

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

In the Matter of: )  
 )  
C N ) OAH No. 13-0427-CMB  
 ) DPA Case No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

The question in this case is whether the Division of Public Assistance (Division) was correct to consider a boat and trailer to be resources owned by C N because he is listed as the registered owner of the boat and trailer in the records of the Division of Motor Vehicles (DMV). The Division denied Mr. N's renewal applications for Alaska Temporary Assistance Program (ATAP), Family Medicaid, and Food Stamp benefits because the value of the boat and trailer caused the total value of Mr. N's countable (non-exempt) resources to exceed the maximum resource limits of the programs at issue. This decision concludes that the registration of the boat and trailer to Mr. N in DMV's official records creates a rebuttal presumption that the boat and trailer are owned by Mr. N, and that the evidence presented by Mr. N failed to rebut that presumption. Accordingly, the Division was correct to consider the boat and trailer as resources owned by Mr. N. The Division's determination denying Mr. N's renewal application for the three programs at issue, based on excess resources, is therefore affirmed.

**II. Facts**

Mr. N is 48 years old and has a two person household consisting of himself and his 12 year old son.<sup>1</sup> Mr. N has received Food Stamp benefits since May 2011, and ATAP and Family Medicaid benefits since October 2012.<sup>2</sup>

On March 4, 2013 Mr. N submitted an application to renew his ATAP, Family Medicaid, and Food Stamp benefits.<sup>3</sup> He participated in an eligibility interview on March 5-7, 2013.<sup>4</sup> During that interview the Division's eligibility technician conducted an online asset search which indicated that Mr. N owned a 17 foot boat with a trailer.<sup>5</sup> Mr. N stated that these items actually belonged to

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<sup>1</sup> Exs. 1, 2.0.

<sup>2</sup> Ex. 1.

<sup>3</sup> Exs. 2.0 - 2.5.

<sup>4</sup> Exs. 1.2 - 1.4.

<sup>5</sup> Ex. 1.2.

his uncle, T G, and that he was not allowed to sell them.<sup>6</sup> However, Mr. N admitted that the boat and trailer had been moved to his property so his family could use it (among other reasons), that he maintained these items, and that they were worth about \$2,500.00.<sup>7</sup>

On March 11, 2013 Mr. N provided the Division with a written statement from Mr. G, which stated in relevant part as follows:<sup>8</sup>

I . . . am the owner of the [boat and trailer]. I had to have my nephew C N put it in his name so he could move it from my house . . . to store for a couple of years at his property because I was going to be out of town. I told him he could use it while I was gone . . . I will get it back from him when I'm ready. We have an agreement he will not sell [the] boat or . . . trailer without my consent.

On March 29, 2013 one of the Division's investigators visited Mr. N's home to view the boat and trailer.<sup>9</sup> Mr. N told the investigator that these items had been transferred into his name because his uncle was in jail and needed somewhere to store them.<sup>10</sup> Next to the boat and trailer at issue were two other boats of similar size and one wave-runner; Mr. N stated that these three items had been transferred to his mother.<sup>11</sup>

DMV records list Mr. N as the owner of the boat and boat trailer at issue in this case.<sup>12</sup> The DMV records indicate that ownership of the boat and boat trailer transferred to Mr. N on June 29, 2011, and that there is no co-owner and no lienholder.<sup>13</sup>

On April 1, 2013 the Division notified Mr. N that his renewal application for ATAP, Family Medicaid, and Food Stamp benefits had been denied because the boat and trailer at issue were countable resources, and because their stated value of \$2,500 exceeded the maximum resource limit of \$2,000 applicable to the benefit programs at issue.<sup>14</sup> Mr. N requested a hearing to contest the Division's decision on April 1, 2013.<sup>15</sup>

Mr. N's hearing was held on April 25, 2013. Mr. N participated by phone and represented himself. His mother, D C, participated by phone and testified on her son's behalf. Jeff Miller, a Public Assistance Analyst employed by the Division, participated in the hearing by phone and

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<sup>6</sup> Exs. 1.2, 1.3, 3.

<sup>7</sup> Exs. 1.2, 1.3, 3.

<sup>8</sup> Exs. 1.8, 4, 13.

<sup>9</sup> Ex. 5, Scott Rand hearing testimony.

<sup>10</sup> Ex. 5, Scott Rand hearing testimony.

<sup>11</sup> Ex. 5, Scott Rand hearing testimony.

<sup>12</sup> Exs. 12.0 - 12.3.

<sup>13</sup> Exs. 12.0 - 12.3.

<sup>14</sup> Exs. 6.0, 6.1, 6.2. The Division also issued a supplemental / corrective notice pertaining to the ATAP benefits on April 23, 2013 (Ex. 6.3).

<sup>15</sup> Exs. 7.0, 7.1.

represented the Division. Scott Rand, an investigator employed by the Division, participated by phone and testified on the Division's behalf. The record closed at the end of the hearing.

### III. Discussion

The ATAP, Family Medicaid, and Food Stamp programs all have a resource limit of \$2,000 applicable to persons under 60 years old.<sup>16</sup> Mr. N is less than 60 years old.<sup>17</sup> Accordingly, the \$2,000 resource limit applies to this case.

Mr. N did not dispute that a boat and trailer are countable (non-exempt) resources under the three benefit programs at issue. Rather, his argument is that the boat and trailer are not really his, and are actually owned by his uncle.

Under Alaska law, there is a presumption of ownership when a person's name appears on the title of certain types of vehicles.<sup>18</sup> A.S. § 28.10.261(a) states in relevant part that "when the title or right to possession of a vehicle is involved, the record of registrations and certificates of title as they appear in the files and records of the department [DMV] are prima facie evidence of the ownership or right to possession." This statutory presumption of ownership applies not only to cars and trucks, but generally also to trailers<sup>19</sup> and boats.<sup>20</sup>

The statutory presumption of ownership is not absolute, and it may be rebutted.<sup>21</sup> However, the presumption has the effect of placing the burden of proof on the person disputing the official record of title (in this case Mr. N).

The three primary indicia of ownership of personal property are title, possession, and control, which includes the right to sell, dispose of, or transfer.<sup>22</sup> In this case, at least two of the

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<sup>16</sup> ATAP regulation 7 AAC 45.280(a) states in relevant part that "[a]n assistance unit is not eligible for ATAP benefits if the assistance unit has nonexempt resources with a total value, as determined under 7 AAC 45.310, in excess of \$2,000 or, if the assistance unit includes an individual age 60 or older, \$3,000." Family Medicaid regulation 7 AAC 100.130(a) states in relevant part that "[a] household is not eligible for Family Medicaid if the household has nonexempt resources, as determined under 7 AAC 100.138 and 7 AAC 100.140, with a total value, as determined under 7 AAC 100.144, in excess of \$2,000 or, if the household includes an individual 60 years of age or older, in excess of \$3,000." Food Stamp regulation 7 C.F.R. § 273.8(b) states in relevant part that "[t]he maximum allowable resources . . . of all members of the household shall not exceed \$2,000 for the household, except that, for households including one or more disabled members or a member or members age 60 or over, such resources shall not exceed \$3,000."

<sup>17</sup> Ex. 1.

<sup>18</sup> See A.S. § 28.10.261(a), *Keltner v. Curtis*, 695 P.2d 1076 (Alaska 1985).

<sup>19</sup> See A.S.28.10.011.

<sup>20</sup> See 2 AAC 70.010, 2 AAC 70.160, 2 AAC 70.200.

<sup>21</sup> 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).

<sup>22</sup> See *Restatement of Property*, Section 10 Owner, Comment b (1936); Smith & Boyer, *Survey of the Law of Property* 456 (2nd Edition 1971); *Black's Law Dictionary* 996-97 (5th Edition 1973); *Meridian Mortgage Co., Inc. v. State of Indiana*, 395 N.E.2d 433, 439 (Ind. App. 1979); *U.S. v. One 1945 Douglas C-54 (DC-4) Aircraft*, 647 F.2d 864, 866 (8th Cir.1981).

three indicia of ownership are clearly present. First, it is not disputed that Mr. N has title to the boat and trailer according to official DMV records. Second, it is not disputed Mr. N possesses the boat and trailer (i.e. the boat and trailer are located on Mr. N's property). As to the third factor, Mr. N disputes that he has the right to sell the boat and trailer because (he asserts) they belong to his uncle. As a practical matter, however, Mr. N's status as titleholder / registered owner of the boat and trailer gives him the ability to sell / transfer the boat and trailer under applicable DMV regulations.

In summary, at least two of the three factors traditionally considered as evidence of ownership indicate that Mr. N is the owner of the boat and boat trailer at issue. Accordingly, Mr. N failed to prove, by a preponderance of the evidence, that the boat and trailer are not his. The \$2,500 value of the boat and trailer exceeds the \$2,000 maximum resource limit applicable to the ATAP, Family Medicaid, and Food Stamp programs by \$500. Mr. N is therefore not financially eligible to receive ATAP, Family Medicaid, or Food Stamp benefits.

#### **IV. Conclusion**

Mr. N' household had more than \$2,000 in countable resources from the time he submitted his renewal application on March 4, 2013 through the date the Division denied his renewal application on April 1, 2012. Accordingly, the Division correctly determined that Mr. N's household was not financially eligible for ATAP, Family Medicaid, and/or Food Stamp benefits. The Division's decision denying Mr. N's renewal application is therefore affirmed.

Dated this 26<sup>th</sup> day of June, 2013.

*Signed* \_\_\_\_\_  
Jay Durych  
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 8<sup>th</sup> day of July, 2013.

By: *Signed* \_\_\_\_\_  
Name: Jay D. Durych  
Title: Administrative Law Judge, DOA/OAH

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