

During the summer of 2010, after the end of the spring 2010 semester on April 28, and before the beginning of the fall 2010 semester on September 9, Ms. G was not enrolled and attending classes, nor was she participating in activities required of students.

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. G is an Alaska resident. However, the division asserts that Ms. G was absent 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 associate, baccalaureate, or graduate degree, as a full time student at a[n accredited] college, university, or junior or community college...”. A person is considered to be “receiving secondary education on a full-time basis” within the meaning of this regulation during the intersession of an academic year.⁴ In Ms. G’s case, this means that her brief periods of absence in January and December, 2010, between the fall and spring semesters of the 2009-2010 and 2010-2011 academic years, respectively, are considered absences while receiving secondary education.

By contrast with intersession, a person is not considered to be “receiving secondary education on a full-time basis” during the period of time between the end of one academic year and the beginning of the next one, that is, during summer vacation.⁵ Ms. G argues that the allowance of 120 days in addition to the time enrolled as a student is insufficient for a person, such as herself, who attends a university with a more extended summer break than is common.⁶ However, neither the division nor the commissioner may disregard the regulation which limits absences to 120 days in addition to time enrolled.

⁴ See, e.g., In Re J.D.C., OAH No. 09-0122-PFD, at 2-3 (Commissioner of Revenue 2009); In Re D. H., OAH No. 08-0060-PFD (Commissioner of Revenue 2008).

⁵ *Id.*

⁶ Ex. 8, p. 3.

Ms. G has asserted that she “was required to move in and participate in academic activities PRIOR to the first day of classes.”⁷ However, the only specific activity she mentions is that “move-in dates are generally 5-7 days prior to the first day of classes.”⁸ The additional time required to find or move in to accommodations prior to the start of classes is not time spent enrolled and attending classes,⁹ and Ms. G has not identified any specific activity that was required of her after the end of the spring 2010 semester or prior to the start of the fall 2010 semester¹⁰ in order to maintain status in good standing as a student, or that would otherwise justify characterizing any additional period of absence as qualifying for status as a student.¹¹

IV. Conclusion

In Ms. G’s case, the summer vacation from her university lasted from the end of the spring 2010 semester on April 28, 2010, until the start of the fall semester on September 9, 2010. During that period of time, Ms. G was absent from Alaska for 126 days from April 29-July 31, and August 8-September 8, 2010. This exceeds the 120 days of absence allowed in addition to absence while enrolled as a student. Ms. G is therefore ineligible for the 2010 dividend.

The division’s denial of B G’s application for a 2011 Alaska Permanent Fund dividend is **AFFIRMED**.

DATED January 18, 2012.

Signed _____
Andrew M. Hemenway
Administrative Law Judge

⁷ Ex. 8, p. 2.

⁸ *Id.*

⁹ Cf. In Re R.K., OAH No. 10-0541-PFD, at 3-4 (Commissioner of Revenue 2011).

¹⁰ Ms. G asserted that during the reading break and spring break she was required to be on campus for student activities. *Id.* However, those periods of time have not been counted against her, because intersessions are considered allowable. See note 4, *supra*. The registrar’s office notified the division that sometimes theater students are required to come in for rehearsals during intersession, but that “those additional times do not generally extend beyond the final exam period in April.” Ex. 9, p. 1.

¹¹ The department has “consistently held” that periods of time for orientation prior to initial enrollment, and while awaiting graduation after completion of classes, are allowable, but neither of those circumstances applies to Ms. G. See In Re E.H., OAH No. 09-0137-PDF (Commissioner of Revenue 2009). Because Ms. G has not shown that she was engaging any specific activity during the summer that was relevant to student status, it is not necessary to decide what specific types of activity, if any, would qualify for student status within the meaning of 15 AAC 23.163(c)(1).

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 8th day of February, 2012.

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

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