

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

In the Matter of)	
)	
B D)	OAH No. 19-0227-SNA
<hr style="width: 40%; margin-left: 0;"/>)	Agency No. 05467729

DECISION

I. Introduction

B D applied for Supplemental Nutrition Assistance Program (SNAP) benefits, commonly referred to as Food Stamps, for her household. The Division of Public Assistance concluded that the household’s resources, which include property worth about \$10,000, exceeded the program limit.

The preponderance of the evidence shows that Ms. D’ household intends to build on or improve the property at issue, so that they can live there. Because the property is excluded from the household’s countable resources, the Division’s decision is REVERSED.

II. Facts

B D applied for Food Stamps on March 5, 2019.¹ On the application, Ms. D reported that her spouse, M H owns land worth \$10,000.²

That same day, Ms. D attended an interview with Division Eligibility Technician, C M.³ During the interview, Ms. D confirmed that she and her spouse own property in Town B worth \$10,000.⁴ Ms. D reported that her household is not currently living on the land and that a trailer on the property is uninhabitable.⁵ Mr. M asked Ms. D several times in the interview if they had any plans to use the land.⁶ Ms. D responded that they did not have plans to use the property.⁷ Mr. M asked Ms. D what their plans for the land were when they bought it, to which, Ms. D responded that they had none—that they lived on the property but moved because the trailer had become uninhabitable.⁸

¹ Ex. 1.
² Ex. 1 at 9.
³ Ex. 2; C M Testimony.
⁴ Ex. 2; M Testimony.
⁵ Ex. 2; M Testimony.
⁶ Ex. 2; M Testimony.
⁷ Ex. 2; M Testimony.
⁸ Ex. 2.

On March 6, 2019, the Division sent Ms. D a notice that her Food Stamps application was denied because the household's countable resources are over the \$2,250 resource limit for the Food Stamp program.⁹ The Division explained:

\$2,250 is the Food Stamp resource limit for your household. \$10,000.00 is the amount of your resources countable for the Food Stamp Program.

...

WE COUNTED THE LAND YOU DO NOT LIVE ON AND HAVE NO PLANS TO USE. YOU ESTIMATED THE VALUE AT \$10,000.00.¹⁰

On March 11, 2019, Ms. D submitted a Fair Hearing Request.¹¹ In her request, Ms. D wrote:

We are still using our land. We have livestock on the land that we raise for food. And when summer gets here we will be fixing it up to live on again. Please call me to discuss.¹²

A telephonic hearing was held on April 3, 2019. Ms. D represented herself and testified on her own behalf. Amanda Holton, a Public Assistance Analyst with the Division, represented the Division. Eligibility Technicians U U and C M from the Division's City A office testified on behalf of the Division. During Ms. D's testimony, her phone was disconnected. Despite several attempts, the Office of Administrative Hearings (OAH) was unable to re-establish contact with Ms. D during the hearing time. Thus, a supplemental hearing was scheduled for April 11, 2019 to allow Ms. D the opportunity to finish presenting her case. Ms. D finished her testimony at the supplemental hearing. In addition, the Division presented testimony from X T, an investigator for the Division.

At the hearing, Ms. D explained that she was distracted during the interview because her four-year-old daughter was getting restless and was acting disruptive.¹³ As a result, Ms. D misunderstood or did not really appreciate the importance of Mr. M's question about use of the property.¹⁴ Ms. D interpreted Mr. M's question as more of a question about current plans for the property.¹⁵ Because the property was covered in snow at the time of the interview, and because they cannot make any improvements to the property until the snow thaws, Ms. D told Mr. M that they did not have plans to use the property.¹⁶ Ms. D explained that her family lived in the trailer on the Town B property for seven

⁹ Ex. 3.

¹⁰ Ex. 3 (Capitalization in original).

¹¹ Ex. 4.

¹² Ex. 4.

¹³ B D Testimony.

¹⁴ D Testimony.

¹⁵ D Testimony.

¹⁶ D Testimony.

years until last summer, when the Office of Children’s Services (OCS) took the children away.¹⁷ A condition of getting the children back was to move off of the property and into a safer, more livable place.¹⁸ Ms. D and Mr. H saved some money and moved to an apartment on August 8, 2018.¹⁹ Having the additional expense of rent has caused significant financial hardships for them.²⁰

Before OCS removed the children, Ms. D and Mr. H were working on making the property livable.²¹ The property has electricity, but it does not have running water or fuel.²² They had done some work on the well, and replaced some water lines from the trailer to the well.²³ But the well was full of debris.²⁴ Mr. H, who works for a construction company, uses company equipment to work on the property when he can.²⁵ Ms. D and Mr. H have always intended to live on the property they own, rather than pay rent someplace else.²⁶ But they have to comply with OCS’s conditions for keeping their children, and the property needs significant work before it will be livable.²⁷ The family plans to save what they can to put in a new well and fix the roof that has caved in.²⁸ They plan to move back to the property when it is safe to do so.²⁹

On April 8, 2019, X T, an investigator for the Division, visited the property in Town B.³⁰ Mr. T interviewed Ms. D during that visit.³¹ Mr. T confirmed that Ms. D has six geese in fenced-in pens on the property.³² The family uses the geese for food: they sometimes eat the geese—for example, on Thanksgiving and Christmas—and the geese produce eggs that the family eats.³³ Mr. T observed a trailer and one small structure on the property.³⁴ Mr. T reported that the small structure looked solid but too small to live in.³⁵ He confirmed that parts of the roof of the trailer were caved in.³⁶ Nevertheless, from his limited view, he believed that with some work, the property could become livable.³⁷

17 D Testimony.
18 D Testimony.
19 D Testimony.
20 D Testimony.
21 D Testimony.
22 D Testimony.
23 D Testimony.
24 D Testimony.
25 D Testimony.
26 D Testimony.
27 D Testimony.
28 D Testimony.
29 D Testimony.
30 X T Testimony.
31 T Testimony.
32 T Testimony.
33 T Testimony; D Testimony.
34 T Testimony.
35 T Testimony.

III. Discussion

In general, real estate owned counts as a resource for purposes of determining eligibility under the Food Stamp program.³⁸ The federal regulations exclude the value of property that is temporarily unoccupied due to uninhabitability if the household intends to return.³⁹ Similarly, the regulations exclude the value of property when the household intends to build a home on it.⁴⁰ Although Ms. D stated in her interview with Mr. M that the household did not have plans for the subject property, that statement was due to a misunderstanding. Her testimony at hearing on this point was credible. At the interview, Ms. D was distracted and understood Mr. M's question to mean whether the family had current plans to reoccupy the property.⁴¹ Because the property was covered in snow at the time of the interview, and because they cannot make any improvements to the property until the snow thaws, Ms. D told Mr. M that they did not have plans to use the property.⁴² OCS's involvement with this family and the fear of removal of the children if they fail to comply with OCS's requirements, lends even more credibility to Ms. D's testimony. Ms. D and Mr. H have always intended to live on the property they own, rather than pay rent someplace else. But to avoid OCS custody of their children, they must comply with OCS's conditions, and the property needs a lot of work before it will be livable.⁴³ The family plans to save what they can to put in a new well and fix the roof that has caved in, and then move back to the property when it is safe to do so.⁴⁴

Ms. D also claimed that the household is using the property for livestock. Because the household's intent to improve the property so that they can re-occupy it is dispositive, this decision need not reach the issue of whether the family's use of the land for geese creates an exemption.

The preponderance of the evidence shows that Ms. D's household intends to build on or improve the property at issue, so that they can live there. Because the property is thus excluded from the household's countable resources, the Division's decision is reversed.

IV. Conclusion

The Division's decision to deny Ms. D's application for Food Stamps because the household's resources, which include property worth about \$10,000, exceeded the program limit, is reversed.

³⁶ T Testimony.

³⁷ T Testimony.

³⁸ 7 C.F.R. 273.8(c)(2).

³⁹ 7 C.F.R. 273.8(e)(1) (Ex. 6 at 2); *see also* Ex. 5 at 4.

⁴⁰ 7 C.F.R. 273.8(e)(1) (Ex. 6 at 2); *see also* Ex. 5 at 4.

⁴¹ D Testimony.

⁴² D Testimony.

⁴³ D Testimony.

⁴⁴ D Testimony.

Dated: April 12, 2019

By: Signed
Signature
Jessica L. Leeah
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

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 1st day of May, 20 19.

By: Signed
Signature
Jessica L. Leeah
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]