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

In the Matter of	)	
	)	
L C	)	OAH No. 16-1017-ATP
	)	Agency No.

DECISION

I. Introduction

The Division of Public Assistance denied recertification of L C's eligibility for benefits under the Alaska Temporary Assistance Program (ATAP) because the Cs had resources that put them above the $2,000 resource limit. The resource that put them above the limit is a three-acre lot. The lot is not eligible for the homestead exemption because the Cs do not live on the lot. In order to be eligible for ATAP, the Cs must be actively trying to sell the property at a reasonable price. Because they were not trying to sell the property at the time of their application for recertification, the Division's denial of recertification is affirmed.

II. Facts

L and E C live in No Name with their six children. On February 8, 2016, Ms. C submitted an application for benefits under the Alaska Temporary Assistance Program on behalf of her family.[1] The Division had concerns, however, about the Cs' application because of their real estate holdings.

The Cs own two adjacent three-acre lots in No Name.[2] On one lot, lot 6, is the C home. On the second lot, lot 5, is an uninhabitable structure. Under the rules for eligibility for ATAP, a family may own a home, and the land on which that home sits, and the value of that property will not be counted against the family's resource limits.[3] Any other property, however, must be sold or listed for sale unless there is a legal impediment to selling the property. If the property is not listed for sale, the family's net share of the property value will be considered a resource that could make the family ineligible for ATAP.

---

1 Division Exhibit 2.2.

2 Although Mr. C claims to have no ownership interest on the theory that he is merely a usufruct (a person entitled to enjoy property owned by another), that theory is rejected. Mr. C did not present any evidence that he was not the owner. The record clearly shows that the Cs listed the property as an asset in their application. Their names are on the deed to the property. Division Exhibit 16. They have offered the property for sale. This evidence established that they are the legal owners of the property.

3 7 AAC 45.300(b).

At first, the Cs objected to the requirement that they put lot 5 on the market. In their view, they could not sell the second lot because their mortgage and deed bound the two lots together.[4] This question was answered, however, by a review of the Cs' Deed of Trust. Paragraph 13 of the Deed of Trust provides that the property, or a part of the property, could be sold if the lender gives permission before the sale.[5] On February 11, the Cs agreed to list the property.[6] Some confusion occurred during the initial application process, however, and the Division continued to have concerns about the issue.[7] An eligibility technician with the Division, Kathleen Olson, investigated this question by calling the lender, Carr-Gottstein properties. She learned that Carr-Gottstein would approve a sale of lot 5. Further delay occurred because Ms. Olson neglected to record this fact in the case notes that are part of the C's file.[8] Eventually, however, the confusion was resolved. The Cs showed the Division that lot 5 was for sale on Craig's List for $120,000. The Cs then received ATAP benefits.[9]

Ms. C applied for recertification of ATAP benefits on July 15, 2016.[10] In processing this application, the Division's fraud unit investigated whether the Cs were making a bona fide effort to sell lot 5. The fraud unit determined that the Cs' asking price of $120,000 was far above actual market value. Because the property was not for sale at a reasonable price, the Division notified the Cs in a letter dated August 4, 2016 that their ATAP benefits would end on August 31 because they were over resource.[11]

During the month of August, the Cs and the Division negotiated over how the Cs could become eligible. The Division did not accept Mr. C's argument that $120,000 was a reasonable price based on the fact that one-acre lots generally sold for $40,000. The Cs then approached a real estate broker, Keller Williams. Keller Williams offered to list the property for $49,500,

---

4 Division Exhibit 2.

5 Division Exhibit 16.8.

6 Division Exhibit 3.

7 Division Exhibit 5. The Division's case note and testimony regarding this confusion show that the Division did make errors in the processing of the initial application. If, as Exhibit 5 indicates, the Division was concerned about a legal impediment to sale, it should have approved the application on this basis under 7 AAC 45.285(b). Given that on the date of this case note, February 16th, the Division understood that the property was listed for sale at what was thought to be a reasonable price (the price was actually unreasonable, but the Division did not know that on February 16th), the Division had no reason to pend approval. The issue today, however, is not whether the Division made an error by pending the application on February 16th because of an unjustified suspicion of a legal impediment to sale. The issue today is whether the Division properly denied recertification on August 4th because the Cs were refusing to attempt to sell the property at a reasonable price.

8 Olson testimony.

9 Division Exhibits 1, 6.

10 Division Exhibit 7.1.

11 Division Exhibit 10.

which represented a reasonable market value for the property.[12] Although the Division would have accepted this approach, and would have found the Cs eligible upon the listing of the property for sale (even if it did not sell), the Cs argued that this approach was unreasonable. They were concerned that selling the one lot would require dissolving their current mortgage contract. Because they were behind in their payments, 100 percent of any realized sales price for lot 5 would be applied against their entire mortgage for both lots. They would still have a balance due on the lot with their home, and, because the mortgage contract would be dissolved, no financing instrument in place to allow them to continue in the home.[13]

When the Division did not accept this argument, the Cs requested a fair hearing. An in-person hearing was held on September 19 and continued by teleconference on October 3, 2016.

III. Discussion

ATAP is a program created in the Alaska Statutes to implement the federal Temporary Aid to Needy Families program.[14] Under the regulations that govern eligibility for ATAP, a person who has more than $2,000 in resources is not eligible for assistance under the program.[15] The regulations provide, however, that some assets are exempt, meaning they are not considered as "resources" in determining eligibility.[16] For example, a house that serves as the applicant's residence and the lot upon which the house sits are exempt.[17]

Under these regulations, lot 5 is not an exempt resource because it is a separate lot that could be sold separately without any need for government intervention (such as replatting).[18] The value of the property for purposes of ATAP eligibility is determined by subtracting the debt owed on the property from the fair market value of the property.[19] The resulting sum is considered the owner's equity, which is a countable resource.[20]

Even if an applicant has equity in a nonexempt parcel of land, however, the Division will consider the applicant eligible for ATAP in three different circumstances. First, if the lot is co-owned by another person, and that person will not sell the lot;[21] second, if the property has an

---

12 Division Exhibit 13.3; D. C testimony.
13 D. C testimony.
14 *See* AS 47.05.010(1); AS 47.27.005 – A.S.47.27.990. The Alaska Temporary Assistance Program's regulations are set forth at 7 AAC 45.149 – 7 AAC 45.990.
15 7 AAC 45.280(a).
16 7 AAC 45.300.
17 7 AAC 45.300(b).
18 7 AAC 45.300(d).
19 7 AAC 45.310(a).
20 *Id.*
21 7 AAC 45.285(b)(1).

uncorrectable legal or physical defect;[22] and third, if the household is making a good faith effort to sell the property at a reasonable price.[23]

Here, the Division explained at hearing that it applied these rules as follows. Based on Mr. C's representation, the Cs owed $57,407.01 on the two lots.[24] Allocating this debt equally between the two parcels would result in lot 5 being encumbered by a debt of $28,703.50. If the fair market value of lot 5 was $49,500, then the Cs' equity in lot 5 is computed by subtracting $28,703.50 from $49,500, which equals $20,796.50.[25] Because that amount of equity was over the resource limit of $2,000, in the Division's view, the Cs are not eligible for ATAP until they put the property up for sale at a reasonable price.

The Cs made several arguments in response to the Division's presentation. These arguments are analyzed below.

A. Does the lack of precision regarding the Cs' equity in lot 5 mean that they should be considered eligible for ATAP?

The Cs argued that the Division's calculation of their equity in lot 5 was flawed. For example, they asserted that because the amount of equity calculated by the Division in the August 4, 2016 letter[26] ($20,033.00) was different from the equity calculated at the hearing ($20,796.50), the Division should be reversed. They argued that the fair hearing was about whether the Division's August 4 letter is accurate. Because it was not accurate, Mr. C argued, the Division loses.

This argument, however, is in error. The question to be answered in the fair hearing is not whether $20,033.00 is precisely accurate. The question is whether the Cs are eligible for ATAP. If they are over the resource limit, they are not eligible, without regard to whether the Division's original calculation of their equity in lot 5 was precise.

In a related argument, the Cs asserted that the Division's allocation of the remaining debt 50/50 between the two parcels was pure speculation. No one knows exactly how much equity and how much debt should be assigned to the two individual plots. The Cs pointed out that a 50/50 allocation defied common sense—in their view, the plot with the home on it was worth more, so a greater share of the original debt, and a greater share of each payment, should be allocated to lot

---

22 7 AAC 45.285(b)(2).

23 Department of Health and Social Services, *Alaska Temporary Assistance Manual*, § 753-7 (Division Exhibit 20.1). Although the Manual is not binding law, the provision cited here is to the benefit of the applicant.

24 Statement of S. Dial.

25 Statement of S. Dial. The amount of equity calculated by the Division in its August 4, 2016 letter was $20,033.00. Division Exhibit 10.

26 Division Exhibit 10.

6. Because no allocation of debt between the two parcels is known or certain, they conclude the Division's exercise in calculating the equity in lot 5 is not evidence of actual equity, and should not be considered in determining their eligibility for ATAP.

Like their other argument, however, this argument is not persuasive. Although the Cs are correct that in order to calculate equity under these facts, a person must make several assumptions, that is true of almost any accounting exercise. In examining the Division's accounting exercise, the question is whether the Division's assumptions are reasonable. I agree that the 50/50 allocation of debt might not be the best method of allocating the debt, but it is a *reasonable* way to allocate the debt. I am sure that there are other reasonable methods. For example, as suggested by the Cs, the percentage allocation of the debt could be based on a reasonable estimate of the percentage of overall value of the two lots. In this hearing, I would be willing to accept any reasonable method proposed by the Cs for allocating the remaining debt between the two plots. The Cs, however, have not provided an alternative method for allocation. Their percentage approach would be fine, but it would require them to provide the reasonable percentages that they believe should be used, which they have not done. Furthermore, no reasonable allocation would result in the value of the equity in lot 5 being less than $2,000. Accordingly, once we accept that accounting for the debt and equity in the two parcels inevitability involves reliance on reasonable assumptions, the Cs' objection to the 50/50 allocation is not *material*—meaning that even if technically a good point, it does not make a difference to the outcome.

B. Does the fact that an actual sale would require a revision of the Cs' contract with the lender mean that they should be considered eligible for ATAP?

The Cs note that if a sale occurs, they will have to renegotiate their agreement with their lender. They make two arguments about why this fact should absolve them from the requirement that they must list lot 5 for sale at a reasonable price.

First, they argue that this sale will require a revision of the loan agreement and deed of trust. At a minimum, they would have to remove lot 5 from their deed, and refinance lot 6. In their view, the Division exceeds its authority when it requires an applicant to revise an existing legal and binding contract. This argument, however, misses the point. The Division is not requiring the Cs to do anything. If they want public assistance, however, they must qualify for it. As long as they own a valuable asset that is not exempt, they are not eligible unless they put that asset up for sale at a reasonable price. That the sale of the asset has some downstream effect on

how the Cs and their lender configure the Cs' property interests does not mean that the requirement to list the property for sale is illegal or beyond the Division's authority.

Second, to the extent that the Cs are arguing that they could not sell the property, or that any revision of the deed or mortgage contract that would occur upon sale would work a hardship on them, they have not proved either point. The Cs had the opportunity to call a loan officer from Carr/Gottstein as a witness at the hearing. They indicated that they would do so. They did not, however, call this witness. On this record, there is no reason to think that the lender would not adopt a reasonable approach to the refinancing required by a sale, and no reason to think that selling lot 5 would work a hardship on the Cs.

C. Does the fact that the lender would apply all of the sale proceeds to pay down the existing debt mean that the Cs should not have to list lot 5 for sale before being eligible for ATAP?

The Cs next point to the fact that even if they sell lot 5 for $49,500, the lender will use all of that money to pay down the loan amount. Mr. C testified that no actual proceeds would be paid to them from this sale because the lender would use the entire proceeds from the sale to pay down the debt. The Cs make the following arguments for why this means that the transaction should not be required under the rules for eligibility of ATAP:

- Under 7 AAC 45.310, only the net equity value of the property is a resource. Here, the net effect of a sale would be that lender would apply $49,500 of the proceeds of the sale to lot 5. This is because if the lender was treating the allocation of debt on some other basis, the Cs would receive a payout. For example, on a 50/50 basis, the sale would result in the $20,796.50 (less closing costs) surplus (after paying 50 percent of the debt) being paid to the Cs, not to the debt. In effect, the lender would be treating the sale of lot 5 *as if* 100 percent of the debt *is* allocated to lot 5, up to the market value of lot 5. If $49,500 of the debt is allocated to lot 5, and the fair market value of lot 5 is $49,500, then, under 7 AAC 45.310, the Cs effectively have no equity in lot 5. If there is no net equity, then the property does not meet the definition of a resource, and, in their view, they should not be required to sell it.
- Under 7 AAC 45.285(a), the Division will not include a resource in the eligibility determination unless the resource is actually available to meet the needs of the dependent children. Here, because the lender will take all of the proceeds of the

sale of the asset, none of the value of the resource would ever be available to meet the needs of the children. Therefore, the Cs conclude, they should not be required to list lot 5 for sale in order to remain eligible for ATAP.

Although these are strong arguments, they are not persuasive. With regard to the point that the lender is treating the proceeds as if 100 percent of the debt is allocated to lot 5, when determining the value of a non-exempt resource, the Division must follow its regulation. Under 7 AAC 45.310, the Division must compute an equity value for lot 5. The result of the private transaction between the Cs and their lender does not shed light on the *actual* equity holding of the Cs. Under any common sense approach to how the loan and the payments should be allocated to the joined properties, the Cs clearly have acquired some equity in lot 5 from making payments. It appears that they have also acquired some equity from appreciation—the property appears to be worth more now than it was when they bought it. The Division is required to take this equity into account. Any other result would allow a family to be on public assistance even while having considerable wealth in real property.

With regard to the point that the property could be treated as exempt under 7 AAC 45.285(a) because the proceeds will not be available to the children even if the property is sold, the problem with this argument is that it ignores 7 AAC 45.285(b). Subsection (b) sets out a specific rule for when *real* property is considered not available to the children.[27] This happens only in two circumstances: (i) when a co-owner refuses to sell; and, (ii) when legal or physical defects prevent sale of the property. In all other circumstances, the equity value of non-exempt real property is available to the children. Thus, 7 AAC 45.285(b) closes the door on any argument that a third-party claim on the proceeds of a real estate transaction would make the money not available to the children. In all circumstances other than the two listed in subsection (b), a family must put its non-exempt real property up for sale at a reasonable price in order to be eligible for ATAP. Until the Cs do that, they are not eligible.

[27] 7 AAC 45.285(b)

IV. Conclusion

The Division's denial of L C's July 15, 2016 application for recertification of ATAP benefits is affirmed. Until the C family lists their non-exempt real property for sale at a reasonable price, they are not eligible for ATAP benefits.

DATED this 10th of November, 2016.

By: *Signed*
Andrew M. Lebo
Administrative Law Judge

Adoption

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

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 1st day of December, 2016.

By: *Signed*
Signature
Douglas Jones
Name
Medicaid Program Integrity Manager
Title

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