

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Ph: (907)-334-2239
Fax: (907)-334-2285

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

In the Matter of)
)
 [REDACTED],)
) OHA Case No. 08-FH-862
)
 Claimant.) Division Case No [REDACTED]
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. [REDACTED], (Claimant), a single woman, applied for Adult Public Assistance (Application) on November 2, 2008. (Ex. 1) The Division of Public Assistance (Division) denied her Application on November 17, 2008 (Ex. 2.1) and notified her of this denial on November 18, 2008. (Ex. 2.2; 3.0)

On November 20, 2008, Claimant requested a Fair Hearing. (Ex. 3.0; 3.1) This Office has jurisdiction under authority of 7 AAC 49.010.

Pursuant to Claimant's request, a Fair Hearing commenced on January 6, 2009. The Claimant appeared telephonically at this hearing. The Division was represented by Mr. [REDACTED], Fair Hearing Representative, who appeared in person. No testimony was given.

At the onset of the hearing, Claimant immediately stated she had noticed "two big mistakes" in the paperwork supplied by the Division in its evidentiary packet. Claimant requested a continuance of the hearing so that she and the Division could address the alleged mistakes. The hearing was continued until January 23, 2009.

The hearing resumed and concluded on January 23, 2009. Claimant again appeared telephonically and testified. [REDACTED] again appeared in person and testified on behalf of the Division.

ISSUE

Was the Division correct to deny Claimant's November 2008 application for Adult Public Assistance due to excess countable resources?

FINDINGS OF FACT

1. Claimant applied for Adult Public Assistance (Application¹) on November 2, 2008. (Ex. 1)
2. The Division denied Claimant's Application on November 17, 2008 and sent Claimant notice of its denial on November 18, 2008. (Exs. 2.1; 2.2; 3.0)
3. The basis for the denial of the Application was that Claimant had an excess of countable resources to be eligible for receipt of Adult Public Assistance. (Exs. 2.1; 2.2; 3.0) The countable resource limit is \$2,000. (Ex. 2.2; 5)
4. Claimant is one of three beneficiaries of her father's estate under the terms of his will. (Ex. 2.3) The Division alleged that Claimant's excess of countable resources resulted from Claimant's receipt of an asset from her father's estate. (Ex. 2.1) The asset is the completed contract of sale for a piece of real property (land sale contract²), formerly owned by Claimant's father. (Ex. 2.1; 2.2)
5. In determining Claimant's countable resource amount, the Division employed [REDACTED] to value the land sale contract. [REDACTED] valued it at between \$14,200 and \$14,900. (Ex. 2.1)
6. The Division valued the land sale contract at \$14,500. (Ex. 2.2) The Division attributed \$4,850, representing about 1/3 of the value of the land sale contract, to Claimant as a countable resource. (Ex. 2.2)
7. It is undisputed that Claimant's interest in the land sale contract derived from her father's will and that Claimant is one of three beneficiaries of all his property. (Ex. 2.3)

¹ A copy of the Application was not included in the file.

² The Division selected the term "land sale contract" to describe the entirety of the documents supplied as evidence of the asset it was valuing for purposes of determining Claimant's eligibility for Adult Public Assistance. The land sale contract documents in the hearing record consist of: a) the Escrow Servicing Agreement (Exs. 2.4; B1; B11-12); the Settlement Statement (Ex. B2); the Disclosure Statement (Ex. B3); the Escrow Instructions (B4-5); the Statutory Warranty Deed (Ex. B6); the Deed of Trust (Ex. B7-9); and the Deed of Trust Note (Ex. B-10). Claimant's name appears on none of these documents, they were all concluded by her father. The land sale contract is not an installment contract.

It is undisputed that the will has not been submitted to probate. (Ex. 3.2; Claimant's testimony)

8. Pursuant to the terms of the land sale contract, the buyers make monthly payments of \$210 to the escrow company. (Ex. B4) The Escrow instructions provide that each \$210 payment is deposited into a savings account at [REDACTED]. (Exs. B11; A)

9. The [REDACTED] account is a savings account jointly owned by the father and Claimant's sister. (Ex. A; B11) It is undisputed that Claimant is not a signer on this joint account. (Ex. A; Claimant's testimony)

10. After the father's death, Claimant's sister has distributed the \$210 that is deposited into the joint account each month. (Exs. 3.2; A; Claimant's testimony) Claimant receives a one-third share, in the amount of \$70 monthly. (Ex. 2.3; 3.2; Claimant's testimony)

PRINCIPLES OF LAW

I. Burden of Proof and Standard 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). This case involves the denial of an application for Adult Public Assistance. When an application is denied, the Claimant has the burden of proof by a preponderance of the evidence.

The regulations applicable to this case do not specify any particular standard of proof. Therefore, the "preponderance of the evidence" is the standard of proof applicable to this case.³ This standard is met when the evidence, taken as a whole, shows that the fact sought to be proved is more probable than not or more likely than not⁴.

II. The Adult Public Assistance Program

Adult Public Assistance is a program created by the Alaska Legislature and is codified in the Alaska Statutes (AS). See AS 47.25.430-615. Because Adult Public Assistance is a State program, its governing law is found in both the Alaska Statutes and the Alaska Administrative Code (AAC).

³ A party in an administrative proceeding can assume that preponderance of the evidence is the standard of proof unless otherwise stated. *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986).

⁴ 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)

The purpose of the Adult Public Assistance program is to furnish financial assistance as far as practicable to needy aged, blind, and disabled persons, and to help them attain self-support or self-care. See AS 47.25.590(b). An applicant for Alaska Public Assistance must meet certain eligibility requirements to qualify as a needy person under the program. 7 AAC 40.090.

In this case, the criteria relevant to the issue is “financial need with respect to resources” as stated at 7 AAC 40.090(7). Pursuant to 7 AAC 40.260(a), an applicant’s “resources” are defined as “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).

Pursuant to 7 AAC 40.270(a), “to be eligible for assistance, an applicant, ... must have non-excludable resources which do not exceed ... \$2,000 for an individual...” Regulation 7 AAC 40.280 lists 17 excludable resources which are not used in determining the countable resources of an applicant for the Adult Public Assistance program. This regulation does not list land sales contracts as an excluded resource.

The Adult Public Assistance Manual Section 430-4A, which aids the State to determine if a resource is countable, provides: “assets are not resources if the individual does not have: (1) any ownership interest; and (2) the legal right, authority, or power to liquidate them; or (3) the legal right to use the assets for his or her own support and maintenance.”

The Adult Public Assistance Manual Section 431-21, subparagraph 2 (Resource value) specifies that “[i]f the item is not saleable, it is not a resource. A promissory note ... may be assumed to be unsalable if there is a legal bar to its sale.” (Ex. 5.1)

III. Probate and Property Ownership

A decedent’s estate is “[p]roperty, both real and personal, which [a] person possesses at the time of his death, and title to it descends immediately to his heirs upon his death subject to the control of the probate court for the purposes of paying debts and claims and after the distribution the estate ceases to exist.” *Black’s Law Dictionary* 365 (5th Ed. 1979)

Probate is a “[c]ourt procedure by which a will is proved to be valid or invalid; though in current usage this term has been expanded to generally include all matters and proceedings pertaining to administration of estates....” *Black’s Law Dictionary* 1081 (5th Ed. 1979)

Alaska Statutes at Title 13 pertain to the affairs of decedent’s estates. Alaska Statute (AS) 13.06.010 addresses the purposes and rules of construction of decedent’s estates.

AS 13.16.010, titled “[n]ecessity of order of probate for will,” provides, in relevant part, “to be effective to prove the transfer of property, or to nominate an executor, a will must be declared to be valid by an order of informal probate by the registrar or by an adjudication of probate by the court.” (emphasis added)

A litigant who obtained an ownership interest immediately upon the death of his father obtained only “bare legal title...without acquiring the possessory rights thereto and the beneficial uses thereof; which were deferred” until the property was decreed to him through probate. See *Larsen v. Duca*, 213 Cal. App. 3d 324; 261 Cal. Rptr. 559, 561-62 (1989)⁵

ANALYSIS

The Division denied Claimant’s application for Adult Public Assistance because she exceeded the resource limit of \$2,000 for the program under 7 AAC 40.270(a). The limit was exceeded because the Division attributed Claimant with a resource consisting of a 1/3 share of the land sale contract which it valued at \$4,850. As a consequence of the Division’s determination, Claimant was ineligible for Adult Public Assistance.

Claimant asked for a Fair Hearing on grounds that she did not own the alleged resource and received only \$70 monthly from it. Thus, the issue is whether the Division was correct in designating a share of the land sale contract as a resource belonging to Claimant and in attributing value of \$4,850 to the share.

This case involves the denial of an application for Adult Public Assistance. Therefore, the Claimant, as the party seeking a change in the status quo, has the burden of proof by a preponderance of the evidence.

I. Facts Not in Dispute

The following facts are not disputed by the parties. Claimant applied for Adult Public Assistance and to be eligible, Claimant cannot have more than \$2,000 in “non-excludable resources.” 7 AAC 40.270(a). Claimant informed the Division that she receives \$70 each month as her 1/3 share of the monthly payment made on a land sale contract. (Exs. 2.0; 3.2; A; Claimant’s testimony)

The land sale contract was part of Claimant’s father’s estate before he died. (Ex. 3.2; footnote 2) Claimant’s father died leaving a will whereby his property was to be shared equally among his three children. (Ex. 2.3) The will has never been submitted for probate. (Ex. 3.2; Claimant’s testimony) Accordingly, the land sale contract has not been the subject of probate. These facts are undisputed.

⁵ In *Larsen*, the Court was interpreting the operation of Propositions 13 and 58 in relation to the effective time of transfer of real property.

Claimant's sister is joint owner, with the father, of the bank account into which the payments made under the land sale contract are deposited. (Ex. 3.2; A, footnote 2) Claimant's sister pays Claimant \$70 each month from this joint account. (Exs. 3.2; A) Claimant is not a signer on the bank account. (Ex. A) These facts also are not disputed.

The Division determined that Claimant's share was a "resource" consisting of 1/3 of the total value of the land sale contract.⁶ (Ex. 2) The Claimant asserts that because the father's will has not been probated, she does not own a share of the land sale contract but receives only the \$70 monthly derived from it, which her sister, identified as Executrix, chooses to give to her. (Exs. 3.0; 3.1; Claimant's testimony)

Claimant does not allege she has no interest in the land sale contract; she affirms she has some interest by acknowledging that the \$70 she receives each month is the result of the payments made under the terms of the land sale contract.⁷ (Ex. 3.1) Thus, the issue in this case is a legal issue - what is the nature of Claimant's interest in the land sale contract?

II. Claimant's Interest In the Land Sale Contract

To determine if Claimant's interest in her 1/3 share of the land sale contract can be deemed an 'owned' resource, the nature of her ownership interest, if any, first must be examined. Resources belonging to an applicant for Adult Public Assistance are counted unless they are specifically excluded by 7 AAC 40.280. Regulation 7 AAC 40.280 does not list land sale contracts among those resource items that are excluded. Therefore Claimant's interest in the land sale contract must be evaluated in light of the definition of countable resource under 7 AAC 40.260(a).

7 AAC 40.260(a) defines a "resource," as an asset that must be both owned and able to be converted to cash by the owner. If the asset is not owned, then it cannot be a countable resource. In that case, value is not important and it does not matter whether Claimant and the Division agree or disagree about its value.

This analysis requires application of the Alaska laws pertaining to Claimant's interest in an asset acquired from a deceased person whose will has not been probated. Two Alaska Statutes apply in evaluating whether Claimant's interest in her share of the land sale contract may be deemed 'owned' as required by 7 AAC 40.260(a). AS 13.12.101(b) and AS 13.16.010 govern the change of ownership of property when a person dies.

The operation and effect of AS 13.16.010 makes clear that upon the death of a person, ownership of his/her property immediately transfers to others. This reflects the common

⁶ The term "land sale contract" was used by both parties to identify the alleged resource. It is adequate for this purpose, although technically, the term includes several documents only one of which is a Deed of Trust Note. See footnote 2.

⁷ Claimant wrote: "Land contract is only available to me at 70.00 a month for 28 years. Which is my only source of income." Ex. 3.1

legal rule. *Black's Law Dictionary* 365 (5th Ed. 1979). The question is, who are the 'others' and do they receive the full rights of ownership or a lesser degree of ownership? The Alaska law addresses this question, as discussed below.

Alaska Statute 13.12.101(b) provides that a will directs the successive ownership of a decedent's property by identifying the 'others' to whom the property will go.⁸ Here, the Division interpreted the will to provide that Claimant would be one of three persons receiving an equal share of the father's property. Accordingly, the Division assumed that upon distribution, Claimant's share of the father's property would include a 1/3 share of the land sale contract. Because there is no other basis than the will to determine how the property would be divided, the Division is correct in attributing to Claimant a 1/3 share of the father's land sale contract. However, Alaska Statutes make a distinction between the ownership interest that is conveyed at the time of death (AS 13.12.101(b)) and the ownership interest that is acquired through probate (AS 13.16.010).

III. The Effect of Ownership without Probate

As stated previously, it is not disputed that the will of the Claimant's father has not been probated. Accordingly, AS 13.16.010 applies because Claimant's interest in her 1/3 share has not (yet) been acquired through probate, but only as a consequence of her father's death.

AS 13.16.010, titled "[n]ecessity of order of probate for will," provides, in relevant part, "to be effective to prove the transfer of property, or to nominate an executor, a will must be declared to be valid by an order of informal probate by the registrar or by an adjudication of probate by the court." (emphasis added) Thus, in Alaska, to prove transfer of property, a will must be declared to be valid "by an order of informal probate by the registrar or by and adjudication of probate by the court." AS 13.16.010. In other words, proof of ownership is acquired through probate, as compared with mere ownership that is acquired at death. AS 13.16.010. It is undisputed that the father's will has not been probated. (Ex. 3.2) Accordingly, until the father's will is probated, the ownership is not transferred to Claimant. Thus, she does not fully own a share of the land sale contract, even though she received a 1/3 share at the moment of her father's death.

If Claimant does not own her share of the land sale contract, she cannot convert it to cash. The Adult Public Assistance regulation states that property is not a "resource" unless the applicant both owns the property and can convert it to cash. 7 AAC 40.260(a)

But the lack of probate does more than prevent the conversion of Claimant's share of the land sale contract to cash. It also means that the interest she received at her father's death is not a full ownership interest. AS 13.16.010.

⁸ See Section 101(b) which states, in relevant part: "[a] decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession."

A review of court decisions could provide further guidance as to what type of interest the Claimant has in the land sale contract. There is no Alaska court decision addressing this issue directly. However, court decisions in other jurisdictions provide further guidance on what type of interest the Claimant has acquired.

Claimant is like the litigant in a California case who obtained an ownership interest immediately upon the death of his father. The court ruled in that case that the litigant obtained only “bare legal title...without acquiring the possessory rights thereto and the beneficial uses thereof; which were deferred” until the property was decreed to him through probate. See *Larsen v. Duca*, 213 Cal. App. 3d 324; 261 Cal. Rptr. 559, 561-62 (CA 1989)⁹ Similarly, Claimant’s ownership interest in her 1/3 share of the land sale contract is “bare legal title” because her share has not been submitted to probate. With “bare legal title”, Claimant cannot exercise the rights and privileges of an owner, like the right of possession or beneficial use of it. Accordingly, she cannot convert her share of the land sale contract to cash.

Although the Division appropriately attributed to Claimant an ownership interest of 1/3 the value of the land sale contract, the nature of Claimant’s interest is not full ownership. Claimant’s “bare legal title” ownership is not what is commonly understood as (full) ownership, and is not sufficient to meet the definition of “resource” in 7 AAC 40.260(a). Hence Claimant’s 1/3 share cannot be deemed a “resource.”

Because Claimant’s ownership interest in her share of the land sale contract does not satisfy the definition of ‘owns’ in 7 AAC 40.260, her ownership interest cannot be counted as a resource and no further analysis is necessary under 7 AAC 40.260(a).¹⁰

Summary

Regulation 7 AAC 40.260(a) clearly defines “resource” as property that an applicant “owns and can convert to cash.” Because Claimant’s ownership interest in the land sale contract is derived from her father’s estate, which has not been probated, her ownership is limited to the “bare legal title.” This does not give Claimant the ability to prove her ownership, take possession or to convert her interest to cash. Therefore, Claimant has met her burden of proof by the preponderance of the evidence that her share of the land sale contract cannot be deemed a “resource” under 7 AAC 40.260(a). Thus, the Division erred when it determined that claimant exceeded the \$2,000 limit and, as a consequence, was not eligible for Adult Public Assistance.

⁹ In *Larsen*, the Court was interpreting the operation of Propositions 13 and 58 in relation to the effective time of transfer of real property.

¹⁰ As stated above, the value attributed to Claimant’s 1/3 share of the land sale contract is irrelevant given that she does not own the asset as contemplated by 7 AAC 40.260(a) and it cannot be counted as a resource.

CONCLUSIONS OF LAW

1. Claimant's ownership of a 1/3 share of the value of the land sale contract derives from her father's will, which has not been submitted to probate. Accordingly, Claimant's ownership interest is "bare legal title" without the ability to prove ownership. Thus, Claimant cannot exercise the rights and privileges of an owner, like the right of possession or beneficial use of it, including the ability to convert it to cash.
2. Claimant's "bare legal title" does not satisfy the requirement of 7 AAC 40.260(a) that property be both owned and capable of being converted to cash by an applicant in order to be counted as a resource.
3. Claimant's interest in the land sale contract is not a countable resource for purposes of determining eligibility for the Adult Public Assistance program.
4. The Division erred in attributing Claimant's ownership interest in the land sale contract as a countable resource.

DECISION

The Division erred when it denied Claimant's November 2, 2008 application for Adult Public Assistance on the basis that the Claimant's share of the land sale contract was a countable "resource" under 7 AAC 40.260(a).

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
P.O. 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.


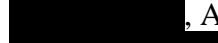
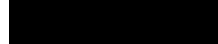
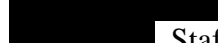
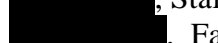

Dated on this 10th day of March _____, 2009

/Signed/
Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this ___ day of
March, 2009 true and correct
copies of the foregoing were
sent to:

Claimant, Certified Mail, Return Receipt Requested.
and by e-mail to the following:

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

Al Levitre, Law Office Assistant I