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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-333
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Adult Public Assistance and Medicaid benefits on April 7, 2009. (Exs. 2.0 – 2.9) On May 5, 2009, the Division of Public Assistance (Division) sent the Claimant written notice his application was denied. (Ex. 4) The Claimant requested a fair hearing on May 13, 2009. (Ex. 5.2) This office has jurisdiction pursuant to 7 AAC 49.010.

A hearing was held, pursuant to Claimant's request, on July 9, 2009. The Claimant appeared telephonically; he represented himself and testified on his own behalf. [REDACTED], Public Assistance Analyst with the Division, attended in person; she represented the Division and testified on its behalf.

The record was held open after the July 9, 2009 hearing to allow the Division to present additional documentary evidence and for the Claimant to file a written response, if any, to the additional exhibits produced by the Division. The Division's additional documentation was received on July 16, 2009 and marked as exhibits 15.0 – 15.8. The Claimant did not file a response to the Division's additional exhibits.

STATEMENT OF ISSUES

Was the Division correct to deny the Claimant's April 7, 2009 Adult Public Assistance and Medicaid application because he owned resources, consisting of a deed of trust note, worth in excess of \$2,000?

FINDINGS OF FACT

1. The Claimant lives by himself. (Exs. 1, 2.1) He receives Social Security disability benefits (SSDS). (Ex. 15.1)
2. The Claimant was receiving Adult Public Assistance and Medicaid benefits from the State of Alaska in May 2008. (Ex. 15.1) At that time, he lived on real property (land) he owned. *Id.*
3. The Claimant's land was listed for sale in May 2008. (Ex. 15.1) The Claimant kept the Eligibility Technician handling his public assistance case continuously informed of the progress of the sale as follows:
 - a. He notified his Eligibility Technician in an in-person interview on May 14, 2008 that he had the land listed for sale and that he had a buyer. (Ex. 15.1 – 15.2)
 - b. He kept his Eligibility Technician informed of the sale status by telephone on June 2, June 9, and July 1, 2008. (Exs. 15.3 – 15.5)
 - c. On August 13, 2008, the Claimant provided his Eligibility Technician with a copy of the agreement listing his land for sale for the price of \$36,500. (Ex. 15.7)
 - d. On September 25, 2008, the Claimant notified his Eligibility Technician that his land had sold on September 23, 2008 for \$36,500, and that the buyers would be making monthly payments to him of \$322. (Ex. 15.8)
4. The Claimant received some cash from the sale of the land, and received a promissory note (deed of trust note) from the buyer in the amount \$24,500. (Exs. 3.2, 15.8) The deed of trust note was secured by a deed of trust upon the land and was payable to the Claimant. *Id.* As of the time of the Claimant's April 7, 2009 Adult Public Assistance and Medicaid application, the Claimant received monthly payments of \$338.50 from the buyer. (Exs. 2.3, 3.1 – 3.2)
5. The Division did not take any action to terminate his Adult Public Assistance and Medicaid benefits after the sale. (Ex. 15.0)
6. The Claimant did not recall having ever been told by his Eligibility Technician that he would remain eligible for public assistance benefits after having sold his property. (Claimant testimony)
7. The Claimant then moved out of Alaska in November 2008 for non-medical reasons, which caused him to stop receiving Alaska Adult Public Assistance and Medicaid benefits. (Claimant testimony)
8. The Claimant returned to Alaska on April 2, 2009 and reapplied for Alaska Adult Public Assistance and Medicaid benefits on April 7, 2009. (Exs. 2.0 – 3.0) As part of his application, the

Claimant informed the Division he was receiving monthly payments of \$338 from the sale of his land. (Ex. 2.3)

9. On April 29, 2009, the Claimant's Eligibility Technician spoke to [REDACTED] at [REDACTED], the business that processes the deed of trust note payments from the land buyer to the Claimant. (Exs. 3.1 - 3.2) [REDACTED] told her the Claimant could sell the deed of trust note. (Ex. 3.1) As of May 4, 2009, the principal amount owing to the Claimant on the deed of trust note was \$22, 899.79. *Id.*

10. The Division determined the Claimant's deed of trust note was a countable resource for the purposes of the Adult Public Assistance and Medicaid programs. (Ex. 3.1) It valued the deed of trust note at its principal balance of \$22,899.79. *Id.* The Division sent the Claimant written notice on May 5, 2009 that his application for Adult Public Assistance and Medicaid was denied because he owned countable resources that were worth more than the \$2,000 resource limit. (Ex. 4) The denial notice specifically informed the Claimant that his deed of trust note was counted as a resource valued at its outstanding balance of \$22,899.79. *Id.*

11. The May 5, 2009 denial notice informed the Claimant that if he disagreed with the Division's valuation of his deed of trust note at \$22, 899.79, that he could provide the Division with estimates of the deed of trust note's fair market value. (Ex. 4) The Claimant did not present any evidence contradicting the Division's \$22,899.79 valuation of the deed of trust note, other than testifying that he would have to sell the deed of trust note at a loss, i.e. for less than its face value of \$22,899.79. (Claimant testimony)

PRINCIPLES OF LAW

This case involves the question of whether or not the Division was correct to deny the Claimant's application for Adult Public Assistance and Medicaid benefits. Because this case involves the denial of an application, the Claimant has the burden of proof¹ by a preponderance of the evidence.²

The Adult Public Assistance program has a resource limit of \$2,000 for a single person. 7 AAC 40.270(a)(1). A resource is "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). Resources are counted unless they fall in the list of exclusions contained in 7 AAC 40.280. Deed of trust notes are not listed as excluded in 7 AAC 40.280.

¹ "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)

² 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). Preponderance of the evidence is defined as "[e]vidence 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)

Men over the age of 18 who reside by themselves and are not receiving Supplemental Security Income benefits from the Social Security Administration are not normally eligible for Medicaid benefits.³ See 7 AAC 100.002. However, an individual who is eligible for and receiving Adult Public Assistance is eligible for Medicaid. 7 AAC 100.410(b).

A person may argue estoppel to prevent government action if the following conditions are met:

[E]stoppel may apply against the government and in favor of a private party if four elements are present: (1) the governmental body asserts a position by conduct or words; (2) the private party acts in reasonable reliance thereon; (3) the private party suffers resulting prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury.

Crum v. Stalaker, 936 P.2d 1254, 1256 (Alaska, 1997).

ANALYSIS

The issue in this case is whether the Division was correct when it denied the Claimant's application for Adult Public Assistance and Medicaid benefits. The Claimant has the burden of proof by a preponderance of the evidence.

As a legal matter, it must first be noted the Claimant is an adult male. He resides by himself and does not receive Supplemental Security Income benefits. As a consequence, his eligibility for Medicaid coverage requires that he be eligible for Adult Public Assistance. 7 AAC 100.410(b).

It is undisputed that the Claimant owns a deed of trust note. That note had a principal balance due, as of May 4, 2009, of \$22,899.79. A deed of trust note is saleable. See Finding of Fact 9 above. Because a deed of trust note is saleable, it is a countable resource for the purposes of determining an applicant's Adult Public Assistance eligibility. 7 AAC 40.260(a). While no evidence was presented as what amount the Claimant could reasonably expect to receive from the sale of the deed of trust note, it can certainly be expected to generate more than \$2,000 in sales proceeds.⁴ Consequently, the value of the deed of trust note is greater than \$2,000. Because the Claimant's deed of trust note is worth more than \$2,000, the Claimant owns more than \$2,000 in countable resources.

In order for the Claimant to be financially eligible for Adult Public Assistance, he must own only \$2,000 or less in countable resources. His deed of trust note, because it is worth more than \$2,000, makes him financially not eligible to receive Adult Public Assistance.

³ Medicaid coverage categories include poverty level children, Family Medicaid, persons receiving SSI, pregnancy, medical institutionalization, home and community based waiver approval, or breast or cervical cancer. See 7 AAC 100.002.

⁴ The Division's May 5, 2009 denial notice informed the Claimant the Division valued his deed of trust note at \$22,899.79, and invited him to submit estimates of its value if he disagreed with the valuation. He did not. See Findings of Fact 10 and 11 above. There is therefore no evidence to rebut the Division's valuation, other than the Claimant's testimony he would have to sell the deed of trust note at a loss. See Finding of Fact 11 above.

The Claimant could only qualify for Medicaid if he was approved for Adult Public Assistance. Because he was not eligible for Adult Public Assistance, he was also not eligible for Medicaid.

Regardless of the fact that the Claimant was not financially eligible for Adult Public Assistance and Medicaid benefits, it is necessary to examine whether the legal doctrine of estoppel requires that the Division approve the Claimant's Adult Public Assistance and Medicaid application. *See Crum v. Stalnakar*, 936 P.2d 1254, 1256 (Alaska, 1997). This is because the Division did not terminate his Adult Public Assistance and Medicaid benefits in either September or October 2008 after he informed it he had completed the sale of the property and received a deed of trust note from the purchaser.⁵ *See Findings of Fact 3(d) and 5* above. Because the Division should have terminated the Claimant's Adult Public Assistance and Medicaid benefits after the sale of his property and did not, it is necessary to examine whether the Division, either by conduct or action, told the Claimant the sale of his property would not affect his Adult Public Assistance and Medicaid eligibility.

In order to have the doctrine of estoppel apply, the Claimant must satisfy each one of the following four elements:

1. The Division must have told the Claimant, either by its conduct or speech, that he could sell his home, receive a deed of trust note from the purchaser, and still remain eligible for benefits;
2. The Claimant must have sold his property relying on the Division's advice;
3. The Claimant must have been harmed thereby; and
4. The estoppel serves the interest of justice so as to limit public injury.

Crum v. Stalnakar, 936 P.2d 1254, 1256 (Alaska, 1997).

A review of the facts in this case shows that the Claimant does not satisfy the above four part estoppel test. Regarding the first element of the test, the Claimant could not recall ever having been told that he could sell his property and still qualify for public assistance benefits. *See Finding of Fact 6* above. Additionally, any possible misleading action by the Division, i.e. the failure to terminate his Adult Public Assistance and Medicaid benefits, was committed after the sale, and not before the sale. In other words, there was no communication, either verbally or through conduct, before the sale, telling the Claimant he could sell his property and still remain eligible for Adult Public Assistance and Medicaid benefits. Because the Claimant did not satisfy the first element of the estoppel test, it is not necessary to address the next three elements of the estoppel test.

The Claimant has the burden of proof in this case. He has not satisfied the estoppel test by a preponderance of the evidence. Accordingly, the doctrine of estoppel does not require the Division to approve the Claimant's Adult Public Assistance and Medicaid application, despite his being financially ineligible. The Division was therefore correct when it denied the Claimant's April 7, 2009 application for Adult Public Assistance and Medicaid benefits.

⁵ There was a lapse in benefits in this case, but it did not arise from the Division terminating the Claimant's benefits, but rather because he left the State. After he returned to the State, he reapplied for benefits. *See Findings of Fact 7 and 8* above.

CONCLUSIONS OF LAW

1. The Claimant was not financially eligible for Adult Public Assistance and Medicaid benefits because he owned a deed of trust note worth more than \$2,000 at the time of his April 7, 2009 application.
2. The Claimant did not meet his burden of proof by a preponderance of the evidence, and show that the legal doctrine of estoppel required the Division to approve his April 7, 2009 application for Adult Public Assistance and Medicaid benefits, despite his not being financially eligible for these benefits.
3. The Division was therefore correct when it denied the Claimant's April 7, 2009 application for Adult Public Assistance and Medicaid benefits.

DECISION

The Division was correct to deny the Claimant's April 7, 2009 application for Adult Public Assistance and Medicaid benefits.

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 26th day of August, 2009.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 26th day of August 2009, true and correct copies of the foregoing were sent to: Claimant via Certified Mail, Return Receipt Requested.

And to the following by email:

[REDACTED], Division representative
[REDACTED], Director
[REDACTED], Director's Office
[REDACTED], Policy & Program Development
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training

J. Albert Levitre, Jr. Law Office Assistant I