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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

In the Matter of)
)
 [REDACTED],)
)
)
)
) OHA Case No. 09-FH-182
) Division Case No. [REDACTED]
)
 Claimant.)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED], (Claimant), completed and signed an Eligibility Review Form application (Application) for re-certification for Food Stamp Program benefits on January 28, 2009.¹ (Ex. 2.3) The Division of Public Assistance (Division) received this Application on February 4, 2009. (Ex. 2.0) The Division denied this Application on March 19, 2009 and terminated Claimant’s Food Stamp benefits effective February 28, 2009. (Ex. 7.1) Additionally, the Division imposed a “transfer of resource penalty” effective from March 1, 2009 to through February 28, 2010. (Ex. 6.1)

On March 20, 2009, Claimant orally requested a Fair Hearing.² (Ex. 8.3) On March 31, 2009, the Division received Claimant’s written request for a Fair Hearing.³ (Ex. 8.3a) This Office has jurisdiction under authority of 7 CFR § 273.15 and 7 AAC 49.010 *et. seq.*

¹ Claimant also applied for Medicaid benefits which the Division also denied and then resolved before the Fair Hearing began. ([REDACTED] testimony) Accordingly, Medicaid is not addressed in this Decision.

² The reasons for the request are identified in the written memorandum of Claimant’s oral request as “does not agree with resource issues now being looked at/counted” by the Division staff (Ex. 8.3) and as “request a fair hearing on the recent denial of my Food Stamps and Medicaid eligibility...” on Claimant’s written request. (Ex. 8.3a)

³ Claimant’s written request is dated “3/13/09” and was not marked with an exhibit number. This must be a typographical error because she was not informed of the denial of her Application until March 29, 2009. Because the Division received the document on March 31, 2009, the date is understood as a transposition of numbers. For purposes of this Decision, both requests are treated as one and the latter is designated by this Office as Exhibit 8.3a.

Pursuant to Claimant's request, a Fair Hearing was scheduled for May 6, 2009. At Claimant's request it was rescheduled to May 27, 2009. The hearing was held on May 27, 2009.⁴ Claimant appeared telephonically and testified. ██████████, Claimant's father, appeared telephonically and testified on behalf of Claimant. ██████████, the Division's Public Assistance Analyst, appeared in person and testified on behalf of the Division.

ISSUE

Was the Division correct to deny Claimant's Application for re-certification of Food Stamp Program eligibility and to implement a transfer of resource penalty?

FINDINGS OF FACT

1. Claimant was approved for Food Stamps on September 19, 2008 and had been receiving Food Stamp benefits since October 1, 2008. (Ex. 1, Ex. 6.2) Claimant completed and signed an Eligibility Review Form (Application) for re-certification of her eligibility for the Food Stamp Program on January 28, 2009. (Ex. 2.0-2.5) This Application was received by the Division on February 4, 2009. (Ex. 2.0)
2. Claimant's response to Application question 3, "[l]ist any houses, cabins, property...or other assets you or anyone in your household owns...", was "[y]ou have a note from my father + Documentation on file." (Ex. 2.1)
3. The "note from my father" and "Documentation on file" to which Claimant referred in her Application either are not in the hearing record or are not identifiable as "Documentation on file." However, references to the Claimant's prior submissions are made in several Exhibits submitted by the Division and appear to be limited to a Quit Claim Deed and a real property co-owner's statement of unwillingness to sell the property. *See:*
 - a. Ex. 6.2 (referencing Claimant's application and approval for Food Stamps on September 19, 2008 and referring to "[p]roperty was quitclaimed from Danielle to her and her father 8/29/08 for \$10.00 & a statement not to sell done – 8/29/08"⁵);
 - b. Exs. 6.8 and 6.9 (consisting of the Quit Claim Deed referenced in Ex. 6.2 transferring one-half interest in six parcels of real property to Claimant's father on August 29, 2008);
 - c. Exs. 3.1, 5.1, 7.1, 7.2, 8.0 each refer to Claimant's father's statement provided to the Division as part of her prior application (September 2008) process. Exhibit 3.1, a case note dated February 17, 2009, states that Claimant

⁴ Hearing Officer Jay Durych presided over the hearing. Subsequently, this case was assigned to Hearing Officer Claire Steffens who reviewed the entire record, listened to the entire electronic record and wrote this Decision.

⁵ The absence of this "statement not to sell" from the evidentiary record leaves a critical gap in the evidentiary record.

had conveyed the real property to herself and her father and that “she did provide a partial statement that he is unwilling to sell however did not provide the complete document.” Exhibit 5.1, a notice to Claimant dated March 5, 2009, more specifically states:

Previously you have provided a document signed by [REDACTED] showing that the attached land not to be sold statement of two (2) pages is true and correct. However we only have this page and unfortunately (sic) it does not detail the property it is talking about. We will need to have the additional pages.

Exhibit 6.1, a case note, records that on August 29, 2008 the Claimant’s property was quit claimed to herself and her father and “a statement not to sell done.”

The “note from my father” referred to by Claimant in answer to question 3 of her Application apparently stated the land which Claimant had conveyed to him on August 29, 2008 was not to be sold. Because the note was not supplied by either party as part of the hearing record it is not possible to examine its contents.

4. On February 17, 2009, the Division discussed with Claimant her ownership interest in parcels of real property, her Quit Claim Deed of August 29, 2008 and the value of her remaining equity in them. (Ex. 3.1) The Division requested Claimant supply verification information, including “property - use, value, owe - & land not to be sold statement.” (Ex. 3.0)

5. On February 27, 2009, the Division received Claimant’s verification information as follows:

a. Exhibit 4.2: a descriptive list of real property and vehicles, including values, uses and disposition of each;

b. Exhibits 6.3-6.7 and 9.1: Matanuska-Susitna Borough property tax reports for each parcel of property identified on Claimant’s list (Exhibit 4.2), providing values for each, and proving joint ownership of the property by Claimant and Claimant’s father for all 6 parcels as per the Quit Claim Deed dated August 29, 2008.

6. On March 31, 2009 the Division received a note signed by Claimant’s father on March 30, 2009 stating he had no intention of selling “Block 2, Lot 1 – 11226-000000.” Ex. 9.0. This parcel of real property is valued at \$1,700 and was identified on Claimant’s list as unnumbered, between numbers 3 and 5. (See Exhibits 4.2, 9.1) This same parcel was identified on the August 29, 2009 Quit Claim Deed at paragraph 3 below the word “and.” (Ex. 6.9)

7. On February 27, 2009, the Division received Claimant’s list of property, including six parcels of real property in which she owns a partial interest shared with her father. (Ex. 4.2; Ex. 6.8-6.9) The values she placed on them were the same as the values of the Matanuska-Susitna Borough (Mat-Su) Tax appraisal values for each property identified

on Claimant's list. (Ex. 4.2; Exs. 6.3-6.7 and 9.1) The Division accepted Claimant's value for each of the properties. (See Ingens reports at Exs. 3.2-3.12) The total value of the properties is \$56,500 for six parcels. (Ex. 7.1)

8. On March 19, 2009, the Division notified Claimant that her Application was denied and her case closed effective February 28, 2009 because Claimant was determined to have countable resources of \$2,699.57, which exceeded the \$2,000 limit for the Food Stamp Program. (Exs. 7.1, 7.2)

The Division determined this as follows:

a. The Division ascribed to Claimant the sole ownership of the parcel of property valued at \$1,700. (Ex. 7.1) It stated in the March 19, 2009 notice:

The statement (sic) of properties not to be sold & the accompanying list have a total of 5 properties listed. The list of properties that you gave to us showing the value, use & amount owned on each property shows a total of 6 properties.... The value of the property not exempt due to the co-owner not being willing to sell is \$1,700. Based on the total value of all property, amount left owing, & not being included on the not to be sold statement it appears the value of this property is an available resource to you. (Ex. 7.1)

b. The Division calculated Claimant had resources of \$2,699.57 based in part on the \$1,700 value of this one parcel. (Ex. 7.1) This calculation caused Claimant to have excess resources of \$699.57. (Ex. 7.1)

9. On March 19, 2009 the Division notified Claimant that it was imposing a transfer of resources penalty because she had "intentionally transferred a resource within the last 12 months for less than it was worth." (Ex. 7.1, 7.2)

a. The Division's determination that Claimant had intentionally transferred the real property for below value was based on Claimant's August 29, 2008 Quit Claim Deed transferring one-half of her interest in the six parcels of real property she owned for only \$10.00 when the undisputed value was \$47,552.35. (Ex. 7.2) The Division determined that the August 29, 2008 Quit Claim Deed affected only five of the six parcels. (Compare Ex. 7.1 with Ex. 6.9, subparagraph 3, which includes 2 parcels.)

b. The Division gave Claimant notice that it was attributing "equity value of the resources" of \$47,552.35 for all 6 parcels, which exceeded the \$10.00 for which the transfer had taken place. (Ex. 7.2)

10. On March 19, 2009, the Division instituted a "transfer of resources penalty" in effect from March 1, 2009 (Ex. 6.1) until February 28, 2010. (Exs. 7.1-7.2)

11. On March 20, 2009, Claimant told the Division she had quit claimed one-half interest back to her father because it was causing her problems in getting public assistance benefits to own the property. (Ex. 8.0)

12. On March 31, 2009 the Division received a note from Claimant's father, signed on March 30, 2009, stating he had "no intentions of selling" the real property identified as "Block 2, Lot 1 -11226- 000000." (Ex. 9.0) This note pertained to the only co-owned property valued at \$1,700 by the Matanuska-Susitna Borough tax appraiser as account 11260000000. (Ex. 9.1)

13. Claimant informed the Division that she had executed the Quit Claim Deed so that she could qualify for public assistance benefits. (Ex. 8) Claimant's father testified that Claimant told him his gift to her of the 6 parcels of real property was causing her "problems" related to public assistance benefits.

PRINCIPLES OF LAW

I. Burden of Proof

Ordinarily the party seeking a change in the status quo has the burden of proof." *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

II. Standard of Proof

The regulations applicable to this case do not specify any particular standard of proof. A preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Therefore, the standard of proof is the preponderance of the evidence.

Preponderance of the evidence is defined as follows:

Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Black's Law Dictionary 1064 (5th Ed. 1979)

II. The Food Stamp Program.

The administration of the Food Stamp Program (7 USC §§ 2011-2029) has been delegated by Congress to the states. 7 CFR § 271.4. In Alaska, the Department of Health and Social Services administers the Food Stamp program under regulations 7 AAC 46.010 - 7 AAC 46.990. These regulations incorporate and adopt the federal regulations of 7 CFR §§ 271 – 274.

A. Recertification of eligibility information

A household periodically must be recertified as eligible to participate in the Food Stamp Program. 7 CFR § 273.14(a) Recertification requires the State to verify the information required for eligibility of the household and the household must be given a minimum of 10 days to provide required verification information. 7 CFR § 273.14(b)(4).

Regulation 7 CFR § 273.14(e) addresses the Division's actions upon a delay in acting on a recertification application. Subsection 273.14(e)(2) addresses the Division's permitted actions if the delay is due to the household failing to take a required action before the Division denies the case, if the household files a recertification application before the end of the prior certification period. This regulation states, in part relevant to this case:

[n]otwithstanding the State's right to issue a denial prior to the end of the certification period, the household has 30 days after the end of the certification period to complete the process and have its application be treated as an application for recertification. If the household takes the required action before the end of the certification period, the State agency must reopen the case and provide a full month's benefits for the initial month of the new certification period. 7 CFR § 273.14(e)(2).

B. Resources

To be eligible for the Food Stamp Program, a household may not have more than \$2,000 in countable resources. 7 CFR § 273.8(b). Real property, including land, buildings, and recreational properties are countable resources. 7 CFR § 273.8(c)

However, if a resource having a cash value is not accessible to the household, it is excluded from being a "countable resource." 7 CFR § 273.8(e)(8) Real property which is co-owned under circumstances such that the co-owners are unwilling to sell it is deemed not accessible to the household. 7 CFR § 273.8 (d)

C. Transfer of resources

Regulation 7 CFR § 273.8(h) embodies rules concerning transfer of resources pertaining to households applying for Food Stamp benefits. Part of this regulation states that households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamp benefits "shall" be disqualified from participation in the program for a period of time. 7 CFR § 273.8(h)

This regulation also establishes a three month period immediately preceding the date of application as the "look back" period:

At the time of application, households shall be asked to provide information regarding any resources which any household member ... had transferred within the 3-month period immediately preceding the date of application. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamp benefits shall be disqualified from participation in the program for up to 1 year from the date of the discovery of the transfer. This disqualification period

shall be applied if the resources are transferred knowingly *in the 3-month period prior to application* (Emphasis added.)

7 CFR § 283.8(h)(1). Resources transferred at or near fair market value do not affect eligibility. 7 CFR § 273.8(h)(2)(ii).

ANALYSIS

I. Issue

There are two issues to be decided:

First, was the Division correct in attributing to Claimant a parcel of real property valued at \$1,700 as a countable resource for purposes of eligibility for Food Stamp benefits?

Second, was the Division correct to attribute to Claimant an intentional transfer of resource penalty of 12 months?

II. Burden of Proof and Standard of Proof

The party seeking a change in the status quo has the burden of proof.” *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

Because the Claimant seeks to obtain Food Stamp benefits by submitting an Application for re-certification of her eligibility for Food Stamps, Claimant therefore is attempting to change the status quo. Accordingly, Claimant has the burden of providing evidence more convincing, or of greater weight, than the Division’s evidence, that she meets the requirements for eligibility for Food Stamp benefits. Also, Claimant must provide the preponderance of the evidence to show that the Division erred in applying a penalty against Claimant for the transfer of resources in violation of the Food Stamp Program rules.

III. Undisputed Facts

The value of real property owned by a household applying for Food Stamp benefits is a “countable” resource when calculating a household’s eligibility. 7 CFR § 273.8.

It is undisputed that in completing her February 4, 2009 recertification Application, Claimant relied on documentation previously supplied to the Division on which basis Food Stamp benefits had been paid to her beginning October 1, 2008. (Ex. 1; Ex. 2.3; Ex. 6.2) The particular documentation is a Quit Claim Deed executed August 29, 2008 (Ex. 6.8-6.9) and her father’s August 29, 2008 statement of unwillingness to sell property jointly owned by Claimant and her father. (This statement has no exhibit number because it is not part of the hearing record, except by reference. See Finding of Fact 3.)

It is also undisputed that Claimant supplied to the Division on February 27, 2009 additional information pertaining to Claimant's ownership of 6 parcels of real property, i.e., the same properties as are listed on the Quit Claim Deed of August 29, 2008.⁶

The Division and Claimant agree on the value of each parcel of real property. The value of parcel [REDACTED] Estates (Account number [REDACTED]) is undisputed at \$1,700 (hereinafter the \$1,700 parcel). (Ex. 9.1)

Another undisputed fact is that on March 31, 2009, Claimant, in response to the Division's request, supplied a handwritten statement from the co-owner of the \$1,700 parcel that he was unwilling to sell it. (Ex. 9.0) The co-owner, Claimant's father, identified the \$1,700 parcel by its Matanuska-Susitna tax appraisal account number [REDACTED]⁷ (Ex. 9.0)

Thus, the issue in this case pertains exclusively to the parcel of real property valued at \$1,700, also described as [REDACTED] Estates, or variations thereof. This Decision refers to this parcel of real property as the \$1,700 parcel.

A. Ownership of the Resource

The Division notified Claimant that it had determined she was the sole owner of a parcel of real property valued at \$1,700 at the time of her Application for re-certification of eligibility on February 4, 2009. (Ex. 7.1) It identified this parcel and value as a resource which it counted as available to Claimant. Consequently, it denied Claimant's Food Stamp Application on grounds Claimant's resources exceeded the permissible limit. (Ex. 7.1)

The Division sent Claimant a notice on March 19, 2009 explaining its reasoning in ascribing to Claimant the sole ownership of the \$1,700 parcel. (Ex. 7.1) It stated in part:

The statement (sic) of properties not to be sold & the accompanying list have a total of 5 properties listed. The list of properties that you gave to us showing the value, use & amount owned on each property shows a total of 6 properties.... The value of the property not exempt due to the co-owner not being willing to sell is \$1,700. Based on the total value of all

⁶ This February 27, 2009 information consists of:

a) Claimant's handwritten list of co-owned properties, including the value she ascribes to each parcel and identification of their use as recreational (Ex. 4.2); and

b) Printouts of the Matanuska-Susitna Borough's tax reports for each of the six properties showing Claimant and her father as joint owners, the appraised value, the August 29, 2008 conveyance by Quit Claim Deed and other information. (Ex. 6.3-6.7 and 9.1)

⁷ The description of the parcel in this statement is flawed in two ways: first, the account number is incorrectly identified as [REDACTED] (Ex. 9.0) when it should be [REDACTED] (Ex. 9.1) and second, the parcel is not [REDACTED] (Ex. 9.0) but is identified merely as "[REDACTED]." (Ex. 9.1) Nonetheless, the co-owner's intent is clear that he is unwilling to sell parcel [REDACTED], valued at \$1,700 and these flaws are not fatal to conveying his intent.

property, amount left owing, & not being included on the not to be sold statement it appears the value of this property is an available resource to you.

The Quit Claim deed executed by Claimant on August 29, 2008 identified six parcels of property but numbered only five of them. (Ex. 6.9) The list Claimant supplied on February 27, 2009 identified six parcels of real property but also numbered only five of them, and if it had not been skipped, the fourth parcel on the list would have been number 4. (Ex. 4.2) Parcel number 4 on the list is the \$1,700 parcel at issue. (Ex. 4.2)

On the Quit Claim Deed, the \$1,700 parcel is identified as part of the paragraph numbered 3, below the word “and.” (Ex. 6.9) This is important because it appears that the Division did not recognize that the Quit Claim Deed, as well as Claimant’s list of February 27, 2009 each identified 6 parcels. The confirmation that Claimant quit claimed all 6 parcels of real property to herself and her father on August 29, 2008 was supplied by Claimant on February 27, 2009 in the form of the Matanuska-Susitna Borough tax reports. (Exs. 6.3-6.7, 9.1)

Therefore, the Division erred when it deemed the \$1,700 parcel to be solely owned by Claimant because it had been co-owned since August 29, 2008. Because a co-owned parcel of real property may still be a resource countable for purposes of eligibility for Food Stamp benefits, further analysis is required.

B. The \$1,700 Parcel of Real Property is Not a Countable Resource

If a co-owner of real property is unwilling to sell the property, the household does not have access to the value of this resource. In this situation, the household’s share of the resource is excluded from the countable resources that are included to calculate eligibility for Food Stamp benefits. 7 CFR § 273.8(d)(e)(8).

On her February 4, 2009 Application, Claimant responded to the question about what property she owned with the words: “You have a note from my father + Documentation on file.” (Ex. 2.1) The hearing record does not contain a note from Claimant’s father other than the one which it received on March 31, 2009. (Ex. 9.0)

This March 31, 2009 note is a statement of the co-owner’s (Claimant’s father) unwillingness to sell the \$1,700 parcel of real property. However, it was received after March 19, 2009 when the Division notified Claimant it had found the household not eligible and denied her Application. Therefore, the Division included the \$1,700 parcel as a countable resource in its calculation of Claimant’s resources and Claimant was determined to have \$699.57 in excess resources. (Ex. 7.1)

The Food Stamp regulations provide applicants an opportunity to cure defects in the application process, within certain time constraints and circumstances. 7 CFR § 273.14(e) Because Claimant previously had been determined eligible for Food Stamps based on her application of September 19, 2008 and certified to receive benefits beginning October 1, 2008, her prior certification period did not expire until April 1,

2009, six months later.⁸ (Ex. 1, Ex. 6.2) Claimant filed her Application for recertification of her eligibility on February 4, 2009, and thus she applied before the expiration of the prior certification period.

Because of this, Claimant had 30 days beyond the end of the prior certification period, i.e., April 1, 2009, to “cure” its defect, even though the Division has denied Claimant’s application. The regulation states, in relevant part:

[n]otwithstanding the State’s right to issue a denial prior to the end of the certification period, the household has 30 days after the end of the certification period to complete the process and have its application be treated as an application for recertification. If the household takes the required action before the end of the certification period, the State agency must reopen the case and provide a full month’s benefits for the initial month of the new certification period. 7 CFR § 273.14(e)(2).

Because Claimant supplied the requested verification information (in the form of the co-owner’s statement of unwillingness to sell co-owned real property, identified as Exhibit 9.0), Claimant cured the alleged deficiency on which basis the Division deemed the \$1,700 parcel a countable resource. Claimant’s cure occurred on March 31, 2009, within the prior certification period and therefore the Division must reopen the case and provide a full month’s benefits for the first month of the new certification period, i.e, April 2009. 7 CFR § 273.14(e)(2)

Accordingly, the Division’s termination of Food Stamp benefits as of February 28, 2009 on grounds that Claimant had excess resources was incorrect.

IV. Was the Division Correct to Penalize Claimant for Transfer of Resources?

The Food Stamp regulation prohibits the transfer of resources in order to be eligible for benefits. 7 CFR § 273.8(h) This regulation states that households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamp

⁸ The record does not contain a copy of the August 29, 2008 note from Claimant’s father on which the Division relied in approving Claimants eligibility in September 2008. There are two references to the co-owner’s August 29, 2008 statement of unwillingness to sell in the record. Exhibit 5.1, a March 5, 2009 notice to Claimant states:

“Previously you have provided a document signed by [REDACTED] showing that the attached land not to be sold statement of two (2) pages is true and correct. However we only have this page and unfortunately (sic) it does not detail the property it is talking about. We will need to have the additional pages.”

Exhibit 6.1, a case note, records that on August 29, 2008 the Claimant’s property was quit claimed to herself and her father and “a statement not to sell done.” Thus, the Division had determined in September 2008 that Claimant had supplied adequate proof that the co-owner was unwilling to sell the real property on the quit claim deed, it did not include any of the 6 parcels as countable resources, and it found the household eligible for benefits.

benefits “shall” be disqualified from participation in the program for a period of time. 7 CFR § 273.8(h)

Claimant transferred a half interest in 6 parcels of real property on August 29, 2008 by Quit Claim Deed. (Ex. 6.8-6.9) She informed the Division that she effectuated the transfer so she could be eligible for Food Stamp benefits. (Ex. 8) Her father testified that she had told him his gift of the land to her was causing her problems relating to public assistance benefits. (██████ testimony) It is clear that Claimant transferred half her interest in the 6 parcels of real property and obtained the statements from her father that he was unwilling to sell the parcels for the purpose of being eligible for the Food Stamp program.

Therefore, the transfer falls within the prohibition against transfers of resources found in regulation 7 CFR 273.8(h).

However, this regulation makes clear that an improper transfer of resources does not permanently bar eligibility for Food Stamps. If an application is filed more than three months after an improper transfer of a countable resource, the transfer is no longer improper. 7 CFR 273.8(h). This regulation states in relevant part:

(1) At the time of application, households shall be asked to provide information regarding any resources which any household member had transferred within the 3-month period immediately preceding the date of application. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamp benefits shall be disqualified from participation in the program for up to 1 year from the date of the discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the 3-month period prior to application or if they are transferred knowingly after the household is determined eligible for benefits. (Emphasis added.)

Claimant’s recertification application was received by the Division on February 4, 2009. Claimant’s Quit Claim Deed was executed August 29, 2008. (Ex. 6.8-6.9) August 29, 2008 is more than three months immediately preceding February 4, 2009. Therefore, Claimant’s transfer of the resource does not fall within the “look back” time limit for the prohibition on transfer of resources. Accordingly, the Division was not correct to impose a transfer of resource penalty against Claimant.

Claimant has proved by a preponderance of the evidence that her August 29, 2008 conveyance to her father was a permitted transfer at the time of her recertification application on February 4, 2009.

CONCLUSIONS OF LAW

1. The Claimant proved by the preponderance of the evidence that she did not have countable resources in excess of \$2,000 when she applied on February 4, 2009 and therefore was improperly denied Food Stamp benefits on the basis of excess resources.

2. The Claimant proved by a preponderance of the evidence that the transfer of real property occurred more than three months prior to her recertification application for the Food Stamp Program and therefore the Division erred in imposing an transfer of resource penalty.

DECISION

The Division's denials of Claimant's eligibility for recertification for Food Stamp benefits and the Division's imposition of a transfer of resources penalty on Claimant are incorrect.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. To do this, send a written request directly to:

Director of the Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

If the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision.

DATED this _____ day of July, 2009.

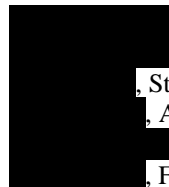
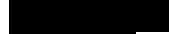
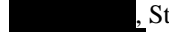
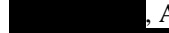
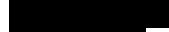
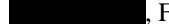
Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this _____ day of July 2009, true and correct copies of the foregoing were sent:

to Claimant by U.S.P.S., by Certified Mail, Return Receipt Requested

and to other listed persons by e-mail:

, Director
, Policy & Program Development
, Staff Development & Training
, Administrative Assistant II
, Eligibility Technician I
, Fair Hearing Representative

Al Levitre
Law Office Assistant I