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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. 11-FH-489
)
 Claimant.) Division Case No. [REDACTED]

FAIR HEARING DECISION

STATEMENT OF THE CASE

Mr. [REDACTED] (Claimant) received Adult Public Assistance and Medicaid (Older Alaskan) benefits. (Ex. 1) While processing Claimant's application for re-certification of these benefits, the Division of Public Assistance (Division) discovered a Kodiak Salmon Seine permit (permit) was identified as belonging to Claimant. (Ex. 2.0, 2.3) On November 1, 2011, the Division sent Claimant a notice it would stop Claimant's Adult Public Assistance benefits after November 11, 2011 because it believed Claimant's permit was a resource valued in excess of the eligibility limit for his household. (Exs. 3.0; 4.3) Claimant requested a Fair Hearing on or before December 5, 2011. (Exs. 4.0-4.1)

This office has jurisdiction pursuant to 7 AAC 49.010.

A hearing was held on January 19, 2012. Claimant attended the hearing telephonically, represented himself and testified on his behalf. Claimant was assisted by his housemate, Ms. [REDACTED] and her son, Mr. [REDACTED], Claimant's caregiver, who testified telephonically on behalf of Claimant. Ms. [REDACTED], Public Assistance Analyst with the Division, attended the hearing in person, and testified on behalf of the Division. The evidentiary record closed at the end of the hearing after all offered exhibits were admitted.

ISSUE

On November 1, 2011, was the Division correct to terminate Claimant's Adult Public Assistance benefits because he owned a resource valued in excess of the eligibility limit applicable to Claimant's household?

FINDINGS OF FACT

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

1. Claimant is a non-working 71 year-old single adult who lives with his friend and her son, who is Claimant's caregiver. (Ex. 1; Caregiver's testimony) Claimant receives Adult Public Assistance benefits as an Older Alaskan Program recipient. (Ex. 1) Claimant does not receive Supplemental Security Income benefits. (Hearing Representative's testimony)

2. On October 31, 2011, while processing Claimant's application to re-certify his eligibility for benefits, an Eligibility Technician "discovered [Claimant] had in his name a Kodiak Salmon Seine permit valued at \$45,200.00 as of September 2011." (Hearing Representative's testimony; Fair Hearing Position Statement; Ex. 2.2) The Division relied on a Commercial Fisheries Entry Commission Estimated Permit Value Report providing values based on transactions involving this type of permit and selected the value (\$45,200) for transactions occurring in September 2011. (Ex. 2.2)

3. The Eligibility Technician telephoned the Commercial Fisheries Entry Commission and learned that the Kodiak Salmon Seine permit [REDACTED] (permit), which she believed Claimant owned, was "revoke[d]" in 2008 due to non payment of fees. (Ex. 2.0) The Eligibility Technician also learned that Claimant could pay all fees owed and request re-instatement of the permit from the Board of the Commercial Fisheries Entry Commission. (Ex. 2.0) The Eligibility Technician wrote in a case note that the Board "usually" grants the request. (Ex. 2.0)

4. Further research concerning the permit disclosed that its status is listed with the Commercial Fishing Entry Commission as "Permit cancelled" with Claimant listed as owner and the permit type as "permanent." (Ex. 2.3) The Division of Public Assistance computerized information system disclosed that Claimant is listed as "Former Owner" under the Holder Status category in its data base. (Ex. 2.1)

5. The Division determined that the \$45,200 value of the permit exceeded the maximum resource limit for Claimant, which it asserted was \$3,000¹, and therefore Claimant was no longer eligible for Adult Public Assistance, effective November 11, 2011. (Ex. 3.0)

6. On November 1, 2011, the Division sent Claimant a written notice stating he would not get Adult Public Assistance benefits after November 11, 2011 because his permit was a "countable resource" valued at \$45,200. (Ex. 3.0)

7. During the Fair Hearing, the following facts were established through Claimant's testimony and the testimony of his caregiver:

¹ The \$3,000 eligibility limit applies to a married person living with a spouse. 7 AAC 40.270(a)(2) The eligibility limit of \$2,000 applies to persons who are single. 7 AAC 40.270(a)(1). Due to the facts of this case, the mistaken amount is not material.

- a. Claimant and his caregiver were unaware Claimant had any ownership interest in the permit until reading the Division's notice. Claimant thought he had lost the permit to the IRS.
- b. Claimant's mother was taking care of all matters relating to the permit and she passed away 4 or 5 years ago.
- c. Claimant has a heart condition and cannot do the physical work required to use the permit.

PRINCIPLES OF LAW

Burden of Proof and Standard of Proof

“Ordinarily the party seeking a change in the status quo has the burden of proof.” *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). The standard of proof in an administrative proceeding is a “preponderance of the evidence,” unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Com’n*, 711 P.2d 1170, 1183 (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)

Adult Public Assistance 40.260, .270, and .280

The State of Alaska provides Adult Public Assistance to needy persons who are eligible. AS 47.25.430. The Adult Public Assistance regulations are found at 7 AAC 40.020-40.900. An applicant for Adult Public Assistance must meet eligibility requirements concerning income and resources. 7 AAC 40.090; 7 AAC 40.230. An unmarried individual applicant may not have “non-excludable” resources valued in excess of \$2,000. 7 AAC 40.270(a)(1). A married applicant living with a spouse may not have “non-excludable” resources valued in excess of \$3,000, regardless of whether the spouse is eligible for assistance. 7 AAC 40.270(a)(1).

Resources include any personal property which an applicant “owns and can convert to cash” and any cash or property received for property which would be a resource, but for the sale, exchange or other disposition of the resource. 7 AAC 40.260.

When determining if a person owns a resource valued in excess of his or her applicable maximum limit, as provided by 7 AAC 40.270(a), certain property which otherwise might be counted as a resource is excluded. Such property, called “excludable resources,” are identified at 7 AAC 40.280(a)(1-17). None of the “excludable resources” apply in this case.

If an individual receiving Adult Public Assistance benefits owns or acquires property exceeding resource limitations, the Division may terminate benefits. AS 47.25.460(b).

ANALYSIS

Issue

On November 1, 2011, was the Division correct to terminate Claimant's Adult Public Assistance benefits because he owned a resource valued in excess of the eligibility limit applicable to Claimant's household?

Burden of Proof and Standard of Proof

The Division has the burden of proof by a preponderance of the evidence because it is seeking to terminate Claimant's Adult Public Assistance benefits and therefore seeking to change the status quo.

Undisputed facts: Claimant is the former owner of Kodiak Salmon Seine permit [REDACTED].

The Division proved by a preponderance of the evidence that Kodiak Salmon Seine permit [REDACTED] (permit) had been cancelled and that Claimant officially is listed by the Commercial Fisheries Entry Commission as the permit holder of this type of permanent permit. *See* Finding of Fact 4. The Division also proved that this permit is controlled and issued by the Commercial Fisheries Entry Commission (CFEC). (Ex. 2.3; *See* Finding of Fact 3) The Eligibility Technician wrote the permit was "revoked" by the Commission. (*See* Finding of Fact 2) The Division's Eligibility Technician determined that Claimant would have to pay all outstanding fees and petition the Commercial Fisheries Entry Commission Board for permission to have the permit re-instated before he could use the permit. Therefore, Claimant must have some type of ownership rights in the permit, albeit inchoate.²

In contrast, the Division's data base shows Claimant as "former owner." Thus, the Division's own data supports finding that Claimant does not have ownership rights to the permit.

The discrepancy in ownership description between the CFEC and the Division is not explained. Assuming that Claimant still owns some interest in the permit because he has the right to re-instate it, the Division's determination of value must be addressed.

The Kodiak Salmon Seine permit [REDACTED] is a resource having no value.

The Kodiak Salmon Seine permit [REDACTED] (permit) cannot be fished in its present legal status of revoked/cancelled. There is no evidence that it can be sold or separated from the Claimant as the identified holder of the permanent permit. Therefore the permit has no value.

Even if Claimant, as undisputed former owner or owner with inchoate rights, has the sole legal right to ownership of the permit (via re-instatement), it is undisputed that the rights of ownership pertaining to the permit cannot be exercised until the Commercial Fisheries Entry Commission Board

² "Inchoate" means "imperfect; partial; unfinished; begun, but not completed." *Black's Law Dictionary* 687 (5th ed. 1979). An inchoate right or interest is one which is not present but may ripen into one, if not barred, extinguished, or otherwise prevented from ripening. *See, Black's Law Dictionary* 687 (5th ed. 1979).

approves a petition for reinstatement and all back fees are paid. Therefore, Claimant owns property which may be counted as a resource, but it has no value.³

In other words, if Claimant owned a vehicle whose “blue book” value was listed as \$45,200 but Claimant’s particular vehicle had no wheels, no engine, no transmission, or otherwise could not be operated, its value would not be \$45,200 but likely would be zero (0) or the value of its parts.

In this case, Claimant’s permit does not have all its “parts” and its entire present value lies in a possibility of providing Claimant the right to fish salmon in the Kodiak fishery. Claimant lost the value of the permit by not paying the fees and allowing it to be cancelled. Until Claimant regains the use of the permit, it has no value.

The Division erred in terminating Claimant Adult Public Assistance based on his ownership of the Kodiak Salmon Seine permit [REDACTED]

The Division’s reason for terminating Claimant’s eligibility for Adult Public Assistance was that he owned the permit, which it valued at \$45,200, well in excess of the resource eligibility limit of \$2,000 applicable to Claimant.⁴ Because the permit’s actual value is zero (0), the Division was incorrect to terminate Claimant’s Adult Public Assistance benefits for this reason.

CONCLUSIONS OF LAW

The Division of Public Assistance proved by a preponderance of the evidence:

1. The Division was not correct to value Kodiak Salmon Seine permit [REDACTED] at \$45,200.
2. The Division was not correct to count the Kodiak Salmon Seine permit [REDACTED] as a resource owned by Claimant having a value in excess of \$2,000.
3. On November 1, 2011, the Division was not correct to terminate Claimant’s Adult Public Assistance benefits because he owned a resource valued in excess of the \$2,000 maximum resource value permitted to unmarried recipients of Adult Public Assistance benefits. AS 47.25.460(b); 7 AAC 40.270(a).

DECISION

On November 1, 2011, the Division was not correct to terminate Claimant’s Adult Public Assistance benefits.

³ Without identifying what exactly Claimant owns in regards to the permit, the Division could not value that interest. Valuing the permit at \$45,200, based on transactions for the type of permit, is an inaccurate method to value the Claimant’s interest in the permit. Claimant’s interest is not identical to full ownership of the permit. It is clear that the status of the permit as “revoked” or “cancelled” means the permit has no value. If the permit has no value, then Claimant’s interest, whatever it may be, can have no value.

⁴ Claimant and his girlfriend are not married. Therefore, the Division erred in notifying Claimant he exceeded the eligibility limit of \$3,000 because that amount is applicable to married applicants. The Adult Public Assistance eligibility limit for a single person is \$2,000. 7 AAC 40.270.

