

maintained her Alaska residency at all times during her absence. She further noted that her absence from October 24, to November 3, 2016, was for vocational and professional training that was not available in Alaska.⁶ At the informal appeal level, the Division again reviewed Ms. N's application and documentation and upheld the original denial of her application.⁷ Ms. N timely requested a formal hearing. In that request she stated that her cumulative absence amounted to 179 days, and that she believed she was eligible for the PFD on the grounds that she in an Alaska resident and was a resident throughout 2016 and her work trip was training for her job in Alaska.⁸ At the formal hearing, Ms. N testified that she returned from her vacation within the 180 day time limit as planned, and it was the unexpected work training that caused her absence to add up to 182 days.⁹

III. Discussion

The applicant bears the burden of proving that the Division wrongly denied a PFD.¹⁰ AS 43.23.005 defines the requirements for eligibility to receive a PFD. For individuals, such as Ms. N who are Alaska residents, but were not physically present in the state throughout the qualifying year, they must be a state resident during the entire year and any absence must be allowed by AS 43.23.008. There is no dispute that Ms. N is and was an Alaska resident throughout 2016. 43.23.008(a) provides a list of allowable absences that do not weigh against eligibility. 43.23.008(17)(A) provides a catch all section allowing allowable absences for reasons not listed in §§(1) – (16):

(17) for any reason consistent with the individual's intent to remain a state resident, provided the cumulative absence or cumulative absences do not exceed

(A) 180 days in addition to any absence or cumulative absences claimed under [provisions not applicable to Ms. N].

15 AAC 23.163 sets forth how to calculate travel days to and from Alaska; it provides:

The department will count whole days when determining the number of days an individual was absent from Alaska. The department will count the day an individual arrives or returns to Alaska as a day absent unless the individual previously left Alaska that same day. The department will count the day an individual leaves Alaska as a day an individual was in Alaska, unless the individual previously arrived or returned to Alaska the same day.

⁶ Exh. 5, p. 2.

⁷ Exhs. 5 and 6.

⁸ Exh. 8, p. 2.

⁹ Testimony of Ms. N. At the hearing, Ms. N noted that she did not dispute the Division's calculation of her total absence, and her original confusion appears to have arisen from the calculation of travel days.

¹⁰ 15 AAC 23.113(b)(1).

Applying §15 AAC 23.163 to the information supplied by Ms. N, the Division’s calculation is correct. Ms. N was absent from Alaska for 182 days in 2016 – the qualifying year for the 2017 PFD.

While Ms. N planned to return, and did return, to Alaska from her European trip in time to qualify for the 2017 PFD, her out of state training brought her over the 180-day limit. AS 43.23.008(a)(2) does provide an allowable absence for full-time vocational professional training. However, that allowable absence does not apply to Ms. N’s work-related training. It only applies to programs for which the Alaska Commission of Postsecondary Education has made a determination that the program is not reasonably available in the state.¹¹

IV. Conclusion

Because Ms. N was absent from Alaska for more than 180 days for absences not otherwise allowable under AS 43.23.008(a)(1) – (16), during 2016, she is ineligible for the 2017 PFD under 43.23.008(a)(17)(A). The decision of the Division is therefore AFFIRMED.

Dated: March 13, 2018

Signed _____
Karen L. Loeffler
Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Revenue, 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 6th day of April, 2018.

By: *Signed* _____
Name: Karen L. Loeffler
Title: Administrative Law Judge

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

¹¹ 43.23.008(a)(2).