

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of: )  
 )  
 S O ) OAH No. 14-0981-SNA  
 ) DPA Case No.

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**DECISION**

**I. Introduction**

S O submitted an application to the Division of Public Assistance for benefits under the Food Stamps program.<sup>1</sup> The division determined that Mr. O was ineligible for Food Stamps because he exceeded the applicable resources limit.<sup>2</sup>

Mr. O requested a hearing and the matter was referred to the Office of Administrative Hearings. The assigned administrative law judge conducted a telephonic hearing on July 2, 2014. Mr. O participated and Jeff Miller represented the Division of Public Assistance.

At issue in this case is whether the division correctly valued a fishing permit owned by Mr. O. The division correctly determined that the value of the permit exceeds \$2,000. Accordingly, the division's decision is sustained.

**II. Facts**

S O lives in no name city, a village on the no name River in the vicinity of no name city. Mr. O and his son, age 17, live in Mr. O's uncle's house (his uncle has passed away but the house is still in his name).<sup>3</sup> Mr. O is unemployed.<sup>4</sup> He does not have \$100 in a bank and he has no income.<sup>5</sup> His housing costs exceed his available income and cash.<sup>6</sup>

Mr. O owns a fishing boat worth about \$900, but has no working motor for the boat. He does not have enough money to fix the motor, or to buy a working motor. His only other asset is an Alaska commercial fisheries limited entry permit for the no name fishery.<sup>7</sup> Mr. O has participated in the no name fishery in past years, generally earning around \$3-4,000 in a season. However, because of the broken motor, Mr. O has been unable to participate in the fishery since 2012. In the open market, assuming a willing buyer and seller, such a permit is worth in excess

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<sup>1</sup> See Ex. 2.0-2.9.  
<sup>2</sup> Ex. 5.  
<sup>3</sup> Ex. 3.  
<sup>4</sup> Ex. 2.3.  
<sup>5</sup> Ex. 2, 2.4.  
<sup>6</sup> Ex. 2.  
<sup>7</sup> Ex. 4, 4.1; S. O Testimony.

of \$5,000.<sup>8</sup> The market for the type of permit Mr. O has is generally restricted to local residents, since it does not generate enough income to interest fishermen from other locations. In any event, Mr. O does not want to sell his fishing permit. Rather, he wants to transfer his fishing permit to his son, but lacks the \$150 in cash required to make the transfer.

### III. Discussion

Food Stamps is a federal program administered by the State.<sup>9</sup> Eligibility for a person in a household of two persons (neither over age sixty or disabled) in Alaska is restricted to persons with resources less than \$2,000.<sup>10</sup> Resources for purposes of the Food Stamp program includes “nonliquid resources, personal property, ... and any other property...not specifically excluded.”<sup>11</sup> Specifically excluded is “[p]roperty which annually produces income consistent with its fair market value”<sup>12</sup> and “[p]roperty...which is essential to the...self-employment of a household member.”<sup>13</sup> Resources are calculated as of the date of the interview,<sup>14</sup> in this case June 2, 2014.<sup>15</sup>

Mr. O’s only known resources are his boat, motor and limited entry permit. The evidence establishes that is worth in excess of \$5,000. Therefore, if the permit is counted as a resource for purposes of the Food Stamps program, Mr. O is ineligible for Food Stamps.

A limited entry permit is not treated as “property” for all purposes.<sup>16</sup> However, the division’s policy, which has been adopted by the commissioner in a number of prior administrative decisions, is to treat a limited entry permit that has not been used for more than one year as a “resource” within the meaning of the Food Stamps program.<sup>17</sup> A permit that is not being used is not producing income and is not essential to self-employment (since no fishing self-employment occurs), and is therefore not excluded as a resource under federal law.

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<sup>8</sup> See Ex. 4.2, 4.6.

<sup>9</sup> See 7 C.F.R. §271.4(a); 7 AAC 46.010.

<sup>10</sup> Ex. 7.

<sup>11</sup> *Id.* See 7 C.F.R. §273.8(e).

<sup>12</sup> 7 C.F.R. §273.8(e)(4).

<sup>13</sup> 7 C.F.R. §273.8(e)(5).

<sup>14</sup> 7 C.F.R. §273.10(b).

<sup>15</sup> See Ex. 3.

<sup>16</sup> See, e.g., Vanek v. State, Board of Fisheries, 193 P.3d 283, 294 (Alaska 2008) (limited entry permit is not property for purposes of the takings clause of the Alaska Constitution); Wik v. Wik, 681 P.2d 336, 337 (Alaska 1984) (entry permit is “ordinary property” for purposes of inheritance); Miner’s Estate v. Commercial Fisheries Entry Commission, 635 P.2d 827, 832 (Alaska 1987) (entry permit is property interest for purposes of due process).

<sup>17</sup> FS Manual §602-2B(7). See In Re Q.B., at 3, OAH No. 12-0799-CMB (Commissioner of Health and Social Services 2012); In Re B.E.L., at 3, OAH No. 12-0515-SNA (Commissioner of Health and Social Services 2012). The department has, by regulation, adopted a similar policy rule for purposes of the Adult Public Assistance Program. See 7 AAC 40.280(a)(17).

**IV. Conclusion**

The division’s determination is consistent with its written policy, prior administrative decisions, and federal law. Accordingly, the division’s decision to deny Mr. O’s application is **AFFIRMED**.

DATED July 18, 2014.

Signed  
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Andrew M. Hemenway  
Administrative Law Judge

**Adoption**

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 7<sup>th</sup> day of August, 2014.

By: Signed  
\_\_\_\_\_  
Signature  
Andrew M. Hemenway  
\_\_\_\_\_  
Name  
Administrative Law Judge  
\_\_\_\_\_  
Title

[This document has been modified to conform to the technical standards for publication.]