

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

In the Matter of _____)
)
K D)
)
_____)

OAH No. 13-0371-MDE
Agency No.

DECISION

I. Introduction

The Division of Public Assistance denied K D’s application for Medicaid benefits because he owned resources that were worth more than \$2,000. He represented himself at his fair hearing on April 10, 2013, and the Division of Public Assistance was represented by Terri Gagne. Because Mr. D owns a boat that is worth at least \$8,500.00, he is not eligible for Medicaid, and the Division’s decision is affirmed.

II. Facts

K D is a single father with sole custody of five-year-old twins. He injured his back a few years ago and is on medication for pain.¹ He has not worked for at least three years.² He has been taking steps to get off the medication, and thinks he will be able to do that soon.³

Mr. D has received Family Medicaid benefits in the past, but they expired in February 2013, and he did not apply for recertification until March 19, 2013.⁴ His application was treated as a new application, and he participated in an intake interview.⁵ His application was denied because he owns a lodge on the No Name River and a 2005 boat, and he had approximately \$1,100 in the bank and \$30 cash on hand, for a total of \$16,430 in nonexempt resources.⁶ He also owned a 2000 Chevrolet Tahoe. The Division found that both the boat and the house were worth more than \$2,000 each, and that neither asset was exempt from counting against the Medicaid maximum resource allowance of \$2,000.⁷ Mr. D appealed the denial, and a telephonic hearing was held on April 10, 2013.⁸

¹ D testimony.

² *Id.*

³ *Id.*

⁴ Division Exhibits 1, 2

⁵ Division Exhibit 2.

⁶ Division Exhibits 2.15, 2.3. The lodge is mortgaged so only the net equity in the lodge is counted for Medicaid purposes.

⁷ Division Exhibit 2.19; Division Position Statement at 2.

⁸ Division Exhibit 2.17. The Division apparently misinterpreted a correction notice having to do with an earlier period, and initially sent a notice of approval for the March 19 application. The Division then corrected this error. Division Position Statement at 2.

Whether Mr. D lived at the lodge on the No Name River was a disputed issue at the hearing. The Division cited to evidence that seemed to indicate that Mr. D had been in town during the winter and that he planned to move back to the lodge on April 15.⁹ At his hearing, however, Mr. D testified that during this past winter he spent more time at the lodge than he spent in town.¹⁰ He said he lived at the lodge, which currently is not operated as a lodge, and would come into town frequently, about once a week, for food and medical services.¹¹ He did not have a residence in town, but would stay at a friend's house located in Houston.¹² He acknowledged that he planned to move to town next fall so that the children could start kindergarten, but he testified that the home on the river was the family's primary home at this time.¹³ Mr. D has established that the No Name River dwelling is his primary residence.

Regarding the boat, Mr. D testified that the boat is damaged and does not run.¹⁴ It is parked at a mechanic's yard because he does not have enough money to fix it.¹⁵ When asked about whether the boat could be sold in its current condition, Mr. D testified that he was confident that it could be sold as-is, that a buyer would likely pay at least \$8,500 for the boat, and that it would be worth approximately \$12,500 when it is in running.¹⁶ Although the boat is intended to be an income-producing asset when Mr. D is able to work again, Mr. D acknowledged that he has not worked for the last three years.¹⁷ He currently does not have a business license or possess the necessary Coast Guard licenses that he needs to be able to use the boat for the commercial ventures that he is planning.¹⁸ Mr. D testified that he did not use the boat for subsistence fishing because the boat was strictly for commercial purposes and he was not permitted to fish from it.¹⁹

At the hearing, Mr. D did not argue that the boat was worth less than \$2,000 or assert that the boat was exempt.²⁰ He explained that he had not understood that Medicaid had a maximum

⁹ Division Exhibit 2.32. The Division's interpretation of Mr. D's statement on his fair hearing request was reasonable. His statement, however, was ambiguous, and his testimony clarified that he had spent more time at the lodge than at his friend's house in town.

¹⁰ D testimony.

¹¹ *Id.*

¹² *Id.*; Division Exhibit 2.17

¹³ D testimony.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

allowance of \$2,000 in nonexempt assets.²¹ He indicated that if he is not eligible for Medicaid, he will seek other sources of assistance.²² His goal was to get back in the work force as soon as possible.²³

III. Discussion

Mr. D has applied for Family Medicaid benefits.²⁴ A person who owns more than \$2,000 in assets, however, is not eligible for Family Medicaid benefits, unless the assets are exempted from being considered in calculating the value of a person's resources.²⁵ The record indicates that the Division would have considered Mr. D eligible for Medicaid assistance except that he owned nonexempt resources worth more than \$2,000.²⁶ Here, Mr. D's house and car are exempt resources. His boat, however, is not.

Mr. D's home on the No Name River is an exempt resource because he established that it is his primary residence, and state Medicaid regulations exempt an applicant's home.²⁷ Although he is away from home frequently, he clarified that his absences were temporary, and were for the permissible purposes of obtaining food and medical care. Therefore, the value of Mr. D's home on the No Name River will not count against his resource limit.

Mr. D's car is also exempt. Although he was not asked specifically to describe his vehicle use, it was clear from his testimony that he uses the vehicle when he is in town to attend medical appointments and obtain provisions. Therefore, the vehicle is exempt under Medicaid regulations that exempt a vehicle used for allowable purposes.²⁸

Mr. D's boat alone, however, is worth more than \$2,000, even in its current condition. Therefore, unless the boat is exempt, Mr. D is not eligible for Medicaid. Although Mr. D did not assert that his boat was exempt, careful consideration was given to whether the boat fit within any of the exempt categories.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ For a list of Medicaid eligibility categories, see 7 AAC 100.002.

²⁵ 7 AAC 100.130 ("A household is not eligible for Family Medicaid if the household has nonexempt resources, as determined under 7 AAC 100.138 and 7 AAC 100.140, with a total value, as determined under 7 AAC 100.144, in excess of \$2000").

²⁶ Division Position Statement at 2.

²⁷ See 7 AAC 100.138(b) ("The physical structure that serves as the applicant's or recipient's residence, and the single legally described piece of real property upon which that structure is situated, are an exempt resource.").

²⁸ 7 AAC 100.138(m) ("A motor vehicle is an exempt resource if it used (1) for household transportation necessary to meet the basic needs of anyone living in the home, including obtaining food, medical care, and other essentials.").

Mr. D testified that he does not use the boat for subsistence hunting or fishing, so it could not be considered exempt under the regulation that exempts motor vehicles used to procure food.²⁹ The boat also does not qualify under the regulation that exempts motor vehicles used to generate self-employment income.³⁰ The self-employment exemption only applies to a person who has a business license, or some other license or permit to pursue self-employment, or who can show self-employment income on the person's tax returns.³¹ Mr. D currently does not have a business license, Coast Guard license, or other license or permit, and he has not had any self-employment income in at least three years. In addition, to qualify as an exempt resource under the self-employment exemption, an asset must either actually be producing income, or would be producing income but for temporary factors beyond the applicant's control.³² Here, the boat has not produced income for at least three years, so it would not qualify as exempt even if Mr. D had a business license. Finally, although the regulations would exclude a nonexempt resources if it was not "actually available"³³ to meet the needs of the family, here, the facts show that a buyer could be found for the boat if it was for sale.³⁴ In sum, under the facts in this record, Mr. D's boat is worth more than \$2,000, and is not exempt for Medicaid purposes.

IV. Conclusion

Mr. D owns nonexempt resources worth more than \$2,000. Therefore, he is not eligible for Medicaid under 7 AAC 100.130(a), and the Division's decision is affirmed.

DATED this 15th day of April, 2013.

By: Signed
Stephen C. Slotnick
Administrative Law Judge

²⁹ 7 AAC 100.138(m)(1).

³⁰ 7 AAC 100.138(j) (motor vehicles "are exempt resources if they are actually producing gross self-employment income as defined in 7 AAC 100.172, or would be producing income except for temporary factors beyond the applicant's or recipient's control.") See also 7 AAC 100.138(m)(5).

³¹ 7 AAC 100.172(a). The definition of self-employment income in 7 AAC 100.172(a) is incorporated into 7 AAC 100.138(j).

³² 7 AAC 100.138(j).

³³ 7 AAC 100.132(a).

³⁴ D testimony.

Adoption

Under a delegation from the Commissioner of Health and Social Services, I adopt this Decision as the final administrative determination in this matter, under the authority of AS 44.64.060(e)(1).

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 22nd day of May, 2013.

By: Signed
Name: Stephen C. Slotnick
Title: Administrative Law Judge/DOA

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