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

In the Matter of)
)
) OHA Case No. 11-FH-400
)
Claimant.) Division Case No.)
)
_____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

_____ (Claimant) applied for Food Stamp benefits on June 28, 2011. (Exs. 5 – 5.9) On June 29, 2011, the Division of Public Assistance (Division) sent the Claimant written notice informing her that her Food Stamp application was denied. (Ex. 7) The Claimant requested a fair hearing on June 30, 2011.¹ (Exs. 9 – 9.1)

This office has jurisdiction pursuant to 7 AAC 49.010 and 7 C.F.R. § 273.15.

The Claimant's hearing was held on November 29 and December 27, 2011. The Claimant appeared telephonically; she represented herself, and testified on her own behalf. _____, a Public Assistance Analyst with the Division, appeared in-person; he represented the Division and testified on its behalf. _____, an Eligibility Technician employed by the Division, appeared telephonically on December 27, 2011 and testified on behalf of the Division.

STATEMENT OF ISSUES

The Division imposed a nine month transfer of asset penalty against the Claimant and denied the Claimant's June 28, 2011 Food Stamp application because she had undisputedly transferred a boat worth more than \$3,000 to another person shortly before filing her application. The Claimant argued that the transfer of asset penalty should not have been applied because she did not really own the boat but merely had the title in her name as a favor to the actual owner to whom she transferred the boat.

¹ This Decision is substantially overdue. Pursuant to 7 C.F.R. § 273.15(c)(1), "[w]ithin 60 days of receipt of a request for a fair hearing, the State agency shall assure that the hearing is conducted, a decision is reached, and the household and local agency are notified of the decision." This Decision was therefore due no later than August 29, 2011. However, the Division did not inform this Office of the Claimant's hearing request nor schedule a hearing for the Claimant until October 19, 2011, at which point the Decision was already 51 days past due.

The resulting issue is:

Was the Division correct to impose a nine month transfer of asset penalty against the Claimant and therefore deny her June 28, 2011 Food Stamp application because she transferred a boat, which was titled in her and her husband's name, to the actual owner of the boat?

FINDINGS OF FACT

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

1. The Claimant was receiving Food Stamp benefits in May 2011. (██████ testimony; Ex. 2) A Division employee determined on May 24, 2011 that the Claimant and her husband owned a boat, boat motor, and boat trailer. *Id.*
2. On May 25, 2011, a Division Eligibility Technician contacted the Claimant. (Ex. 3) The Claimant told the Eligibility Technician that the boat, boat motor, and boat trailer were worth \$6,000. *Id.* The Claimant further informed the Eligibility Technician that the boat, boat motor, and boat trailer were actually owned by a friend in California. *Id.*
3. On May 26, 2011, the Division sent the Claimant written notice that her Food Stamp case was closed and that she would not receive Food Stamp benefits after June 30, 2011 because she owned resources worth over the \$2,000 Food Stamp program resource limit. (Ex. 4) The written notice further informed the Claimant that the Division was counting the boat, boat motor, and boat trailer as resources valued at \$6,000. *Id.*
4. The Claimant and her husband transferred the boat to ██████ ██████ on June 23, 2011. (Ex. 6.2)
5. The Claimant applied for Food Stamp benefits on June 28, 2011. (Exs. 5 – 5.9) The application disclosed that the boat was given “back to owner.” (Ex. 5.5)
6. The Division determined that the Claimant had transferred a resource, the boat, out of her ownership. (Ex. 6.1) It took the value of the boat, boat motor, and boat trailer (\$6,000) and subtracted the standard Food Stamp resource limit (\$2,000) to arrive at a transferred asset figure of \$4,000. *Id.* It then determined the Claimant was subject to a nine month transfer of asset penalty, based upon a transfer of \$4,000, and sent the Claimant notice on June 29, 2011 that her June 28, 2011 Food Stamp application was denied based upon the nine month transfer of asset penalty. (Exs. 6.1, 7)
7. The Claimant credibly testified as follows:
 - a. ██████ ██████ is a friend of the Claimant and her husband. He works seasonally in Alaska. He had a boat, boat motor, and boat trailer he wanted to buy and sent them the money to buy the boat for him.

- b. The Claimant and her husband bought the boat, boat motor, and boat trailer for Mr. [REDACTED]. They placed the title in their name in order to take it out of the seller's name.
- c. The Claimant and her husband were not the actual owners of the boat, boat motor, and boat trailer, even though the legal title was in their name. They were just placeholders for Mr. [REDACTED] who was the actual owner.
- d. The Claimant and her husband transferred the boat title into Mr. [REDACTED]'s name because they really did not own it. They did not transfer the boat trailer into his name because of concerns that the Division might not like it. The boat trailer is worth between \$400 to \$500.

8. The Claimant's husband signed a note dated September 21, 2011 that reads:

I . . . went and picked up a boat for my friend [REDACTED] [REDACTED] until he could get up here to take possession of it. I put it in my name until then. When he came to Alaska in June of 2011 he then transferred it into his name. It was only to help a friend out.

(Ex. 10)

9. Mr. [REDACTED] signed an undated note that reads that he is the owner of the boat, and that he does not know where the bill of sale is. (Ex. 11)

PRINCIPLES OF LAW

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

The Food Stamp program is a federal program which is administered by the State of Alaska. 7 C.F.R. § 271.4(a). The Code of Federal Regulations (C.F.R. §) contains the rules for determining if an applicant is eligible for Food Stamp benefits.

The Food Stamp program rules on countable resources are contained in federal regulation 7 C.F.R. § 273.8. Items of personal property such as vehicles (which would include boats) are countable resources. 7 C.F.R. § 273.8(c)(2). However, if resources are not "accessible" to the household, they are not countable resources. 7 C.F.R. § 273.8(e)(8).

If a resource is "knowingly transferred" in order to qualify for benefits in the three month period before the filing of a Food Stamp application, the applicant is disqualified from receiving Food Stamp benefits for a period of time based upon the value of the resource. 7 C.F.R. § 273.8(h)(1). The

disqualification period for a resource transfer worth between \$3,000 to \$4,999 is nine months. 7 C.F.R. § 273.8(h)(4). However, if the resource that is transferred is one that does not affect eligibility, i.e. is not a countable resource, then the transfer disqualification penalty does not apply. 7 C.F.R. § 273.8(h)(2)(i).

A recent Food Stamp financial eligibility case before this Office involved a parent withdrawing funds, for her personal use, from her child's bank account that was restricted by court order. This Office held that because the parent had accessed the funds, they were countable as resources for Food Stamp eligibility purposes. *See* Decision in Case No.10-FH-209, issued September 28, 2010. That decision was appealed to the Superior Court, *Terra Smith v. State, Department of Health and Social Services*, Case No. 3AN-10-12367 Civil. The Superior Court reversed this Office's decision and held that because the account was restricted by court order, it was not "accessible" to the household regardless of the fact the parent had actually used the account funds for her own personal use. *Smith*, Order on Appeal dated July 14, 2011, p. 6. The Superior Court's decision stated that "[a]ccessible" also means that the person is legally authorized to do so." *Id.* The Superior Court's decision then referred to a New York Food Stamp case where the New York court held that if a person had the legal ability to utilize a resource but faced legal liability for doing so, then the resource was not "accessible" for Food Stamp eligibility purposes. *Id.*, fn. 18 at p. 6. (citing *Abramowitz v. Bernstein*, 420 N.Y.S.2d 322, 325 – 326 (N.Y. Sup. Ct 1979)). The Superior Court then concluded the funds in the account were not "accessible" and hence not a countable resource for the purposes of determining Food Stamp financial eligibility. *Id.*

An additional Food Stamp case from New York held that where a mother and son were the joint owners of a bank account, where the mother testified it was her funds alone in the bank account and that she only intended to convey a right of survivorship in the funds to her son and not a present ownership interest, that the funds were not countable as the son's resource for Food Stamp eligibility purposes. *Kolodziejczyk v. Wing*, 689 N.Y.S.2d 825 (NY Sup. Ct., Appellate Division, 4th Department, 1999)

ANALYSIS

The issue in this case is whether the Division was correct to impose a nine month transfer of asset penalty against the Claimant and therefore deny the Claimant's June 28, 2011 Food Stamp application. Because this case involves the denial of an application, the Claimant is the party who is seeking to change the status quo. She, therefore, 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).

It is undisputed that the Claimant transferred the resource in question, specifically the boat, on June 23, 2011, only days before she applied for Food Stamp benefits. However, the Claimant's credible testimony, which was corroborated by both her husband's written statement and Mr. ██████'s written statement, established that she and her husband were the owners of the boat in name only, and that Mr. ██████ was the actual owner of the boat. *See* Findings of Fact 7, 8, and 9 above.

The Claimant has the burden of proof by a preponderance of the evidence. In order to prevail, she must prove, by a preponderance of the evidence, that she did not transfer a countable resource in order to qualify for Food Stamp benefits. The facts of this case, as recited above, demonstrate that the Claimant's household has met her burden for the following reasons:

1. Because the Claimant was not the actual owner of the boat, despite legal title, she faced legal liability to the actual owner, in the event she sold the boat or transferred it to someone other than the actual owner. Under the Court's analysis in the *Terra Smith* case, this means the boat was not an "accessible" resource for the Claimant. *Also see Kolodziejczyk v. Wing.*
2. Because the boat was not an accessible resource, it was not countable as a resource for determining the Claimant's eligibility for Food Stamp benefits. 7 C.F.R. § 273.8(e)(8).
3. It therefore follows, that because the boat was not a countable resource, its transfer to the actual owner does not trigger the transfer of asset penalty. 7 C.F.R. § 273.8(h)(2)(i).

The Division was therefore not correct when it imposed a nine month transfer of asset penalty against the Claimant and denied her June 28, 2011 Food Stamp application.

CONCLUSIONS OF LAW

1. The Claimant had the burden of proof by a preponderance of the evidence. She met her burden of proof and established that the boat was not a countable resource for the purpose of qualifying for Food Stamp benefits.
2. Consequently, the transfer of the boat to its actual owner did not trigger the Food Stamp program's transfer of asset penalty.
3. The Division was therefore not correct when it denied the Claimant's June 28, 2011 application for Food Stamp benefits.

DECISION

The Division was not correct to deny the Claimant's June 28, 2011 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. If the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision. To appeal, send a written request directly to:

