

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

In the Matter of:)
)
 M T) OAH No. 13-1688-CMB
) DPA Case Nos.

DECISION

I. Introduction

M T submitted an application to the Division of Public Assistance for benefits under the Adult Public Assistance and Food Stamps programs, as well as for Medicaid and Chronic and Acute Medical Assistance.¹ The Division determined that Ms. T was ineligible for Adult Public Assistance, Food Stamps and Medicaid because she exceeded the applicable resources limit,² and was ineligible for Chronic and Acute Medical Assistance because her household income exceeded the applicable program limit.³

Ms. T requested a hearing and the matter was referred to the Office of Administrative Hearings. The assigned administrative law judge conducted a telephonic hearing on December 19, 2013. Ms. T participated and Jeff Miller represented the Division of Public Assistance.

At issue in this case is whether the Division correctly valued a flat-bottomed riverboat and certain real estate owned by Ms. T, and whether she has made a good faith effort to sell either property. The Division has correctly valued both properties. Ms. T did not show that at the time the Division her applications, she was making a good faith, reasonable effort to sell either property. For these reasons, the Division's decision is sustained.

II. Facts

M T's husband passed away in 2009, and since then she has lived by herself in a house she owns in No Name.⁴ She has a gross monthly income of \$1,090 in Social Security benefits (net income of \$985 after a deduction for supplemental medical insurance) and \$175 in Senior Benefits.⁵ The Social Security benefit is paid by direct deposit to Ms. T's checking account on the 20th of each month.⁶ The Senior Benefits are paid by direct deposit to the same account on

¹ See Ex. 2.0-2.11.

² Ex. 4.

³ Ex. 12.

⁴ Ex. 2.1, 2.3, 2.8, 3.

⁵ Ex. 2.6; Ex. 11, 11.1, 11.2.

⁶ See Ex. 5, Ex. 11.

the 27th of each month.⁷ On October 3, Ms. T received an Alaska Permanent Fund dividend in the amount of \$900 by direct deposit to that same account.⁸

Ms. T is the sole owner of a lot adjacent to No Name Lake, north of No Name.⁹ She also owns a 2007 Toyota Sienna, valued at around \$3,000, and an inoperable 1985 Dodge pickup truck worth perhaps \$200.¹⁰ She had a checking account with a balance of \$1,049.64 on October 1, 2013,¹¹ and approximately \$2,000 on November 8,¹² and a savings account with a balance of \$798.32 on October 1, 2013, \$848.32 on November 1, \$898.32 on November 8, and \$24.32 on December 1.¹³ Ms. T also owns a flat-bottomed river boat built by her husband in 2000, which he used for hunting trips on the Yukon River.¹⁴ The boat cost \$10,000 to build and has a custom-built trailer that cost about \$16,000.¹⁵ The boat and trailer have a combined fair market value of about \$2,000.¹⁶

Some time ago Ms. T contacted a real estate agent to sell the No Name Lake lot, but the property is not currently listed it for sale.¹⁷ The lot's assessed value is \$25,000, however it is presently submerged and its current fair market value is speculative.¹⁸ Ms. T has wanted to sell the river boat for some time, and she has placed notices advertising it for sale in a number of locations in No Name, as well as at garage sales at her own home.¹⁹ Because of its size and flat bottom, the boat is of no practical use on waters in the immediate vicinity of No Name.²⁰

Ms. T is 78 years old. She does not own a computer and is unfamiliar with their use or the manner in which items may be sold online.²¹ Following the hearing, with the assistance of a friend, she posted the lot and the boat and trailer for sale on Craigslist.²²

⁷ See Ex. 5, Ex. 11.1.

⁸ Ex. 5.

⁹ Ex. 2.8.

¹⁰ Ms. T's application valued the Toyota at \$3,000. Ex. 2.8 It is valued at \$20,000 in a note prepared by the Division after a conversation with her. Ex. 3.

¹¹ Ex. 5. See also Ex. 2.8 (of \$1,679.45 on October 23, 2013, the date of her application).

¹² Ex. 3, Ex. 4.

¹³ Ex. 34.

¹⁴ Ex. 3.

¹⁵ Position Statement, p. 2.

¹⁶ Ex. 4.1.

¹⁷ Testimony of M. T; Position Statement, p. 2.

¹⁸ Testimony of M. T.

¹⁹ Testimony of M. T.

²⁰ Testimony of M. T.

²¹ Testimony of M. T.

²² Supplemental Exhibit.

III. Discussion

A. Adult Public Assistance and Medicaid

Alaska Public Assistance benefits are payable to eligible needy aged, blind and disabled persons.²³ An aged person who receives Adult Public Assistance benefits is eligible to receive Medicaid benefits as well, and the same financial need and resource standards apply.²⁴ To be eligible for Adult Public Assistance, a person who lives alone may not own more than \$2,000 in resources, after permissible exclusions.²⁵ Resources include “any real or personal property that an applicant...owns and can convert to cash to be used for his or her support and maintenance.”²⁶ Permissible exclusions include the applicant’s home, household goods and personal effects,²⁷ one motor vehicle,²⁸ and other specified items, none of which applies to her boat, the trailer, or the No Name Lake lot.²⁹

Resources are valued on the first day of each eligibility month.³⁰ Ms. T’s application, dated October 23, was received on October 28;³¹ she was interviewed on November 8,³² and her application was denied by written notice on November 12.³³

Ms. T’s resources include her checking and savings account. Income, to the extent not expended in the month it is received, is counted as a resource in the following month.³⁴ Thus, Ms. T had \$1,847.96 in cash resources on October 1, 2013.

The boat and trailer and the No Name Lake lot are resources for purposes of Adult Public Assistance and Medicaid if Ms. T can convert them to cash, that is, if they are saleable. At the hearing Ms. T claimed that there is no market for the boat and trailer in No Name, because the boat is designed for use on the Yukon River and is of no use on waters in the vicinity of No Name. However, the Division contacted a local marine business No

²³ AS 47.25.430-.615.

²⁴ AS 47.07.020(b)(4); 7 AAC 100.400(a)(10), (13)-(15); 7 AAC 100.410(b). Ms. T has not shown that she is eligible for Medicaid under any other category. *See generally*, AS 47.07.020; 7 AAC 100.002.

²⁵ 7 AAC 40.230; 7 AAC 40.270(a)(1).

²⁶ 7 AAC 40.260(a).

²⁷ 7 AAC 40.280(a)(1), (2).

²⁸ 7 AAC 40.280(a)(3).

²⁹ *See* 7 AAC 40.280(a)(4)-(17). A boat with an inboard motor is a motor vehicle for purposes of this program, but a boat with an outboard motor is not. *See* 7 AAC 60.900(5) (“‘motor vehicle’ means a self-propelled vehicle for surface transportation”). It is not clear whether Ms. T’s boat is self-propelled or not, but because only one motor vehicle is excluded, it makes no difference.

³⁰ 7 AAC 40.270(b).

³¹ Ex. 1, Ex. 2.

³² Ex. 1; Ex. 3.

³³ Ex. 4.

³⁴ 7 AAC 40.300(c).

Name, which estimated the value of the boat and trailer as \$2,000 in light of the condition of the boat and trailer and the local economy.³⁵ That a value was provided in light of the condition of the local economy indicates this is the price that can be obtained locally. The preponderance of the evidence is that with a good faith, reasonable effort the boat and trailer can be sold “as is, where is” for \$2,000. Ms. T testified as to the manner in which she had attempted to sell the boat. She stated she has not marketed the boat outside of No Name, and that she has not offered it for sale in No Name at its estimated value of \$2,000. Absent any attempt to market the boat in a community where it can be used or of an attempt to sell it in No Name at its value in that community, Ms. T has not established that the boat cannot be sold.

As for the No Name Lake lot, at the hearing Ms. T testified that the value stated on the application is the assessed value, not the fair market value. She asserted that the lot’s fair market value is far less than the \$25,000 stated in her application, because the lot is under water. However, she has not had an appraisal or estimate, and she did not establish that it is presently listed for sale. Under these circumstances, Ms. T has not proven that the property is not saleable, or that its value is less than \$2,000.

Because she has not established that the boat, trailer, and lot are unsalable, Ms. T has not shown that she meets the resource limits applicable to Adult Public Assistance and Medicaid.³⁶

B. Food Stamps

Food Stamps is a federal program administered by the State.³⁷ Eligibility for a person in a household of one person over age sixty in Alaska is restricted to persons with resources less than \$3,250.³⁸ Resources for purposes of the Food Stamp program includes money in checking and savings accounts,³⁹ and (unless specifically excluded)⁴⁰ a boat⁴¹ and unoccupied land.⁴² Specifically excluded is “real property which the household is making a good faith effort to sell

³⁵ See Ex. 4.1.

³⁶ The Division has authority to provide assistance under the Adult Public Assistance program to certain applicants who are over the applicable resource limit based on an agreement to dispose of their disqualifying resources within a specified time. 7 AAC 40.290. Nothing in this decision prevents Ms. T from requesting assistance under such an agreement.

³⁷ See 7 C.F.R. §271.4(a); 7 AAC 46.010.

³⁸ Ex. 8.1. The federal limit is \$3,000. See 7 C.F.R. §273.8(b).

³⁹ 7 C.F.R. §273.8(c)(1).

⁴⁰ *Id.* See 7 C.F.R. §273.8(e).

⁴¹ A boat is a “vehicle” within the meaning of 7 C.F.R. §273.8(c)(2). *Cf.* 7 AAC §273.8(e)(i)(A) (excluding income-producing vehicles, “such as, but not limited to, a...fishing boat”).

⁴² 7 C.F.R. §273.8(c)(2).

at a reasonable price and which has not been sold.”⁴³ Eligibility is determined for the month of application and, if the application remains under consideration after the end of that month, for subsequent month as well.⁴⁴ Eligibility is based on the anticipated income for the month being considered.⁴⁵ Resources are calculated as of the date of the interview,⁴⁶ in this case November 8.

For purposes of eligibility in October, Ms. T’s resources include her checking and savings account balances on November 8. At her interview on that date, Ms. T stated she had about \$2,000 in her checking account, including \$1,090 from her Social Security benefit. The Division therefore excluded an amount equivalent to the Social Security benefit as resource and calculated Ms. T’s cash resource as \$910. However, Ms. T’s monthly benefits for Social Security and Senior Benefits are paid later in the month, on the 20th and 27th, respectively. On November 8, the entire balance in Ms. T’s bank accounts was a cash resource for purposes of Food Stamps, because none of it had been received as income in the month of November. Based on the interview, on November 8 Ms. T had approximately \$2,000 in her checking account, and her bank statement establishes that she had \$898.32 in her savings account, for a total cash resource of approximately \$2,898.32.

The Division excluded Ms. T’s 2007 Toyota from the calculation of her available resources, but no specific exclusion applies to the boat. As previously stated, the fair market value of the boat was \$2,000. With respect to the No Name Lake lot, resources are valued on the date of the interview, and on November 8 that property had not been listed for sale and was not being marketed online. Because on that date Ms. T was not making a good faith effort to sell the No Name Lake lot, it too is included as an available resource. In any event, even without including that lot, the value of Ms. T’s cash resource and her boat is in excess of \$3,250. She is therefore ineligible for Food Stamps for the months of October and November, 2013.

C. Chronic and Acute Medical Assistance

Eligibility for Chronic and Acute Medical Assistance is based on, among other things, financial need and lack of income to meet that need.⁴⁷ A person living alone is deemed to have financial need for purposes of this program only if their income is less than \$300 per month.⁴⁸

⁴³ 7 C.F.R. §273.8(e)(8).
⁴⁴ 7 C.F.R. §273.10(a)(3).
⁴⁵ 7 C.F.R. §273.10(a)(1), (c)(1).
⁴⁶ 7 C.F.R. §273.10(b).
⁴⁷ 7 AAC 48.525(a)(1), (2).
⁴⁸ 7 AAC 48.540; 7 AAC 47.150(a), (b).

Ms. T's regular monthly income from Social Security and Senior Benefits is in excess of \$300 per month.⁴⁹ She is therefore ineligible for Chronic and Acute Medical Assistance.

IV. Conclusion

The Division correctly determined that Ms. T was ineligible for Adult Public Assistance, Food Stamps, and Medicaid for the months of October and November, 2013, because she exceeded the applicable resource limits, and that she was ineligible for Chronic and Acute Medical Assistance during those months because her household income exceeded the applicable program limit. Accordingly, the Division's decision to deny her application is **AFFIRMED**.

DATED January 23, 2014.

Signed

Andrew M. Hemenway
Administrative Law Judge

Adoption

The undersigned by delegation from the Commissioner of Health and Social Services, adopts this decision as final under the authority of AS 44.64.060(e)(1).

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 10th day of February, 2014.

By: Signed

Signature
Andrew M. Hemenway

Name
Administrative Law Judge

Title

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

⁴⁹ See 7 AAC 47.150(c).