

III. Discussion

In general, real estate owned counts as a resource for purposes of the food stamp program.⁵ The federal regulations exclude the value of the home owned and occupied by a household from that household's resources.⁶ However, because Ms. W's house is in Idaho and Ms. W and Mr. J do not live in that house, the division cannot exclude the house from the household's resources on that basis.

The regulations also exclude the resources of a household member who receives SSI benefits.⁷ Mr. J currently receives SSI benefits. However, he does not own the house, Ms. W owns the house. Ms. W has applied for SSI benefits, but does not yet receive SSI benefits. Therefore, the division cannot exclude the house from the household's resources on that basis.

The regulations exclude the value of a house that a household is making a good faith effort to sell at a reasonable price and which has not been sold.⁸ At the interview Ms. W and Mr. J said that Ms. W was not trying to sell the house.⁹ Consequently, the division cannot exclude the house from the household's resources on that basis.

Finally, the regulations exclude the value of a rental home that produces annual income consistent with the home's fair market value.¹⁰ Whether Ms. W is getting annual income from the house she owns consistent with the home's fair market value is a question of fact. Because Mr. J's application for food stamps is a request for a new benefit, Mr. J has the burden of providing evidence that the house is producing income consistent with its fair market value.¹¹

Ms. W's daughter is living in the house, and making the mortgage payments of \$610 a month. Ms. W submitted an estimate of the fair market rent for her house in Lewiston of \$995 a month, obtained from an online real estate site.¹² The difference between the fair market estimate Ms. W provided and the amount of the mortgage payment her daughter is

⁵ 7 C.F.R. 273.8(c)(2).

⁶ 7 C.F.R. 273.8(e)(1).

⁷ 7 C.F.R. 273.8(e)(17).

⁸ 7 C.F.R. 273.8(e)(8).

⁹ Division Exhibit 3.

¹⁰ 7 C.F.R. 273.8(e)(4) ("Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis. Such property shall include rental homes and vacation homes.")

¹¹ 7 AAC 49.135.

¹² Division Exhibit 7 (from Zillow.com).

making is \$395 a month. Based on this information, the division concluded that Ms. W was not receiving fair market rent for the home.¹³

Mr. J testified that home was older and had an antiquated heating system, but he did not supply evidence of what comparable older homes rent for in Lewiston. Ms. W's daughter submitted evidence that she is paying approximately \$168 for utilities for the house every month, however, Mr. J did not provide any evidence about whether utilities are typically included in the rental price of homes in Lewiston, or whether the rent estimate included utilities. Based on the evidence provided, Ms. W is not receiving income from the house consistent with the house's fair market value. Therefore, the division was correct not to exclude Ms. W's equity in her house in Idaho from Mr. J's household resources.

The food stamp program resource limit for a household with a disabled household member is \$3,250.¹⁴ The division calculated the Mr. J's household resources at \$27,500, including Ms. W's equity in the house in Idaho. The division was correct to include the value of the equity in the house in the household's resources, and that put the household over the applicable resource limit. Therefore, the division was correct to deny Mr. J's application for food stamps.

IV. Conclusion

The division's decision to deny Mr. J's application for food stamps is upheld.

Dated: December 19, 2016.

Signed

Kathryn L. Kurtz
Administrative Law Judge

¹³ Division Position Statement at 2.

¹⁴ Division Exhibit 9 (Alaska Food Stamp Program Manual Addendum 4, Standards and Maximum Allotments, effective October 1, 2016 through September 30, 2017). The denial notice sent to Mr. J recited the regular \$2,250 limit, however, the division did not dispute that Mr. J was disabled or that the higher \$3,250 limit applied to his household. A case note from the division's prehearing conference with Mr. J refers to the higher limit of \$3,250. Division Exhibit 6.

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 6th day of January, 2017.

By: *Signed*

Name: Kathryn L. Kurtz

Title: Administrative Law Judge

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