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

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In the Matter of

M U

OAH No. 18-0744-PFD Agency No. 2018-011-6179

DECISION AND ORDER

I. Introduction

M U applied for a 2018 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division (Division) denied his application on the basis that Mr. U was absent from Alaska for the more than 180 days during the 2017 qualifying year, and his absences did not meet any categories of allowable absences. Mr. U appealed arguing that his need to be out of state to play junior hockey should count as an allowable absence.

Mr. U choice to play junior hockey is not an allowable absence under PFD regulations despite the lack of available opportunity to pursue this level of hockey in Alaska. Therefore, Mr. U is not eligible to receive the 2018 PFD.

II. Facts

M U is a life-long Alaska resident. He has received the PFD his whole life, from 1999 - 2017.¹ Mr. U applied for the 2018 PFD online on January 15, 2018. In his application he truthfully noted his absences from the state in 2017 – all of which were to play junior hockey in No Name, Minnesota. His three absences--from January 1, 2017 – March 26, 2017; August 31, 2017 – December 19, 2017; and December 28, 2017 – December 31, 2017 – added up to a total of 197 days.²

The Division denied Mr. U's 2018 PFD application on January 26, 2018, on the grounds that absence to play junior hockey was not an allowable absence under the applicable PFD statutes and regulations.³

Mr. U timely requested an informal appeal. In his request, he wrote:

I have no intentions of establishing residency anywhere other than Alaska. I am playing junior hockey in MN. I come home at Christmas and when the

¹ Exhibit 1.

² Exhibit 1.

³ Exhibit 3.

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 2^{nd} 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 $\S(1) - (16)$:

(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: <u>Signed</u> 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 <u>19th</u> day of <u>November</u>, 20_{18} .

By: <u>Signed</u> Name: Sheldon Fisher Title: Commissioner

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