

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. 11-FH-494
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) and her husband were receiving Medicaid benefits in December 2011. (Ex. 1) She applied to renew those Medicaid benefits on December 5, 2011. (Ex. 2) On December 6, 2011, the Division of Public Assistance (Division) sent the Claimant written notice that her and her husband's Medicaid benefits would be terminated on December 31, 2011.¹ (Ex. 3)

The Claimant requested a Fair Hearing on December 9, 2011. (Ex. 5.0)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on January 24, 2012. The Claimant appeared telephonically; she represented herself and testified on her own behalf. [REDACTED], a Public Assistance Analyst with the Division, appeared in person; she represented the Division and testified on its behalf.

STATEMENT OF ISSUES

Was the Division correct when it, on December 6, 2011, notified the Claimant that her and her husband's Medicaid benefits would be terminated on December 31, 2011?

FINDINGS OF FACT

The following facts were established by a preponderance of the evidence:

¹ The Division's December 6, 2011 notice states that the Medicaid coverage for the Claimant, her husband, and two of the three children would be terminated. (Ex. 3) At hearing it was clarified that all of the Claimant's children have Medicaid coverage and that only the Claimant and her husband's Medicaid coverage is at issue.

1. The Claimant is a married woman who resides with her husband and their three children. (Ex. 2.1) The Claimant and her husband are each less than 60 years old. (Ex. 2.1)
2. The Claimant and her husband, and their children were receiving Medicaid benefits, in the Family Medicaid coverage category, in December 2011. (Ex. 1; ██████ testimony) Their benefits were due to expire on December 31, 2011. (Exs. 1, 5.1)
3. The Claimant applied to renew the family's Medicaid benefits on December 5, 2011. (Ex. 2)
4. The Division did not renew the Claimant and her husband's Medicaid benefits. The Division sent the Claimant notice on December 6, 2011 that the Claimant and her husband's² Medicaid benefits would end on December 31, 2011. (Ex. 3) The reason the Division gave for the termination of Medicaid benefits was that the household owned too much in the way of countable resources, specifically the Medicaid resource limit was \$2,000 and the household was purchasing real property in which it had \$2,400 equity.³ *Id.*
5. The Claimant and her husband live on a parcel of land (home parcel), which they are purchasing under a contract of sale, where the legal title to the property does not pass until the land is completely paid for. (Claimant testimony) The home parcel does not have city water and sewer available to it and its septic system failed. *Id.* The parcel of land which directly adjoins the home parcel (adjoining parcel) does have city water and sewer available to it. (Claimant testimony)
6. The home parcel and the adjoining parcel are legally separate pieces of property. (Exs. 2.16, 2.19, 6.1 – 6.2)
7. The Claimant and her husband entered into a contract of sale on January 4, 2011, whereby they agreed to purchase the adjoining parcel. (Ex. 2.15) The purchase price for the property was \$15,600. *Id.* The Claimant and her husband are required to make monthly payments to the property seller, and legal title to the property does not pass until the property is paid for. (Ex. 2.15; Claimant testimony) *Id.* The contract of sale does not contain any restrictions on the Claimant and her husband selling the adjoining parcel. *Id.* On her December 5, 2011 Medicaid renewal application, the Claimant stated the estimated value for the adjoining parcel was \$15,600 and that they owed \$13,200 on it; they therefore had \$2,400 in equity in the adjoining parcel. (Exs. 2.3, 2.15)
8. The reason the Claimant and her husband purchased the adjoining parcel was so that they could connect their home parcel to city water and sewer; they are currently using a composting toilet system which has a limited useful lifespan. (Claimant testimony) The Claimant and her husband found out, while purchasing the adjoining parcel, that one third of their house is actually sitting on the adjoining parcel. *Id.* The aerial photograph submitted by the Claimant shows that the house sits on both the home parcel and the adjoining parcel. (Ex. 6.1)

² See fn. 1 above.

³ The Division also counted funds in a checking account and savings account totaling \$340.10 as countable resources. (Ex. 3) The Claimant did not challenge the Division's classification of these funds as countable resources, and their classification does not affect the resolution of this case. They are therefore not addressed in this Decision.

9. Once both the home parcel and the adjoining parcel are paid for, the Claimant and her husband intend to have them replatted as a single parcel of land. (Claimant testimony)

10. The Claimant believes that the actual value of the adjoining parcel is not its purchase price of \$15,600 but is closer to the Borough's tax appraisal value for 2011 of \$10,700. (Claimant testimony; Ex. 2.19)

PRINCIPLES OF LAW

A party who is seeking a change in the status quo has the burden of proof. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). The normal standard of proof in an administrative proceeding, unless otherwise stated, is the preponderance of the evidence standard. *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). "Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the [triers of fact] that the asserted facts are probably true." *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495 (Alaska 2003).

The Alaska Medicaid program contains a variety of coverage categories. *See* 7 AAC 100.002 Each of these categories has varying eligibility requirements.

The Medicaid program provides medical coverage for financially eligible households that have minor children in them. 7 AAC 100.002(a)(1); 7 AAC 100.100. This Medicaid coverage category is referred to as Family Medicaid. *Id.* A Family Medicaid household consists of the dependent children in the household and the parent or parents or other caregivers that reside with them. 7 AAC 100.104. Among the financial eligibility requirements for the Family Medicaid program is one that a household may not own more than \$2,000.00 in countable resources, unless the household includes a person who is over 60 years old. 7 AAC 100.130(a).

A resource is "cash [,] or an asset that can be converted to cash." 7 AAC 100.990(46). Real estate is a resource. 7 AAC 100.990(46)(A). Resources are counted unless they fall in the list of exemptions contained in 7 AAC 100.138 and 140. *See* 7 AAC 100.130(a); 7 AAC 100.138(a). "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." 7 AAC 100.138(b).

The Alaska Supreme Court has stated "tax appraisals do not reliably measure true value." *Bennett v. Artus*, 20 P.3d 560, 565 (Alaska 2001)

"The purchaser under an installment land contract is treated as the equitable owner and the vendor as holding the bare legal title merely as security for the purchase price." *Dillingham Commercial Co., Inc. v. Spears*, 641 P.2d 1, fn. 7 at 7 (Alaska 1982).

"Administrative agencies are bound by their regulations just as the public is bound by them." *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

State of Alaska Fair Hearing regulation 7 AAC 49.170 provides that “the role of the hearing authority is limited to the ascertainment of whether the laws, regulations, and policies have been properly applied in the case and whether the computation of the benefit amount, if in dispute, is in accordance with them.”

ANALYSIS

The issue in this case is whether the Division was correct when it terminated the Claimant and her husband’s Medicaid benefits as of December 31, 2011. Because this case involves the Division terminating benefits, the Division has the burden of proof by a preponderance of the evidence.⁴

The Division’s position was that the Claimant and her husband’s equity in the parcel of land directly adjoining the parcel of land where their home was located caused them to exceed the Medicaid program’s \$2,000 countable resource limit, and that as a result the Claimant and her husband were not financially eligible to receive Medicaid benefits.

The Claimant raised two independent arguments in opposition to the Division. First, that adjoining parcel should not be counted as a resource, i.e. that it was exempt. Second, that she and her husband had little or no equity in the adjoining parcel and that it did not cause them to exceed the resource limit. These arguments are addressed separately below.

1. Is the adjoining parcel exempt from being counted as a resource?

The first thing that must be noted is that although the Claimant and her husband do not have legal title to the adjoining parcel, they do have an ownership interest in the adjoining parcel. *See Dillingham Commercial Co., Inc. v. Spears*, 641 P.2d 1, fn. 7 at 7 (Alaska 1982). In addition, the sale contract for the adjoining parcel does not restrict the Claimant and her husband from selling the adjoining parcel. The adjoining parcel therefore meets the regulatory definition of a resource: it is an asset, specifically real property that can be converted to cash. *See* 7 AAC 100.990(46).

The applicable Medicaid regulation, 7 AAC 100.138(b), exempts a recipient’s residence and the “single legally described piece of real property upon which that structure is situated” from being counted as a resource.

The Claimant essentially raised a necessity defense, being that the home parcel has a failed septic system and that they need the adjoining parcel so that they can connect their home to city water and sewer. However, the applicable Medicaid regulation only allows the exemption of a “single legally described piece of real property.” The home parcel and adjoining parcel are two separate legally

⁴ It must be noted that when the Division terminates a recipient’s Medicaid coverage under one category, it is required to determine if the recipient is eligible for coverage under another Medicaid category: “[t]he agency must – . . . (b) Continue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible.” 42 CFR 435.930. However, there was no evidence presented that the Claimant and her husband fell within any of the numerous Medicaid coverage categories other than Family Medicaid: aged over 65, disabled, receiving Supplemental Security Income benefits, pregnant woman, cervical or breast cancer, etc. For a complete listing of the Medicaid coverage categories, see 7 AAC 100.102.

described pieces of property. On its face, the applicable Medicaid regulation, 7 AAC 100.138(b), does not provide an exemption for the adjoining parcel. This Office is required to follow the applicable Medicaid regulation; it does not have the ability to ignore the regulation and create an exemption where none exists. “Administrative agencies are bound by their regulations just as the public is bound by them.” *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010). *Also see* 7 AAC 49.170.

The facts of this case also present a unique situation that does not quite fit within the terms of the exemption regulation. The applicable Medicaid regulation, 7 AAC 100.138(b), only exempts a recipient’s residence and the “single legally described piece of real property upon which that structure is situated” from being counted as a resource. The Claimant’s home is located on the home parcel, but it also encroaches upon the adjoining parcel. In other words, the home is located on both parcels and not upon a single parcel of land. However, because the Medicaid regulation only allows an exemption of a “single legally described piece of real property” and because this Office cannot create an exception to a regulation, the Claimant is not entitled to claim the adjoining parcel as exempt from being counted as a resource.⁵

In summary, the Claimant is not entitled to an exemption for the adjoining parcel. The Division was correct to count the adjoining parcel as a resource.

2. Valuation.

Because the adjoining parcel is not exempt from being counted as a resource, the next issue that must be decided is the amount of the adjoining parcel’s countable value. The Claimant and her husband purchased the adjoining parcel on January 4, 2011 for \$15,600. The Claimant’s December 5, 2011 Medicaid renewal application states that the Claimant and her husband then owed \$13,200 on the adjoining parcel. This would place their equity in the adjoining parcel at \$2,400 (\$15,600- \$13,200). This equity amount, being greater than \$2,000, would place the Claimant over the Family Medicaid resource limit of \$2,000. 7 AAC 100.130(a).

The Claimant disagreed with the Division’s equity figure of \$2,400 for the adjoining parcel. She believes the adjoining parcel is worth closer to the 2011 tax appraisal value of \$10,700, instead of the \$15,600 that she listed on her December 5, 2011 Medicaid renewal application. Because the Claimant and her husband owed \$13,200 on the adjoining parcel at the time of the December 5, 2011 Medicaid renewal application, this would mean that the Claimant and her husband actually had negative equity in the property rather than the \$2,400 in equity that the Division counted.

The Claimant’s belief that the tax appraisal was closer to the correct value is not supported for several reasons. First, tax appraisals are not reliable indicators of value. The Alaska Supreme Court has stated “tax appraisals do not reliably measure true value.” *Bennett v. Artus*, 20 P.3d 560, 565 (Alaska 2001). Second, the Claimant and her husband purchased the property at the beginning of January 2011 for \$15,600. It is highly unlikely that the property would have decreased in value to the tax appraisal value

⁵ The Division’s December 6, 2011 termination notice did not mention the home parcel as a countable resource, only the adjoining parcel. (Ex. 3) It is therefore clear that the Division did not count the home parcel, i.e. exempted it, as a countable resource.

Certificate of Service

I certify that on this 16th day of March, 2012, true and correct copies of the foregoing were sent to:

Claimant by U.S.P.S First Class Certified Mail, Return Receipt Requested and to the following by secure e-mail:

- [REDACTED], Public Assistance Analyst
- [REDACTED], Public Assistance Analyst
- [REDACTED], Policy & Program Development
- [REDACTED], Staff Development & Training
- [REDACTED], Administrative Assistant II
- [REDACTED], Policy & Program Development

/signed/

J. Albert Levitre, Jr.
Law Office Assistant I