

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

In the Matter of :)	
)	
K. O. A.)	
)	OAH No. 09-0123-PFD
<u>2008 Alaska Permanent Fund dividend</u>)	DOR No. 2008-014-7411

DECISION

I. Introduction

K. O. A. filed a timely application for a 2008 Alaska Permanent Fund dividend. The Permanent Fund Dividend Division denied the application. Ms. A. filed a timely appeal and requested a hearing. The case was referred to the Office of Administrative Hearings and the assigned administrative law judge conducted a telephonic hearing on April 8, 2009. Ms. A. participated, and Pete Scott represented the division.

Because Ms. A. was absent from Alaska during 2007 for more than 120 days in addition to the time during which she was a full time student, as applicable law has been interpreted in prior agency decisions, she is ineligible for the 2008 dividend. The division's decision is therefore sustained.

II. Facts

K. O. A. is a life long Alaska resident. After graduating from high school in Anchorage in the fall of 2005, Ms. A. left her home in Alaska and began her college career as a student at the University of Washington in Seattle.

The University of Washington considers a student full time if the student is enrolled for 10 credits. Ms. A. was enrolled and attending classes at the university as a full time student for the entire 2005-2006 academic year.

Ms. A.'s second year in college was the 2006-2007 academic year. Ms. A. was enrolled and attending classes at the University of Washington as a full time student for the fall (15 credits) and winter (10 credits) terms (September, 2006-March, 2007).¹

For the spring term (March-June, 2007), she enrolled as a half-time time student at the university, taking 8 credits: a 5 credit classroom course, and a 3 credit psychology research

¹ Ex. 2, p. 2; Ex. 6, p. 6.

course, which required a minimum of 9 hours per week of student work in a psychology research laboratory.² During that time, in addition to attending classes, Ms. A. worked part time as a child care provider on two afternoons a week. Ms. A. spoke with her academic advisor to see if there was another course she could take to retain her full time student status. However, Ms. A. did not find a course that would fit with her combined class and work schedule.³

Ms. A. was not enrolled at the university during the summer of 2007, and she returned to Alaska for 31 days.⁴ In the fall term of the 2007-2008 academic year, Ms. A. was enrolled and attending classes at the university as a half time student (5 credits),⁵ and at North Seattle Community College (10 credits).⁶ For winter term, she was enrolled and attending classes at the university as a half-time student (8 credits)⁷ and at the community college (10 credits).⁸

At the time of the hearing, Ms. A. was on track to complete her college studies in the normal four year time frame, and anticipated receiving her degree from the University of Washington in the spring of 2009. She plans to return to Alaska and attend graduate school.

III. Discussion

AS 43.23.005(a) establishes certain statutory requirements for eligibility for a permanent fund dividend. In addition to Alaska residency, required by AS 43.23.005(a)(2) and (3), AS 43.23.005(a)(6) requires that the individual was absent from the state during the qualifying year for no more than the period allowed by AS 43.23.008(a). The division does not dispute that Ms. A. is an Alaska resident. However, the division asserts that Ms. A. was absent from Alaska during 2007 (the qualifying year for the 2008 dividend) for more than the time allowed by AS 43.23.008(a)(1) and (16)(B), which together provide that an individual may be absent for no more than 120 days in addition to time absent “receiving secondary or post-secondary education on a full-time basis.”

15 AAC 23.163(c)(1) states that “receiving secondary education on a full-time basis means...(B) enrollment and attendance in good standing, for the purpose of obtaining an

² Ex. 2, p. 2; Ex. 6, pp. 3-4, 6.

³ Ms. A. testified that it might have been possible for her to take an independent study course that would not have required any class participation, but she stated that her advisor did not inform her of that opportunity and that at the time she was unaware of any class she could take that would have fit her schedule.

⁴ Ex. 2, p. 2; Ex. 6, p. 6.

⁵ Ex. 2, p. 2; Ex. 6, p. 6.

⁶ Ex. 4, p. 4; Ex. 6, p. 7.

⁷ Ex. 6, p. 6.

⁸ Ex. 4, p. 4; Ex. 6, p. 7.

associate, baccalaureate, or graduate degree, as a full time student at a[n accredited] college, university, or junior or community college...”. During 2007, Ms. A. was absent while enrolled and attending classes as a full time student from January 1 until the end of the spring term on March 17, 2007, and from the beginning of the fall term on September 24, 2007, until December 31, 2007.⁹ From March 18 through September 23, Ms. A. was in Alaska a total of 31 days. The division contends that during the entire remainder of 2007, or 159 days,¹⁰ Ms. A. was unallowably absent. Ms. A. argues that she should be considered enrolled as a full time student for the spring term of 2007, from March 25 through June 8, which would reduce her absence to less than 120 days, even though she was enrolled for only 8 credits, which is less than the 10 credits that the University of Washington considers to constitute full time status.

15 AAC 23.163(c) requires enrollment and attendance at an accredited educational institution, but offers no guidance regarding what constitutes “full-time” student status. In general, the division will accept an educational institution’s own standards as sufficient to establish that a student is a full-time student for purposes of the dividend program, even though the number of credit hours required for full time status varies. But an institution’s standards are not conclusive; when circumstances warrant, individuals may be considered to have full-time student status for purposes of the dividend program even if they are not carrying the full number of credit hours the institution generally requires for full time student status.¹¹ As has been observed:

A reasonable, practical and commonsense reading of [AS 43.23.008(a)(1)] suggests that the legislature’s intent is to limit eligibility to Alaska residents, and to exclude applicants who are unlikely to still be Alaska residents. It is reasonable to assume that students who are out of the state devoting their full attention to their studies are more likely to graduate in a timely manner and return

⁹ In the fall term of 2007, Ms. A. was considered a full time student by the University of Washington. In the fall term of 2008, she was considered a half time student by the university, but took a total of 15 combined credits at the university and at the community college, which is sufficient to establish full time student status even if she was not full time at either institution. Inter-terms absence between semesters as a full time student is counted as part of the allowable student absence. *See In Re D.H.*, OAH No. 08-0060-PFD (Department of Revenue, July 8, 2008). Because Ms. A. was a full time student in the fall term of 2006 and the winter term of 2007, and in the fall term of 2007 and the winter term of 2008, her inter-term absences between those terms are allowable.

¹⁰ March 18 through September 23 is a total of 190 days. Subtracting the 31 day visit to Alaska yields 159 days of absence.

¹¹ *See, e.g., In Re J.K.*, Department of Revenue Caseload No. 010381 (January, 2002) (graduate student full time even though taking only two credit hours); *In Re M.F., et al.*, OAH No. 06-0722-PFD (Department of Revenue, April 20, 2007) (disabled applicant took less than full load “due to the functional limitations placed on him by his physical disability.”).

to Alaska, whereas people devoting only part of their time to studies, and who will be out of the state longer to complete their studies, may be building a life and establishing a home in the state in which they are studying, and are therefore less likely to return to Alaska to make their home. ... The most reasonable and practical interpretation of “full-time” is study at a pace that demonstrates, within reason, that applicants are devoting their full attention to their studies, and are not absent for other reasons than for education, such as employment. In most cases, the college or university’s definition of full-time and part-time attendance will provide useful guidelines. But colleges and universities do not have the final say on the meaning of Alaska laws.^[12]

Ms. A. makes two basic arguments why she should be considered a full time student for purposes of the dividend program in 2007. First, she argues that she should be considered a full-time student during the 2007 spring term because her 3 credit psychology internship required a total of nine hours per week of attendance, and no other course was available to her given her class and work schedule. Second, Ms. A. argues that rather than looking solely at one particular term, her status as a full time student should be considered in light of the progress she made toward degree completion during a more extended period.

Ms. A.’s first argument, which focuses on her status during the 2007 spring term, is not persuasive. It is true that during that time Ms. A. was enrolled and attending classes.¹³ However, it is also true that she took less than a full course load, and that she chose to reduce her course load below the level required for full time status at the University of Washington.¹⁴ Ms. A. asserts that she did not choose to reduce her course load: rather, her enrollment status was the product of her class and work schedule, under which no other courses were available to her. However, it was Ms. A.’s decision to be employed that restricted her ability to find an available course. While financial considerations may make it difficult or even impossible for a particular individual to attend courses on a full time basis for all or a portion of an individual’s course of study, during those periods of time the individual is not a full time student.

Ms. A.’s second argument focuses on her status over time. Apart from summers and the 2007 spring term, Ms. A. was a full time student from the time she first enrolled in college in the

¹² In Re M.F., et al., OAH No. 06-0722-PFD, at 3. (Department of Revenue, April 20, 2007).

¹³ Ms. A.’s case is thus distinguishable from a case in which a student takes on off campus internship and is not attending any classes at all. See In Re K.W., Department of Revenue Caseload No. 000646 (April, 2001).

¹⁴ The division may deny an application even if the reason for less than full time student status was outside the individual’s control. See State of Alaska, Department of Revenue, Permanent Fund Dividend Division v. Bradley, 896 P.2d 237 (Alaska 1995). However, the individual’s inability to attend classes on a full time basis is a circumstance that may warrant granting the application in a particular case. See In Re M.F., et al., supra.

fall of 2005, and she was on track to graduate in the normal four year timeframe and receive her degree in the spring of 2009. Furthermore, during 2007 (the qualifying year) Ms. A. took a total of 33 credits, more than she needed to take to maintain full time student status throughout the year. However, the argument that full time student status may be determined based on status over time was in substance rejected in a decision issued in 2004. In that case, a student had taken 8 credits in the summer and 8 credits in the fall, and noted that the total number of credits taken would have been sufficient for full time status in either the summer or the fall.¹⁵ In *dictum*, the decision rejected the student's argument that credits should be averaged over a period of time, as Ms. A. suggests should be done. To the extent that the prior decision has rejected the position that Ms. A. has taken in this case, that agency precedent should be followed in this case, unless the commissioner chooses to reject, modify or amend the agency's prior interpretation and application of 15 AAC 23.163(c)(1).¹⁶

The specific circumstances of this case warrant consideration by the commissioner of a modification of the agency's prior interpretation and application of 15 AAC 23.163(c)(1). In this case, several specific facts have been established that make it distinguishable from prior cases addressing that regulation.¹⁷ First, financial constraints were the cause of a temporary reduction in the number of credit hours taken (denial of the dividend to an otherwise qualified applicant exacerbates any existing financial concerns). Second, during the qualifying year, the total number of credit hours taken was sufficient for full time status for the year as a whole. Third, the student will graduate in the normal four year period for full time students. A reasonable and practical interpretation of 15 AAC 23.163(c)(1) is that it provides discretion to consider an individual to be a full time student if the individual: (1) is enrolled and attending classes; (2) in the qualifying year obtains credits equal to or greater than to the credits required for full time status during the regular academic year; and (3) is on track to complete a degree in the normal period of time for a full time student.

IV. Conclusion

¹⁵ See In Re N.S., Department of Revenue Caseload No. 040231 (June, 2004) (rejecting application of student who took 8 credits in summer and 8 credits in fall).

¹⁶ May v. State, Commercial Fisheries Entry Commission, 168 P.3d 873, 884 (Alaska 2007); Alaska Public Interest Group v. State, 167 P.3d 27, 42 (Alaska 2007).

¹⁷ *Supra*, notes 11-15.

K. A. was not enrolled and attending classes as a full time student in the spring, 2007, term, within the meaning of 15 AAC 23.163(c)(1) as interpreted in prior administrative decisions. Under existing agency precedent, she is ineligible for the 2008 dividend.

DATED July 10, 2009.

Signed

Andrew M. Hemenway
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order 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 13th day of August, 2009.

By: Signed

Signature
Virginia Blaisdell

Name
Director, Administrative Services Division

Title

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