

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

In the Matter of)	
)	OAH No. 13-0874-CMB
E N)	Division No.
_____)	

DECISION

I. Introduction

E N was receiving Interim Assistance benefits and applied for Food Stamp¹ benefits. On February 15, 2013, the Division of Public Assistance (Division) notified Mr. N that his Interim Assistance benefits were being terminated and that his Food Stamp application was denied. Mr. N requested a hearing that same day.² The Division did not refer this case to the Office of Administrative Hearings for hearing until June 20, 2013.³

Mr. N's hearing was held on July 8, 2013. Mr. N represented himself and testified on his own behalf. Jeff Miller, Public Assistance Analyst with the Division, represented the Division and testified on its behalf.

This decision concludes that the Division should not have terminated Mr. N's Interim Assistance benefits nor denied his application for Food Stamp benefits. Those actions are reversed.

II. Facts

Mr. N was receiving Interim Assistance benefits in January 2013.⁴ He was also receiving Food Stamp benefits through his wife's Food Stamp household benefits. His wife moved out of the house. She notified the Division of the move on January 3, 2013.⁵ On January 9, 2013, she filed a Food Stamp application for Mr. N. That application stated that Mr. N and his brother jointly owned real property worth \$50,000.⁶

¹ In 2008, Congress changed the name of the Food Stamp program to the Supplemental Nutrition Assistance program. The program is still commonly referred to as the Food Stamp program.

² Ex. 11.

³ A hearing on public assistance benefits cases is required to be held and a final decision issued "no later than 90 days" after the Division receives a hearing request. *See* 7 AAC 49.180. This case was referred to the Office of Administrative Hearings 125 days after the Division received Mr. N's hearing request, *i.e.*, 35 days after the final decision due date.

⁴ Exs. 1, 4.

⁵ Exs. 5, 5.1, 6.

⁶ Ex. 7.3.

Mr. N participated in an eligibility interview regarding the Food Stamp application on January 29, 2013, during which the real property was discussed.⁷ The Division reviewed borough property records and determined that Mr. N and his brother jointly owned two separate pieces of real property.⁸ Mr. N and his brother acquired the properties by inheritance. Mr. N does not live on either piece of property. The brother lives on one piece of property, which has a tax valuation of \$71,600. The other piece of property, which is located across the road from the residence, is unimproved; its tax valuation is \$21,000.⁹

The Division sent Mr. N notice that he needed to provide it with documents in order to determine both his eligibility for Food Stamp benefits and his continuing eligibility for Interim Assistance. For the Food Stamp program, the Division requested a written statement from Mr. N's brother stating he was unwilling to sell both pieces of property.¹⁰ For the Interim Assistance program, the Division requested both a statement from Mr. N's brother that he was unwilling to sell the residential property because it would cause him hardship and he had no other housing readily available, and an agreement to sell the non-residential property, including a requirement that the property be advertised or listed for sale at a reasonable price.¹¹ The deadline for complying with the Division's requests was February 14, 2013.¹²

Mr. N did not comply with the Division's requests. On February 15, 2013, the Division made the decision to deny Mr. N's Food Stamp application and terminate his Interim Assistance benefits due to lack of compliance.¹³ Mr. N requested a hearing that same day.¹⁴

Mr. N was not able to comply with the Division's requests because his brother would not cooperate. His brother would not sign or agree to anything regarding their jointly owned property, despite numerous requests. After the Division denied Mr. N's Food Stamp application and terminated his Interim Assistance benefits, he was able to sit down with his brother and his brother said he would sign the necessary documents. The brother then signed one document on March 12, 2013, which was a Social Security Administration form, stating that the property was

⁷ Ex. 8.
⁸ Ex. 8.
⁹ N testimony; Exs. 8.1 – 8.2.
¹⁰ Ex. 9.1.
¹¹ Ex. 9.
¹² Exs. 9 – 9.1.
¹³ Ex. 10.
¹⁴ Ex. 11.

his home and selling it would be a hardship. He would not sign the other document, which was the Division's Agreement to Sell Property form.¹⁵

III. Discussion

The issue in this case is whether Mr. N's Food Stamp application should have been denied and his Interim Assistance benefits terminated because he undisputedly did not provide the Division with the documents it requested.

Both the Food Stamp and the Adult Public Assistance (Interim Assistance is a limited form of Adult Public Assistance) programs provide the Division with the authority to request information regarding an applicant/recipient's eligibility for those benefits.¹⁶ The amount of resources (both personal property and real property) that a person owns is a factor that affects financial eligibility for those programs.¹⁷ If a person refuses to provide the Division with the requested information, then the Division may deny or terminate benefits.¹⁸

A. Food Stamp program

The requested documentation was a statement from Mr. N's brother that he was not willing to sell the two pieces of property. This was relevant information because jointly owned property is counted as a resource when determining financial eligibility unless the co-owner is unwilling to sell the property.¹⁹ However, Mr. N was unable to supply the requested documentation because his brother would not cooperate. Under the circumstances, Mr. N's application should not have been denied: "[t]he State agency shall not determine the household to be ineligible when a person outside of the household fails to cooperate with a request for verification."²⁰

B. Adult Public Assistance program

The request was for two documents: a statement from Mr. N's brother that he was unwilling to sell the residential property because it would cause him hardship and he had no other housing readily available, and an agreement to sell the non-residential property, including a requirement that the property be advertised or listed for sale at a reasonable price. Both of these

¹⁵ N testimony; Ex. A, pp. 1 – 2.

¹⁶ 7 C.F.R. § 273.2(d)(1) (Food Stamp program); 7 AAC 40.050(a); 7 AAC 40.450(a) and (b) (Adult Public Assistance/Interim Assistance program).

¹⁷ 7 CFR § 273.8(b) (Food Stamp program). 7 AAC 40.270(a) (Adult Public Assistance/Interim Assistance program).

¹⁸ 7 C.F.R. § 273.2(d)(1) (Food Stamp program); *see Alaska Adult Public Assistance Manual* Section 400-4 (Adult Public Assistance/Interim Assistance program). The *Alaska Adult Public Assistance Manual* is available online at <http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm>.

¹⁹ 7 C.F.R. § 273.8(d).

²⁰ 7 C.F.R. § 273.2(d)(1).

documents were relevant. Jointly owned property is potentially excludable as a countable resource if the joint owner, who is not a benefit applicant/recipient, lives on the property and is unwilling to sell it.²¹ Property, that is otherwise a countable resource, may be excluded as a countable resource for a limited time if it is up for sale.²² However, Mr. N was not able to provide the requested documentation, through no fault of his own. His brother's cooperation was essential to provide the requested documents. Given the circumstances, Mr. N cannot be held liable for not providing them.

IV. Conclusion

The Division's decision to deny Mr. N's Food Stamp application and to terminate his Interim Assistance benefits is reversed.

DATED this 19th day of July, 2013.

Signed _____
Lawrence A. Pederson
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 2nd day of August, 2013.

By: *Signed* _____
Name: Lawrence A. Pederson
Title: Administrative Law Judge

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

²¹ The Adult Public Assistance regulations, unlike the Food Stamp regulations, do not explicitly state that jointly owned property is excluded as a resource when the co-owner is unwilling to sell. See 7 AAC 40.280 for a list of exclusions. However, the Adult Public Assistance regulations define a "resource" as being "any real or personal property that an applicant . . . owns and can convert to cash to be used for his or her support and maintenance." 7 AAC 40.260(a). The Division's policy statement excluding jointly owned property as a countable resource, under some circumstances, is contained in the *Alaska Adult Public Assistance Manual* § 432-1 C.

²² 7 AAC 40.290(b).