

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

In the Matter of)
)
T T-B) OAH No. 18-1216-SNA
) Agency No. 05154253
_____)

DECISION

I. Introduction

T T-B applied for recertification of food stamps benefits for her household. Her household consists of only herself. The Division of Public Assistance (Division) concluded that a home owned by Ms. T-B must be included in the household’s resources, and therefore the resources exceeded the program limit. Ms. T-B appealed. A telephonic hearing was held on December 13, 2018. Ms. T-B participated and testified on her own behalf; her son Q Q also testified. N D appeared and testified on behalf of the Division.

This decision concludes that because Ms. T-B’s equity in the home was properly counted as part of the household’s resources, the resources exceed the program limit. Therefore, the Division’s decision is upheld.

II. Facts

Ms. T-B applied for recertification of her food stamps case on October 31, 2018.¹ She owns a house in No Name; she has approximately \$46,000 equity in the house.² Ms. T-B does not live in the house. Rather, her son and his wife live there; they are making the mortgage payments of \$800 per month directly to the bank, and paying all of the utilities directly to utility companies, for a total outlay of approximately \$1,300 per month.³ The Division determined an estimated fair market rent rate for for the house, including utility costs, to be \$1,636.⁴

Mr. Q testified that the house is in rough shape and in need of a number of repairs, which he has been performing in addition to paying the mortgage and utilities.⁵ Ms. T-B

¹ Division Exh. 6-6.9.

² D testimony; Division Exh. 8. Ms. T-B provided a fair market value estimate for the house on her recertification application. Division Exh. 6.1. The equity figure was calculated by deducting Ms. T-B’s estimated mortgage debt on the house from the fair market value estimate. D testimony.

³ Testimony of J; mortgage and utility statements submitted by Ms. W’s daughter after the hearing.

⁴ D testimony; Division Exh. 18.1.

⁵ Q testimony.

confirmed to a Division caseworker that she was not trying to sell the home at the time of her recertification application.⁶

III. Discussion

In general, real estate owned by a household member counts as a resource for purposes of the food stamp program.⁷ The federal regulations exclude the value of a home owned and occupied by a household from that household's resources.⁸ However, because Ms. T-B does not live in the house, the Division cannot exclude the house from the household's resources on that basis.

The regulations also exclude the value of a house that a household is making a good faith effort to sell at a reasonable price and which has not been sold.⁹ At the time that she filed her recertification application, however, Ms. T-B confirmed that she was not trying to sell the house.¹⁰ Consequently, the Division cannot exclude the house from the household's resources on that basis.

Finally, the regulations exclude the value of a rental home that produces annual income consistent with the home's fair market value.¹¹ Ms. D testified that Mr. Q confirmed to her that he and his wife are paying less than fair market rent for the home.¹² Mr. Q did not disagree with this assertion at the hearing. He and Ms. T-B also explained, however, that the significant repairs he is making to the house provide value in addition to the mortgage and utility payments. In addition, he pointed out that Ms. T-B uses the house for showers, laundry, etc., which also provides value to her. They argued that these additional value factors should be considered as part of the calculation of whether fair market rent is paid for the house.

Whether Ms. T-B is getting annual income from the house she owns consistent with the home's fair market rental value is a question of fact. Because her application for

⁶ D testimony; Division Exh. 7.

⁷ 7 C.F.R. 273.8(c)(2).

⁸ 7 C.F.R. 273.8(e)(1).

⁹ 7 C.F.R. 273.8(e)(8).

¹⁰ Division Exh. 7.

¹¹ 7 C.F.R. 273.8(e)(4) ("Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis. Such property shall include rental homes and vacation homes.")

¹² D testimony.

recertification is a request for a continuing benefit, the Division has the burden of providing evidence that the house is not producing income consistent with its fair market value.¹³

The Division met its burden of establishing that fair market rental rate for the house is \$1636 per month (including utilities), and that the payments actually made by Mr. Q and his wife are well below that rate. In addition, the Division does not have the authority to consider the rough value of repairs and of showers and laundry usage as part of “rent” for purposes of determining if fair market value rent is paid for a home. The regulations governing this situation do not allow any discretion to the Division to broaden the definition of what constitutes rent.

Based on the evidence provided, Ms. T-B is not receiving income from the house that is consistent with the house’s fair market value. Therefore, the Division was correct not to exclude Ms. T-B’s equity in her house from her household resources.

The food stamp program resource limit for a household that does not include a disabled household member is \$2,250.¹⁴ The Division calculated Ms. T-B’s household resources to be \$40,050, including her equity in the house in No Name. The Division was correct to include the value of her equity in the house in her household’s resources, and that put the household over the applicable resource limit. Therefore, the Division was correct to deny Ms. T-B’s application for food stamps recertification.

IV. Conclusion

The Division’s decision to deny Ms. T-B’s application for food stamps recertification is upheld.

Dated: January 16, 2019

By: Signed
Signature
Andrew M. Lebo
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

¹³ 7 AAC 49.135.

¹⁴ Division Exhibit 15 (Alaska Supplemental Nutrition Assistance Program Manual Addendum 4, Standards and Maximum Allotments, effective October 1, 2018 through September 30, 2019).

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 28th day of January, 2019.

By: Signed
Signature
Andrew M. Lebo
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]
