

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

In the Matter of)
)
W M) OAH No. 19-0261-MDE
_____)

DECISION

I. Introduction

W M applied for Medicaid benefits. The Division of Public Assistance (Division) denied her application because it found that her countable resources exceeded the Medicaid program’s limit of \$2,000. Ms. M’s court appointed guardian, the Alaska Office of Public Advocacy, requested a hearing on her behalf.

Ms. M’s hearing was held on July 24, 2019. The record was held open after the hearing for Ms. M to submit additional information. The record closed on August 2, 2019.

The evidence in this case shows that Ms. M’s primary asset, a piece of real property located in State A, has debt upon it that exceeds its market value. As a result, Ms. M does not have countable resources worth more than \$2,000, and the denial of her application is REVERSED.

II. Facts

Ms. M is an elderly woman, and the Office of Public Advocacy is her court appointed guardian.¹ Ms. M applied for Medicaid on December 6, 2018.² She is the owner of a residence in a rural area of State A, where she and her now deceased husband used to live. Ms. M and her husband moved to Alaska leaving the residence behind. After receiving information from Ms. M’s guardian regarding Ms. M’s property, the Division denied her application on February 27, 2019, because it determined that Ms. M had a countable resource, being Ms. M’s property, which exceeded the Medicaid program’s countable resource limit of \$2,000. It arrived at this conclusion by finding the value of Ms. M’s property, after accounting for any debt against it, was \$10,672.89. The Division arrived at this figure by subtracting the mortgage amount from a tax assessment value of \$83,284.³

¹ See Superior Court Case No. 4XX-18-00000-PR.

² Division Exs. 2.2 – 2.15.

³ Division Ex. 7.

The underlying mortgage on Ms. M’s property has been in default and pre-foreclosure status since November 2015. The property has not been occupied since 2016. Neither Ms. M nor her daughter have keys to the property.⁴

Ms. M’s property is located on .65 acres of land. It has 988 square feet and is a two-bedroom, one bath home. There is also a garage, a barn, and a shed. Except for the shed, which was built in 1970, the other structures were all built in the 1950s. The local municipal tax assessor’s office provides that the 2018 “Full Market Value” for the entire property is \$87,188.⁵ S L, a public guardian with the Office of Public Advocacy, contacted B D, a local realtor, regarding the property. Ms. D provided Ms. L with photos of the exterior, which shows signs of disrepair. Ms. D was not able to view the interior of the property. Ms. D also provided Ms. L with real estate listing/sales information for comparable properties.⁶ The comparable properties she provided are all located in the same county and school district as Ms. M’s property. They are as follows:

- Road A. This 768 square foot home built in 1991 located on 4.9 acres. It does not have a garage. The listing price for this property is \$50,000.⁷
- Road B. This 960 square foot two-bedroom, one bath home was built in 1950. It has a one car attached garage, a two-car detached garage, and a shop building. It is located on 2 acres and has a pond. The listing price for this property is \$45,000.⁸
- Road C. This 1064 square foot two-bedroom, two bath home was built in 1995. It has a two-car detached garage and is located on 3 acres. The listing price for this property is \$45,000.⁹
- Road D. This 960 square foot three-bedroom, one bath home was built in 1966. It is located on 2.45 acres with two out-buildings and a pond. It sold for \$61,000.¹⁰
- Road E. This 936 square foot two-bedroom, one bath home was built in 1976. It has an attached garage and a barn. It is located on 4.35 acres. It sold for \$44,000.¹¹

⁴ Division Exs. 3.2 –3.6; Ms. L’s testimony.

⁵ Division Ex. 4.8.

⁶ Ms. L’s testimony; M Ex 4; Division Ex. 6.3.

⁷ M Ex. 6, p. 2.

⁸ M Ex. 6, p. 3.

⁹ M Ex. 6, p. 4.

¹⁰ M Ex. 6, p. 5.

¹¹ M Ex. 6, p. 6.

Ms. M's property has several encumbrances on it. There is a mortgage due and owing to JP Morgan Chase Bank (Chase Bank). The payments on that mortgage were past due and resulted in a court action where Chase Bank obtained court leave to foreclose upon the property in February of 2019.¹² Chase Bank has yet to conduct the actual foreclosure sale.¹³ The payoff figure on that mortgage, through February 21, 2019, was \$72,611.01.¹⁴ In addition to the Chase Bank mortgage, there is also a judgment lien against the property in favor of Olean Area Federal Credit Union, filed on April 7, 2016, in the amount of \$7,370.30.¹⁵ Finally, there is a 2008 mortgage against the property, payable to the New York State Affordable Housing Corporation, in the principal amount of \$2,859.¹⁶ The record does not show what the unpaid balance, if any, is on that mortgage.

III. Discussion

The Alaska Medicaid program contains a variety of coverage categories. *See* 7 AAC 100.002. Each of these categories has differing eligibility requirements. These include financial requirements which limit how much monthly income a Medicaid applicant may have, and how much in resources (cash, other personal property, and real property) an applicant may own.

A Medicaid recipient, who is single, not own more than \$2,000 in countable resources.¹⁷ The term "resource" is defined, by regulation, as "any real or personal property that an applicant ... owns and can convert to cash to be used for his or her support and maintenance."¹⁸ An applicant's home is only exempt from being counted as a resource if it is used as the applicant's principal residence.¹⁹ It is undisputed that Ms. M has not used the property as her home since at least 2016, so it is countable as resource.

The Division denied Ms. M's application because it found that the value of Ms. M's property, after accounting for any debt against it, was \$10,672.89. The Division arrived at this figure by subtracting the Chase Bank mortgage amount from a tax assessed full market value of \$83, 284.²⁰

¹² M Ex. 13 (Court Order Confirming Referee Report and Judgment of Foreclosure and Sale dated February 7, 2019 – supplement to the record filed on July 25, 2019).

¹³ Ms. L's testimony; M Ex. 1.

¹⁴ Division Ex. 4.2

¹⁵ M Ex. 9, pp. 7 – 10.

¹⁶ M, Ex. 8, p. 1.

¹⁷ 7 AAC 100.400(a)(14).

¹⁸ 7 AAC 40.260; 7 AAC 100.400(a)(13).

¹⁹ 7 AAC 100.400(a)(15).

²⁰ Division Ex. 7.

Ms. M disagrees with the Division’s determination that the value of her property, not accounting for any debt against the home, is \$83,284. It is therefore necessary to determine the value of the property. In so doing, the most current tax assessment in the record, which is for 2018, provides that the “Full Market Value” for the entire property is \$87,188.²¹ However, the Alaska Supreme Court has stated “tax appraisals do not reliably measure true value.”²² As such, the tax assessed value is not dispositive and the comparative properties provided by Ms. D are considered more reliable.

Ms. M’s property is located on .65 acres of land. It has 988 square feet and is a two-bedroom, one bath home. There is also a garage, a barn, and a shed. Except for the shed, which was built in 1970, the other structures were all built in the 1950s. The property is in disrepair. Out of the five comparable properties’ information provided by Ms. D, the one with the highest market value is the Road D property. It has a 960 square foot three-bedroom, one bath home was built in 1966. It is located on 2.45 acres with two out-buildings and a pond. It sold for \$61,000. This property contains more acreage and has a pond, and the home is newer. It is therefore more likely true than not true that Ms. M’s property is worth less than the \$61,000 that the Road D property sold for.

Assuming, just for the sake of this decision, that Ms. M’s property is worth \$61,000, the same as the Road D property’s sale price, it is apparent that Ms. M’s property is not a countable resource. This is because the Chase Bank mortgage (\$72,611.01) greatly exceeds the value of the M property. In addition, there are two other encumbrances against the property: the judgment lien against the property in favor of Olean Area Federal Credit Union, filed on April 7, 2016, in the amount of \$7,370.30, and the 2008 mortgage against the property, payable to the Sate A Affordable Housing Corporation, in the principal amount of \$2,859. In other words, even if Ms. M were able to sell the property for \$61,000, the sales price would not be enough to pay off even the Chase Bank mortgage, let alone to also pay the Olean Area Federal Credit Union and the State A Affordable Housing Corporation debts. Because there is no equity in the property, it is not a countable asset for Ms. M.

²¹ Division Ex. 4.8.

²² *Bennett v. Artus*, 20 P.3d 560, 565 (Alaska 2001)

The Division's denial of Ms. M's Medicaid application was premised upon her having over \$2,000 of equity in her property. As discussed immediately above, she does not. As a result, she is financially eligible for Medicaid.

IV. Conclusion

The denial of Ms. M's Medicaid application is reversed.

Dated: August 27, 2019

By: Signed
Name: Lawrence A. Pederson
Title: 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 10th day of September, 2019.

By: Signed
Signature
Lawrence A. Pederson
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.]