

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

In the Matter of)	
)	
B N)	OAH No. 16-1228-ATP
_____)	Agency No

DECISION

I. Introduction

B N contests a decision by the Division of Public Assistance (Division) that her husband owns a boat and trailer valued at more than \$2,000. The Division found that the boat and trailer placed Ms. N’s household over the countable resource limit for the Alaska Temporary Assistance Program (ATAP) and the Food Stamp program. It therefore closed Ms. N’s ATAP and Food Stamp cases, and it sought repayment of \$13,325 in ATAP benefits that the household received from October 2015 through October 2016.

This decision concludes that Ms. N’s husband owns the boat and trailer in question. However, the Division did not meet its burden to show that the boat and trailer value exceeds the resource limits for the ATAP and Food Stamp programs. Accordingly, the Division's decision to close Ms. N’s Food Stamp and ATAP cases is reversed, as is the request that she repay \$13,325 in allegedly overpaid ATAP benefits.

II. Facts

A. Material Facts¹

Ms. N is 44 years old. She lives in No Name City. Her household of four includes her husband, D N, Jr., also 44, and their two sons, ages 6 and 4.² Mr. N worked for many years as a law enforcement officer. He has not worked recently because of ongoing health problems. The N household has received ATAP and Food Stamp benefits since September 2014.³ From October 2015 through October 2016, the household’s monthly ATAP benefit was \$1,025, for total benefits of \$13,325.⁴

Mr. N’s mother also lives in No Name City. She lives separately, but she depends on Mr. N for assistance with many tasks and chores. In 2013, Mr. N’s mother paid \$8,000 to buy a 24-foot flat bottom skiff with an outboard motor and a trailer. The boat is of unknown make and

¹ Unless noted otherwise, the material facts are based on the testimony of D N, Jr.
² Exhibit 3.1.
³ Exhibit 1.
⁴ Exhibit 10.

model, but it was built in 1987. The motor is a Yamaha 80 jet unit.⁵ She planned to use the boat for recreation and fishing.

Shortly after she purchased the boat, Mr. N's mother moved to Mississippi, but she returned to No Name City for the summers. After his mother moved out of state, Mr. N registered the boat and trailer in his name in April 2013.⁶ He did this as a matter of convenience for his mother.

Ms. N did not report the boat and trailer as household resources when she applied for ATAP and Food Stamps, because she and Mr. N consider them to be his mother's. Mr. N's mother moved back to No Name City permanently in May 2016, so she could live close to her son full-time. She took possession of the boat and trailer upon her return.

After its purchase, Mr. N took the boat out once for a test run. He and his mother did not otherwise use the boat in 2013, because they were busy caring for Mr. N's father, who was out of state and quite ill. Mr. N took his mother for outings two or three times during the summer of 2014, and he did not otherwise use the boat. He and his mother quickly realized that it had significant steering problems, and it was not of the quality they had previously believed. They then parked it, and have not used it since.

The boat is not currently operable, because the motor will not start, despite a new battery. The bilge pump does not work. And the steering problem has not been diagnosed or resolved. The trailer is also broken, because the tongue is badly bent and twisted.⁷ As a result, it cannot be used to tow anything in its current condition.

B. Procedural Background

On July 1, 2016, the Division conducted a Quality Assurance review of Ms. N's ATAP case.⁸ It found DMV records that identified Mr. N as the registered owner of a 1987 runabout skiff with an outboard motor and a trailer.⁹

In July 2016, an agency representative called the Ns, to ascertain the value of the boat and trailer. During the conversation, Mr. N told the representative that he did not have experience with the boat market, or with boat and trailer valuation. When the representative asked whether the boat might be worth \$3,500 in its current condition, and \$4,500 if it was repaired, Mr. N

⁵ See Exhibit 31.2.

⁶ Exhibit 2.1-2.4.

⁷ See Exhibit 31.1. Mr. N's photos of the boat and trailer are in the record at Exhibit 31.

⁸ Exhibit 2.

⁹ Exhibit 2.1-2.4.

agreed that it could be true.¹⁰ He also agreed that the trailer value could be \$500, but he explained that it was broken and not currently usable.¹¹

On August 3, 2016, the Division received Ms. N's recertification application for ATAP and Food Stamps.¹² Following an interview with Ms. N, the Division approved the application for both ATAP and Food Stamps, and it approved \$1,025 in monthly ATAP benefits.¹³

On September 21, 2016, a Quality Assurance reviewer determined that the DMV title established Mr. N as the legal owner of the boat and trailer.¹⁴ Based on the Division's July case notes, estimating the boat's value at \$3,500 in its current condition, the Division determined that the household was over the countable resource limit for both ATAP and Food Stamps.¹⁵ It closed the family's ATAP and Food Stamps cases.¹⁶

On October 3, 2016, the Division sent Ms. N a letter, notifying her that she had received \$13,325 in overpaid ATAP benefits when the household was not financially eligible, from October 2015 through October 2016. It requested repayment of that amount.¹⁷

Ms. N appealed.¹⁸ The hearing took place on December 1, 2016. Mr. and Ms. N appeared telephonically. Mr. N represented his wife. Both Mr. and Mrs. N testified. Public Assistance Analyst Jeff Miller appeared telephonically and represented the Division. All offered exhibits were admitted into the record, and the record closed at the end of the hearing.

III. Discussion

The Alaska Temporary Assistance Program provides temporary cash assistance and work services to low-income families with children to help them while they get back on their feet.¹⁹ Eligibility is based on financial need.²⁰ By regulation, unless someone in the household is age 60 or older, the household is not eligible for ATAP benefits if it has countable resources valued at

¹⁰ The agency's case notes suggest that Mr. N estimated the boat's value at \$3,500, \$4,500 if repaired, and the trailer value at \$500. Exhibit 2. However, the case note does not specify who made these estimates. Mr. N credibly testified that the interviewer suggested these values; his testimony is accepted as more likely than not true.

¹¹ Mr. N also indicated that he owns a 1994 Arctic Cat snowmachine. The snowmachine is not at issue in this case.

¹² Exhibit 3.1-3.6.

¹³ Exhibit 4.

¹⁴ Exhibit 5.

¹⁵ *Id.*

¹⁶ Exhibit 6.

¹⁷ Exhibit 10-10.27. The Division sent a revised overpayment and recoupment notice on November 21, 2016, showing the same recoupment amount. Exhibit 12-12.12.

¹⁸ Exhibit 11.

¹⁹ AS 47.27.005(1).

²⁰ 7 AAC 45.275.

more than \$2,000.²¹ The Food Stamp countable resource limit is \$2,250 for a household with members under age 60.²²

A. Ownership of the boat and trailer

The first question is whether Mr. N owns the boat and trailer. Ms. N argues that they are not countable resources, because Mr. N's mother is the true owner.

There is no dispute that Mr. N registered the boat and trailer with the DMV in 2013, and he identified himself at that time as their owner. Under Alaska law, DMV registration records and certificates of title are prima facie evidence of ownership, or the right to possession, of a vehicle.²³ This applies not only to DMV records for cars and trucks, but also for trailers and boats.²⁴ However, this presumption of ownership is not absolute; it may be rebutted by the party who disputes the official record of title.²⁵

The three primary indicia of ownership of personal property are title, possession, and control, which includes the right to sell, dispose of, or transfer.²⁶ In this case, Mr. N has been the registered owner of the boat and trailer for three years. This includes his assertion of title.²⁷ Since May 2016, Mr. N's mother has had possession. Possession is often associated with evidence of usage, which is helpful for understanding which purported owner benefits from use of the resource in question. Here, possession is not particularly meaningful, because the boat and trailer are not functional and neither party benefits from their use.

In terms of control, Mr. N testified that he sees his mother as the real owner, and he would not sell the boat or trailer unless she directed him to. As a practical matter, however, his status as the registered owner gives him control of any sale or transfer. Mr. N's commitment to honoring his mother's wishes is both understandable and commendable. Considering all the evidence, however, it is not sufficient to overcome the presumption of ownership created by title and DMV registration.²⁸ The Division has shown by a preponderance of the evidence that Mr. N owns the boat and trailer in question.

B. Fair Market Value of the boat and trailer

²¹ 7 AAC 45.280(a).

²² Alaska Food Stamp Manual, Addendum 4, Resource Limits (Exhibit 23).

²³ AS 28.10.261(a).

²⁴ See AS 28.10.011 (trailers); 2 AAC 70.010, 2 AAC 70.160, 2 AAC 70.200 (boats).

²⁵ See *Weaver v. O'Meara Motor Company*, 452 P.2d 87 (Alaska 1969); *State Farm Mutual Automobile Insurance Company v. Clark*, 397 F.Supp. 745 (D. Alaska 1975).

²⁶ See *In re CN*, OAH 13-0427-CMB (Comm'r of Health & Soc. Services, 7/8/2013).

²⁷ See Exhibit 8 (DMV boat registration certification of legal ownership).

²⁸ See *id.* See also *In re J E-D*, OAH 13-0750-SNA (Comm'r of Health & Soc. Services, 8/1/13) (rejecting a contrary outcome as unsupported by the evidence).

Even if the boat and trailer are countable resources, Ms. N argues that their fair market value falls below the \$2,000 ATAP resource limit. The Division bears the burden to show that their value more likely than not exceeds \$2,000 for ATAP eligibility, and \$2,250 for Food Stamp eligibility.²⁹

In determining the value of a countable (non-excluded) vehicle, ATAP and Food Stamp regulations require the Division to evaluate its fair market value, taking into account any legal encumbrances on the property.³⁰

Mr. N credibly testified that he has no particular competency in boat or trailer values, and he did not volunteer the figures that the Division relied upon when it closed his family's ATAP and Food Stamp cases. He only agreed with the agency representative's question whether those values were possible. Given Mr. N's unfamiliarity with this area, his acquiescence was not an admission. It was more likely than not a guess, based primarily on the boat's purchase price. After further reflection, Mr. N determined that the boat's multiple mechanical problems and the trailer's badly bent tongue made them both nearly worthless. During the hearing, he asserted that, despite the boat's purchase price, he had learned through experience that it is "junk." The fact that the boat was only functional for a short period of time, and it has not been usable for years due to a number of unresolved mechanical problems, generally supports this view. Mr. N's photographs also show the boat's marginal condition and the trailer's unusable tongue.³¹

Prior to the hearing, the Division submitted four proposed comparable sales listings to provide background on the market for 24-foot flat bottom boats and trailers. It found the comparables on an online website called Alaska's List Classifieds.³² Each comparable includes a flat bottom skiff and a trailer; three of the four boats include a motor. Two of the boats are in the Anchorage area, one is in Fairbanks, and one is in Delta Junction. The listed sales prices range from \$3,500 to \$7,500, "or best offer."

The proposed comparable listings are unpersuasive, because each has significant distinguishing traits or significant unknowns. The comparables are also located in places where services and repairs are more readily available than in No Name City. Without knowing more about these boats, and about their sellers' pricing strategies, they are not reliable comparisons for

²⁹ 7 AAC 49.135.

³⁰ See 7 AAC 45.310(a) (ATAP); Temporary Assistance Manual §752-1 (Exhibit 16); 7 CFR § 273(f) (Food Stamps). There are no legal encumbrances on the boat and trailer in this case.

³¹ Exhibit 31-31.4.

³² Exhibits 27-30.

Mr. N's boat. It is also notable that the listings only identify the seller's asking price; there is no assurance that these prices would be close to the final sales price.

Each of the proposed comparable sales listings involves a functional boat and trailer. Two of them are distinguishable by their condition or motor. One, a 20-foot Lowe riverboat listed for \$7,500, is in "great condition." It also includes a "like new" motor, that the owner values close to \$6,000.³³ Another, a 20-foot Quachita aluminum riverboat listed at \$5,000 "or best offer," includes two 1997 Mercury 65 jet outboard motors.³⁴ The third, a 20-foot Monarch, includes a "75 jet" motor unit. It is listed for \$4,000 "or best offer." However, the listing provides no other information.³⁵ Based solely on the single advertisement photo, the boat appears to be in significantly better condition than Mr. N's. The most similar comparable unit involves a 24-foot flat bottom skiff built in 1971, without a motor. It is listed at \$3,500.³⁶ However, it comes with a 28-foot flatbed trailer that the seller indicates can be used for other purposes.

Based on the totality of the evidence, the Division did not meet its burden to show that the fair market value of the boat and trailer in this case exceeds \$2,000. Mr. N's boat and trailer are in quite different condition than the four comparable sales listings offered by the Division. Further, as Mr. N testified, necessary repair services are not readily available in No Name City. Therefore, the likely cost to transport and repair both the boat and trailer significantly reduces their value in comparison to the proposed comparable boat listings.

In light of these considerations, Ms. N is more likely than not correct that the combined market value of the boat and trailer is less than \$2,000. Therefore, the Division should not have closed the family's ATAP and Food Stamp cases, and it incorrectly concluded that the family received ATAP overpayments of \$13,325 from October 2015 through October 2016.

IV. Conclusion

Ms. N did not overcome the presumption that her husband, the registered owner of the boat and trailer in this case, owns those resources. The boat and trailer therefore are countable resources for purposes of the household's ATAP and Food Stamp eligibility. However, based on the totality of the evidence in the record, the Division did not show that the fair market value of the boat and trailer exceeds \$2,000. Accordingly, Ms. N's household did not exceed the applicable resource limits, and the Division incorrectly closed her ATAP and Food Stamp cases.

³³ Exhibit 30-30.4.

³⁴ Exhibit 28-28.3.

³⁵ Exhibit 27-27.1.

³⁶ Exhibit 29-29.4.

Because the household was financially eligible for ATAP benefits from October 2015 through October 2016, the Division need not seek recoupment of ATAP benefits issued for that time period.

The Division's decisions closing Ms. N's ATAP and Food Stamp cases, and its effort to recoup \$13,325 in ATAP benefits issued for October 2015 through October 2016, are reversed.

DATED: December 20, 2016.

By: Signed
Kathryn Swiderski
Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), 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 5th day of January, 2017.

By: Signed
Name: Lawrence A. Pederson
Title: Administrative Law Judge

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