

season is over. I was honest about my travel dates. Gone 197 days: not under 180. If I were training for Olympic team this would matter. I am appealing the denial. I have option to play Jr. Hokey for a total of 3 years. This is my 2nd year. After that I will be living in Alaska again.⁴

The Division denied Mr. U' appeal on the basis that participation in a junior hockey program was not an allowable absence.⁵ Mr. U appealed requesting a formal hearing. In his request, he noted that he was attending a pre-college program and was only out of state because there is no comparable program available in Alaska.⁶

A hearing was held on September 10, 2018. Mr. U participated by telephone, representing himself and setting forth his position. Bethany Thorsteinson represented the Division. Prior to the hearing, the Division sent Mr. U an e-mail asking to clarify whether Mr. U was enrolled in secondary or postsecondary education. At the hearing Mr. U explained that he was not taking courses because to do so could affect his NCAA eligibility.⁷

III. Discussion

The applicant bears the burden of proving that the Division wrongly denied a PFD.⁸ AS 43.23.005 defines the requirements for eligibility to receive a PFD. For individuals, such as Mr. U 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 Mr. U is an Alaska resident and was an Alaska resident throughout 2017. However, "Regardless of whether the absences were for good reasons, unless the absences fall within one of the [16] categories listed in AS 43.23.008(a) as those categories have been defined by regulation," Mr. U is not eligible for the 2018 dividend.⁹

Playing junior hockey unfortunately does not fall within one of the 16 categories set forth in AS 43.23.008(a). AS 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*

⁴ Exhibit 4, p. 2.

⁵ Exhibit 5.

⁶ Exhibit 6.

⁷ Testimony of M U.

⁸ 15 AAC 23.113(b)(1).

⁹ *In re: D.E.*, OAH No. 15-1414-PFD p. 4 quoting *In re: D.B.* OAH No. 05-0282 p. 2.

(A) *180 days* in addition to any absence or cumulative absences claimed under [provisions not applicable to Mr. U]. (emphasis added).

Mr. U does not dispute that he was out of the state for over 180 days during 2017. Fundamentally, what he requests is a variance from strict application of the regulations considering the unavailability of comparable junior hockey programs within Alaska. Unfortunately, neither the Division nor an Administrative Law Judge may grant PFD's to people who were absent for reasons not allowable under the applicable statute and regulations.¹⁰ Thus, Mr. U is not eligible for the 2018 PFD.

IV. Conclusion

Mr. U' absences in 2017 to play junior hockey in Minnesota do not fall within any of the allowable absences set forth in the applicable PFD statutes. Therefore, he is not eligible for the 2018 PFD, and the Division's decision to deny his application is AFFIRMED.

Dated: October 3, 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.]

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 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 19th day of November, 2018.

By: Signed
Name: Sheldon Fisher
Title: Commissioner

¹⁰ *Id. citing In re: J. and D.B.*, OAH No. 05-0282, p. 2.