notified the Claimant that his Food Stamp application was denied (April 7, 2011) and that his Adult Public Assistance and Medicaid benefits were terminated (April 7 and 8, 2011), the Division sent the Claimant an additional notice that read “[t]he information you provided is not enough to determine what resources were actually in the trust. We need verification in order to determine if the items in the trust would count as resources. . . We need to get a copy of the trust to determine what was actually in the trust.” (Ex. D)

PRINCIPLES OF LAW

A. Burden of Proof

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).

B. Food Stamps

Food Stamps is a federal program administered by the State. 7 CFR 271.4(a). The rules that control an applicant's eligibility and the application process are set out in the Code of Federal Regulations (CFR). The Alaska State implementation of the federal Food Stamp regulations, including its adoption of state optional Food Stamp requirements, is set out in 7 Alaska Administrative Code 46.010 *et. seq.*

A person is not financially eligible for Food Stamp benefits if he owns countable resources which are worth more than \$2,000. 7 CFR 273.8(b). The countable resource limit for a disabled person or a person who is 60 years of age or older is higher - \$3,000. *Id.* A person's home and directly adjoining property are exempt from being counted as a resource. 7 CFR 273.8(e)(1). Property that is held by an irrevocable trust, where the applicant does not have the ability to control the trust, is similarly exempt from being counted as a resource. 7 CFR 273.8(e)(8).

The Division is required to verify a household's liquid resources on an initial application. 7 CFR 273.2(f)(3)(i). 7 AAC 46.021(a)(4)(A). It is also required to verify a Food Stamp applicant's questionable information:

The State agency shall verify, prior to certification of the household, all other factors of eligibility which the State agency determines are questionable and affect the household's eligibility and benefit level.

7 CFR 273.2(f)(2)(i).

A refusal to cooperate with the Division is grounds for denial of a Food Stamp application; a mere *failure to cooperate* is not:

(d) *Household cooperation.* (1) To determine eligibility, the application form must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the household refuses to cooperate with the State agency in completing this process, the application shall be denied at the time of refusal. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to

complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed not merely failing to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied, and the agency shall provide assistance required by paragraph (c)(5) of this section.

7 CFR 273.2(d)(1).

C. Adult Public Assistance and Medicaid

The Alaska Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].” AS 47.25.430. In order to financially qualify for Adult Public Assistance, an applicant/recipient may not own more than \$2,000 in countable resources. 7 AAC 40.090(7); 7 AAC 40.270(a). A countable resource is one that an applicant/recipient “owns and can convert to cash.” 7 AAC 40.270(a). An applicant/recipient’s home and directly adjoining property is exempt from being counted as a resource. 7 AAC 40.280(a)(1).

An Adult Public Assistance applicant/recipient is required to “furnish adequate evidence to demonstrate his eligibility for assistance.” 7 AAC 40.050(a). The Division is allowed to investigate and redetermine an Adult Public Assistance recipient’s eligibility. 7 AAC 40.450(a) and (b). An Adult Public Assistance applicant/recipient who does not provide necessary verification is not eligible for assistance. *See Alaska Adult Public Assistance Manual* Section 400-4.

When an Adult Public Assistance applicant/recipient is the beneficiary of a trust, and has the ability to revoke a trust (i.e. is the trustee of a revocable trust), then the assets of the trust are countable as his assets. *See Alaska Adult Public Assistance Manual* Section 431-2F. The applicant/recipient is responsible for providing the Division with copies of the trust documents to allow the Division to determine whether he can access the trust resources. *Id.*

The Medicaid program has numerous eligibility categories. *See* 7 AAC 100.002. An Adult Public Assistance recipient is entitled to receive Medicaid benefits. *See* 7 AAC 100.002(d)(1) and 7 AAC 100.410(b).

D. Trusts

A Trust is a legal entity where “one person (the *trustee*)” holds a property interest “at the request of another (the *settlor*) for the benefit of a third party (the *beneficiary*).” *Blacks Law Dictionary* at 1647 (Ninth Edition 2009) (emphasis in original). A Trust can be created either orally or in writing. AS 13.36.010. The Trust must be registered in court. AS 13.36.005. The registration is accomplished by filing a statement with the court, identifying the Trustee of the Trust, and indicating, in part, the date of the creation of the Trust. *Id.* The Trust document itself is not filed with the registering court. *Id.*

The Trustee of a Trust has the ability to acquire, manage, and distribute the property held by the Trust. *See* AS 13.36.109 for a general discussion of a Trustee's powers.

ANALYSIS

There are two separate issues in the case, both of which pertain to the Claimant's alleged refusal to provide the Division with information the Division requested. Each of those issues is addressed separately below.

1. Was the Division correct to deny the Claimant's February 22, 2011 Food Stamp application on April 7, 2011 because he did not comply with the Division's request for information?

Because this case involves the Claimant having applied for benefits, he seeks to change the status quo. Accordingly, he has the burden of proof on this issue 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). Therefore in order to prevail, the Claimant must prove, by a preponderance of the evidence, that the Division was either not entitled to request the information at issue, or that he did not refuse to provide it.

After receiving the Claimant's February 22, 2011 Food Stamp application, the Division sent the Claimant a notice on March 21, 2011, that it required "a copy of the trust documents for [REDACTED] Trust" in order to determine his eligibility for Food Stamp benefits. *See* Finding of Fact 8 above. The deadline for providing the information was March 31, 2011. *Id.* It is undisputed that the Claimant did not provide the Division with a copy of his Trust documents. *See* Finding of Fact 10 above. The Division then sent the Claimant notice, on April 7, 2011, that his Food Stamp application was denied. *See* Finding of Fact 11 above.

The Food Stamp program determines financial eligibility, in part, on a maximum countable resource limit of either \$2,000 or \$3,000, depending upon the household circumstances. A person is not financially eligible for Food Stamp benefits if he owns countable resources which are worth more than \$2,000. 7 CFR 273.8(b). Property that is held by an irrevocable trust, where the applicant does not have the ability to control the trust, is similarly exempt from being counted as a resource. 7 CFR 273.8(e)(8).

The Division had the duty to determine whether the Claimant's Trust was revocable or irrevocable, in order to determine if the assets held by the Trust were countable as the Claimant's own assets. *See* 7 CFR 273.2(f)(3)(i). 7 AAC 46.021(a)(4)(A). If there was any question as to whether the Claimant's Trust's assets were countable, then the Division would have a legitimate reason to review the actual Trust documents in order to determine if the Trust was irrevocable, and whether the Claimant had control of the Trust assets.

The facts of this case show that the Division knew that the Claimant's Trust was revocable. *See* Finding of Fact 2 above. The facts of this case show that the Division knew, and had known since 2007, that the Claimant was himself the Trustee of his Trust. *Id.* By virtue of the fact that

the Claimant was the Trustee of his Trust, he had the ability to control the Trust's assets. *See* AS 13.36.109.

The federal Food Stamp regulation, 7 CFR 273.8(e)(8), only exempts resources held by an irrevocable Trust, where the applicant cannot control the Trust, from being counted as an applicant's assets. The Division's request for information was designed to answer the question regarding whether the Trust assets were countable. However, as explained above, the Division already knew the answer to this question: because the Trust was **revocable**, and the Claimant was the **Trustee**, the Trust's assets, unless otherwise exempt, were countable. It must be noted that the record is devoid of any assertion by the Claimant that his Trust was irrevocable or that he was not the Trustee.

If the Division had requested that the Claimant provide a list of the Trust assets, that request would be proper.¹ It would be an inquiry to try and ascertain the Claimant's countable assets. *See* 7 CFR 273.2(f)(3)(i); 7 AAC 46.021(a)(4)(A). A refusal to comply would constitute grounds to deny the Claimant's Food Stamp application. *See* 7 CFR 273.2(d)(1). However, the Division did not ask for a list of the Trust assets.² Instead, it asked for a copy of the Trust documents, when it already knew the answer to its salient question: the Trust assets were countable, unless otherwise exempt. The Division then explained, in its April 29, 2011 notice, that it needed a copy of the Trust documents in order to determine "what was actually in the trust." *See* Finding of Fact 14 above. The Division, however, cannot rely on this to justify its request for a copy of the Trust documents as implicitly being a request for a list of the Trust assets.

While it is undisputed that the Claimant did not provide the Trust documents to the Division, he cannot be penalized for the failure to comply. He cannot be faulted for his lack of response to the Division when the Division already had the information in its possession that its inquiry was seeking to elicit. Because the Division already knew the necessary information, it did not need a copy of the Trust documents to determine the Claimant's eligibility for Food Stamp benefits. It was not justified in making its request for information.

The Claimant cannot therefore be deemed to have refused to comply with a valid request for information. Consequently, the Division cannot rely on 7 CFR 273.2(d)(1) to deny the Claimant's February 22, 2011 Food Stamp application. The Claimant has therefore met his burden of proof, and established the Division was not correct when it denied the Claimant's February 22, 2011 Food Stamp application.

¹ The Division explained, in its April 29, 2011 notice, that it needed a copy of the Trust documents in order to determine "what was actually in the trust." *See* Finding of Fact 14 above. The Division, however, cannot rely on this April 29, 2011 notice to justify its March 21, 2011 request for a copy of the Trust documents as implicitly being a request for a list of the Trust assets. This is because the Division issued this notice after it had already denied the Claimant's Food Stamp application on April 7, 2011.

² It must be noted that the Claimant disclosed the Trust assets, being the Kenai real property, to the Division, by listing them as being owned by him personally on his February 22, 2011 Food Stamp application. *See* Findings of Fact 4 and 13(a) and (b) above.

2. Was the Division correct to terminate the Claimant's Adult Public Assistance and Medicaid benefits after April 30, 2011 because he did not comply with the Division's request for information?

Because this issue involves the Division seeking to terminate benefits, it seeks to change the status quo. Accordingly, the Division has the burden of proof on 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). Therefore in order to prevail, the Division must prove, by a preponderance of the evidence, that the Division was entitled to request a copy of the Claimant's Trust document and that the Claimant did not provide it.

On March 21, 2011, the Division sent the Claimant written notice that it required "a copy of the trust document for [REDACTED] Trust" in order to determine his continued eligibility for Adult Public Assistance and Medicaid benefits. *See* Finding of Fact 7 above. The deadline for providing the information was March 31, 2011. *Id.* It is undisputed that the Claimant did not provide the Division with a copy of the Trust document. *See* Finding of Fact 10 above. The Division then sent the Claimant notices, on April 7 and 8, 2011, that his Adult Public Assistance and Medicaid benefits would terminate after April 30, 2011. *See* Finding of Fact 12 above.

In order to financially qualify for Adult Public Assistance, an applicant/recipient may not own more than \$2,000 in countable resources. 7 AAC 40.090(7); 7 AAC 40.270(a). When an Adult Public Assistance applicant/recipient is the beneficiary of a trust, and has the ability to revoke a trust (i.e. is the trustee of a revocable trust), then the assets of the trust are countable as his assets. *See Alaska Adult Public Assistance Manual* Section 431-2F. The applicant/recipient is responsible for providing the Division with copies of the trust documents to allow the Division to determine whether he can access the trust resources. *Id.*

The facts of this case, as discussed above, demonstrate that the Division knew the Claimant was the Trustee of his revocable Trust. This means that the Trust assets, unless otherwise exempt, were countable as the Claimant's assets for the purposes of determining his financial eligibility for Adult Public Assistance benefits. It must be noted that the record is devoid of any assertion by the Claimant that the Trust was irrevocable or that he was not the Trustee.

If the Division had requested that the Claimant provide a list of the Trust assets, that request would be proper.³ It would be an inquiry to try and ascertain the Claimant's countable assets. *See* 7 AAC 40.050(a) and (b). A refusal to comply would constitute grounds to terminate the Claimant's Adult Public Assistance benefits. *See Alaska Adult Public Assistance Manual* Section 400-4. However, the Division did not ask for a list of the Trust assets. Instead, it asked for a copy of the Trust documents, when it already knew the answer to its salient question, the Trust assets were countable, unless otherwise exempt.

³The Division explained, in its April 29, 2011 notice, that it needed a copy of the Trust documents in order to determine "what was actually in the trust." *See* Finding of Fact 14 above. The Division, however, cannot rely on this April 29, 2011 notice to justify its March 21, 2011 request for a copy of the Trust documents as implicitly being a request for a list of the Trust assets. This is because the Division issued the April 29, 2011 notice after it notified the Claimant on April 7 and 8, 2011 that his Adult Public Assistance and Medicaid benefits would be terminated.

In conclusion, the Division already had the necessary information in its possession: the Claimant was the **Trustee** of his **revocable** Trust. The Claimant did not need to give the Division with a copy of his Trust documents, because those documents would only supply information the Division already knew: his Trust assets were countable resources, unless otherwise exempt. The Division has therefore not met its burden of proof and established that it was correct to request this information. It therefore could not use the Claimant's failure to provide a copy of the Trust document as a basis for terminating the Claimant's Adult Public Assistance benefits. The Division was therefore not correct to terminate the Claimant's Adult Public Assistance and Medicaid benefits after April 30, 2011.⁴

CONCLUSIONS OF LAW

1. Food Stamps

- A. The Claimant had the burden of proof by a preponderance of the evidence to establish either that the Division was not entitled to request a copy of his Trust documents, or that he provided those documents. The Claimant met his burden of proof and established that the Division already had the necessary information in its possession, being that the Claimant was the **Trustee** of his **revocable** Trust. As a result, the Division was not entitled to request a copy of the Trust documents. The Division cannot therefore penalize the Claimant for failing to provide the Division with a copy of the Trust documents.
- B. As a result, the Division was not correct to deny the Claimant's February 22, 2011 Food Stamp application.

2. Adult Public Assistance and Medicaid.

- A. The Division had the burden of proof by a preponderance of the evidence to establish that it was entitled to request a copy of the Claimant's Trust document and that the Claimant did not provide it. The Division did not meet its burden of proof because the Division already had the necessary information in its possession, being that the Claimant was the **Trustee** of his **revocable** Trust. As a result the Division was not entitled to request a copy of the Trust documents. The Division cannot therefore penalize the Claimant for failing to provide the Division with a copy of the Trust documents.
- B. As a result, the Division was not correct to terminate the Claimant's Adult Public Assistance and Medicaid benefits after April 30, 2011.

DECISION

- 1. The Division was not correct to deny the Claimant's February 22, 2011 Food Stamp application on April 7, 2011.

⁴ An Adult Public Assistance benefit recipient is automatically eligible to receive Medicaid benefits. *See* 7 AAC 100.002(d)(1) and 7 AAC 100.410(b).

