

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

In the Matter of	)	
	)	
E J	)	OAH No. 16-0743-CMB
_____	)	Agency No.

**DECISION**

**I. Introduction**

E J gave her adult daughter a house, but never officially transferred the title to the house to her daughter. The Division of Public Assistance terminated Ms. J’s food stamp and Adult Public Assistance benefits after it discovered that Ms. J had assets that exceeded the eligibility limit for these benefit programs. Because Ms. J still has legal title to the house, the house must be included in Ms. J’s resources. The Division’s decision is affirmed.

**II. Facts**

E J is a 63-year-old resident of No Name. She has received food stamps and adult public assistance for several years.<sup>1</sup> She submitted her application for recertification of these benefits on May 13, 2016.<sup>2</sup> The application identified very limited resources—a 2001 Dodge 1500 truck worth \$3,500 and \$44 in the bank.<sup>3</sup> She did not inform the division that she owned a house. According to her application, she lives with a relative in exchange for housesitting and paying utilities. Her application was approved.

Later, however, the Division of Public Assistance discovered that Ms. J owns a house on No Name in the No Name area, assessed at \$25,100.<sup>4</sup> The division contacted Ms. J, and she explained she had given the house to her daughter, M B over ten years ago. Ms. B lives in the home, and pays all taxes and utilities. They did not transfer the legal title to her daughter because of an issue with a lien on the home.<sup>5</sup>

The division determined that Ms. J was still the legal owner of the home. Because Ms. J did not live in the home she owned, she was not eligible for the homestead exemption for the No Name home. Therefore, after discovering the home, the division included the value of the home in Ms. J’s resources and determined that she was not eligible for food stamps or adult public

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<sup>1</sup> Division’s Position Statement.  
<sup>2</sup> Division Exhibit 2-2.9.  
<sup>3</sup> Division Exhibit 2.3.  
<sup>4</sup> Division Exhibit 4.2.  
<sup>5</sup> Division Exhibit 17.

assistance. It sent her a notice that her case was being closed in June 2016 and she would receive no additional food stamps or adult public assistance.<sup>6</sup>

Ms. J appealed the termination and requested a fair hearing. Before the hearing occurred, the division discovered that she was also part owner of the home in which she is currently living because her relative had included her as co-owner on the deed. This discovery, however, did not affect her eligibility for assistance. Because she lived in the home, the value of the home did not count toward her resources. Thus, the only issue for the fair hearing was whether the No Name home was a resource to be counted against her for purposes of determining her eligibility for assistance.

A telephonic fair hearing was held on July 12, 2016. One issue that arose during hearing was whether the division knew that Ms. J had transferred the No Name home to Ms. B, and had determined that Ms. J no longer needed to include the No Name home in her resources. The record was held open until July 22, 2016, for the parties to address this issue.

### **III. Discussion**

The issue in this case is whether the Division was correct to include the No Name home when determining Ms. J's household resources for purposes of calculating eligibility for food stamps and adult public assistance.

The Food Stamp program is a federal program administered by the State.<sup>7</sup> Federal Regulations set the rules for determining a household's financial eligibility, which is determined, in part, based on the resources (assets) owned by the household members. The program has a resource limit of \$3,000 for a household with a member who is over 60 years of age.<sup>8</sup> Some resources, such as the household's home, are not counted as household assets.<sup>9</sup> Other real property, however, is counted unless a person is actively trying to sell the property or the property is income-producing.<sup>10</sup>

Alaska public assistance benefits are payable to eligible needy aged, blind and disabled persons.<sup>11</sup> An aged person who receives adult public assistance benefits is eligible to receive Medicaid benefits as well, and the same financial need and resource standards apply.<sup>12</sup> To be eligible for adult public assistance, a person who lives alone may not own more than \$2,000 in

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<sup>6</sup> Division Exhibit 5.

<sup>7</sup> 7 C.F.R. § 271.4(a).

<sup>8</sup> 7 C.F.R. § 273.8(b).

<sup>9</sup> 7 C.F.R. § 273.8(e)(1).

<sup>10</sup> 7 C.F.R. § 273.8(e)(4), (8).

<sup>11</sup> AS 47.25.430-.615.

<sup>12</sup> AS 47.07.020(b)(4); 7 AAC 100.400(a)(10), (13)-(15); 7 AAC 100.410(b).

resources, after permissible exclusions.<sup>13</sup> Resources include “any real or personal property that an applicant . . . owns and can convert to cash to be used for his or her support and maintenance.”<sup>14</sup> The value of a person’s home is excludable from resources if the home is the applicant’s “principal place of residence.”<sup>15</sup>

Under the law, if the value of the No Name house is included in her resources, Ms. J would not be eligible for assistance. Ms. J does not live in the No Name house. Here, even though Ms. B was given the house, until the title is transferred, the No Name house must be included in Ms. J’s resources.

Ms. J asserted, however, that she informed the division about the ownership status of the No Name house in the past. In her view, the division understood that her daughter effectively owned the home. She made it very clear that she never hid the house. She asserted that the division must have lost some paperwork because it had allowed her to receive benefits in the past in spite of her nominal ownership of the No Name house. In her supplemental filing to address the issue of the division’s past practices and promises, Ms. J did not provide any official documents, but described how she had transferred the property to Ms. B and indicated her willingness to quit claim the deed to her daughter.<sup>16</sup>

The division disputes that it had previously approved Ms. J’s eligibility in spite of her ownership of the No Name house. The division’s records indicate that in 2013 the division understood that years ago the house had been sold to Ms. B and that transfer of title was delayed pending resolution of a lien.<sup>17</sup> When a 2013 search of borough records showed that E J did not own the home, the division was satisfied, and approved Ms. J’s application. The problem, however, was that the division did not know that the house was titled to Ms. J under her married name, E C.<sup>18</sup> Had the division understood that E C and E J were the same person, it would have denied Ms. J’s application as being over the resource limits.

Ms. J argued at the hearing that the division’s past action in approving benefits when it knew about the No Name house means that the division must keep paying the benefits now. This argument could work in some fact situations. For example, a governmental entity might be bound to its past action when it has access to the facts, clearly adopts a position on a person’s eligibility,

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<sup>13</sup> 7 AAC 40.230; 7 AAC 40.270(a)(1).

<sup>14</sup> 7 AAC 40.260(a).

<sup>15</sup> 7 AAC 40.280.

<sup>16</sup> J supplemental filing.

<sup>17</sup> Division Exhibit 17.

<sup>18</sup> *Id.*

and as a result it would be unfair and harmful to change that position.<sup>19</sup> Merely making a mistake (such as not looking up ownership records based on an alias), and then correcting a mistake, however, is not grounds for continuing to pay a person a benefit for which the person is not eligible.<sup>20</sup> Therefore, the division's past action does not affect the outcome here.

As for Ms. J's intent to quitclaim the deed, under the rules for benefits, even if she intends to do that in the future, it does not affect her eligibility at this time.<sup>21</sup> Moreover, the division advised at the hearing that Ms. J should be careful, and consult with it before doing so, in order to avoid incurring transfer penalties.

#### **IV. Conclusion**

The Division of Public Assistance's termination of E J's food stamp and adult public assistance benefits is affirmed.

DATED this 22<sup>nd</sup> day of August, 2016.

By: Signed  
Bride A. Seifert  
Administrative Law Judge

#### **Adoption**

Under a delegation from the Commissioner of Health and Social Services and under the authority of AS 44.64.060(e)(1), I adopt this decision 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 8<sup>th</sup> day of September, 2016.

By: Signed  
Name: Bride Seifert  
Title/Division: ALJ/OAH

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

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<sup>19</sup> *Crum v. Stalnaker*, 936 P.2d1254, 1256 (Alaska 1997).

<sup>20</sup> *Cf., e.g., Flisock v. State, Div. Ret. and Ben.*, 818 P.2d 640, 644 n.5 (Alaska 1991).

<sup>21</sup> *See, e.g., In re E.L.*, OAH No. 14-0126-SNA at 2 (Dep't Health and Soc. Servs. 2014) (holding that intent to give away property in future does not affect current eligibility), available at [http://aws.state.ak.us/officeofadminhearings/Documents/SNA/SNA140126.pdf?\\_ga=1.209297746.1741211287.1424461288](http://aws.state.ak.us/officeofadminhearings/Documents/SNA/SNA140126.pdf?_ga=1.209297746.1741211287.1424461288).