

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of	)	
	)	
K N	)	OAH No. 20-0471-CMB
_____	)	Agency No.

**DECISION**

**I. Introduction**

The issue in this case is whether K N remained an Alaska resident for the purpose of continued receipt of Adult Public Assistance (APA) and Medicaid benefits. The Division of Public Benefits reviewed his April 2, 2020 renewal application and concluded he did not because he was applying from an out-of-state address, had been absent from Alaska for an extended period of time, and had taken other steps incompatible with Alaska residency. Specifically, Mr. N obtained a driver’s license and received several months of public benefits from another state. Mr. N responded that he lived a peripatetic lifestyle and his connections to Alaska were his strongest ties to any community, so it was appropriate to continue his benefits rather than require him to change benefit providers for each state in which he temporarily resided.

Because Mr. N’s application did not meet clear statutory and regulatory requirements to receive benefits designated for Alaska residents, the decision by the Division is Affirmed.

**II. Facts<sup>1</sup>**

K N began receiving State of Alaska benefits more than a decade ago. At the time of his initial application, Mr. N was living in small Alaskan community. In 2014 he was convicted of a crime having some local interest.<sup>2</sup> Mr. N was subsequently exonerated, and his conviction vacated.<sup>3</sup>

Mr. N testified that when he returned to his home community after his conviction was vacated, he felt unwelcome. Thus, he decided to leave Alaska for a while with the plan he would

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<sup>1</sup> These facts were established by a preponderance of the evidence by the exhibits and testimony at the hearing.

<sup>2</sup> *United States v. N*, No. 14-30114, (9th Cir. 10-28-2014) (*available at* <https://caselaw.findlaw.com/us-9th-circuit/1682496.html>); *see also*; <https://www.justice.gov/usao-ak/pr/former-ketchikan-resident-sentenced-three-years-illegal-possession-firearm>

<sup>3</sup> *United States v. N*, *supra*; *see also*, <http://forejustice.org/db/N--K-Arthur-.html>.

return after the community had more time to become accustomed to the idea that he had been exonerated and would be living there again.<sup>4</sup>

Mr. N left Alaska in the latter part of 2014. He did not leave any personal belongings in storage. He did not own any Alaska real property, and he departed driving his only motor vehicle.<sup>5</sup> When he left, Mr. N expected to be gone for an indefinite period.<sup>6</sup>

Mr. N first went to Oklahoma, where he obtained a cell phone number.<sup>7</sup> He then went to Montana, where he obtained a driver's license before the end of 2014.<sup>8</sup> A person must be a resident of Montana in order to receive a Montana driver's license.<sup>9</sup>

He was in a car collision in Oklahoma in 2015. This was a serious collision which may have been fatal for a passenger in one of the other cars involved. He was told by the local hospital that he would benefit from surgery, but he did not have the money for it. He has experienced pain since the accident, but he has not had the surgery nor been under a doctor's care for treatment other than prescription medication.<sup>10</sup>

Mr. N returned to Montana after the motor vehicle collision. He applied for Medicaid in Montana during that time.<sup>11</sup> The timing of Mr. N's application for Montana Medicaid corresponds to the expiration of his Alaska Medicaid benefits for failing to file a timely renewal application.<sup>12</sup> The State of Montana verified that it paid Medicaid benefits to Mr. N from February 1, 2016 through May 31, 2017.<sup>13</sup>

From 2016 through 2019, Mr. N lived a somewhat nomadic lifestyle. He was in Montana and Virginia in 2017. He lived in Oklahoma and Montana from 2018 into 2020 apparently

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<sup>4</sup> Id.

<sup>5</sup> The Alaska Registration for this vehicle expired November 2015. Ex. 16.2, Ex. 17.2-3.

<sup>6</sup> Testimony of J. N.

<sup>7</sup> Mr. N provided a telephone number with a 405-area code as his contact number to the Division and the Office of Administrative Hearings (OAH). That number was used for the hearing. 405 is the area code for Oklahoma. [www.allareacodes.com](http://www.allareacodes.com) › 405.

<sup>8</sup> Id.

<sup>9</sup> Mont. St. Anno. 61-5-103.

<sup>10</sup> Testimony of J. N.

<sup>11</sup> Id.

<sup>12</sup> Exs. 2-3.

<sup>13</sup> Ex. 14; Testimony of J. Miller.

regularly going between the states.<sup>14</sup> While in Montana in 2018 he renewed the driver's license he originally obtained in 2014.<sup>15</sup> His Montana license does not expire until 2023.<sup>16</sup>

On March 12, 2019, while in Oklahoma, Mr. N contacted the Division to re-open his Alaska benefits.<sup>17</sup> The Division worker informed him that he would need to re-apply because he was no longer approved. At that time the Division had not had contact from Mr. N for two years.<sup>18</sup> Mr. N told the Division worker that he had not planned to be absent from Alaska for so long, but his return had been delayed due to a need for medical care related to a car collision.<sup>19</sup> He asked to have an application mailed to him in Oklahoma. According to Division case notes, he was informed he would need to be physically present in Alaska to qualify for the benefits requested.<sup>20</sup>

By early 2020, Mr. N was in Washington State.<sup>21</sup> His supplemental social security benefits were sent to him in Vancouver, WA.<sup>22</sup> In February and March 2020, Mr. N contacted the Division by telephone seeking to obtain Alaska public benefits.<sup>23</sup> During one of those calls, Mr. N gave his mailing address as General Delivery, Vancouver, WA.<sup>24</sup>

On April 4, 2020 Mr. N applied to renew both his Alaska Adult Public Assistance and Medicaid benefits.<sup>25</sup> This was treated as a new application.<sup>26</sup> His written application provided two addresses: Street A., Vancouver, WA, and Street B., City A, Alaska.<sup>27</sup> The written application was signed under penalty of perjury.<sup>28</sup> In his telephonic application interview, Mr. N told the Division case worker that he was physically present in Washington State at the time he prepared the application and continued to be there as they spoke.<sup>29</sup>

The Division denied the application.<sup>30</sup>

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<sup>14</sup> He was also in Texas during this period. Ex. 25.2-4.

<sup>15</sup> Testimony of J. Miller.

<sup>16</sup> Testimony of J. Miller.

<sup>17</sup> Ex. 1.4.

<sup>18</sup> Ex. 1.7-8.

<sup>19</sup> Ex. 1.4; Testimony of J. N. (This appears to be the Oklahoma collision from four years previously).

<sup>20</sup> Ex. 1.4.

<sup>21</sup> Ex. 23.5.

<sup>22</sup> Ex. 4.

<sup>23</sup> Id.

<sup>24</sup> Ex. 12. Testimony of B. Lightner.

<sup>25</sup> Exs., 2,3, and 11.

<sup>26</sup> Testimony of J. Zell.

<sup>27</sup> Ex. 5.

<sup>28</sup> Ex. 5.

<sup>29</sup> Exs. 6 and 7.

<sup>30</sup> Ex. 8

Mr. N appealed.<sup>31</sup>

After filing his appeal, Mr. N also contacted the Division to discuss the perceived mistake. Judi Zell, a Division worker, testified regarding her telephone calls with Mr. N. When he spoke with her, Mr. N agreed that he had not been physically present in Alaska for several years and had not been in Alaska when the April 4, 2020 application was submitted. He told Ms. Zell that he continued to consider himself an Alaska resident, however, because he had always planned to return.<sup>32</sup> Ms. Zell informed Mr. N that given his lengthy absence from the state, the Division would not consider him a legal resident unless or until he returned as he stated he desired to do.<sup>33</sup> She also corrected his mistaken belief that he would need to have a valid passport before he could return.<sup>34</sup>

According to Mr. N, he purchased a plane ticket to return to Alaska the day after Ms. Zell let him know that he did not need a passport to travel back to Alaska.<sup>35</sup> He returned to Alaska on May 14, 2020.<sup>36</sup> He filed a second application for APA and Medicaid benefits on May 15, 2020.<sup>37</sup> This application did not use the same Alaskan address he submitted with the April 2, 2020 application.<sup>38</sup> This application was subsequently approved.<sup>39</sup>

The hearing in this case focused solely on whether it was error for the Division to deny Mr. N's April 2, 2020 application. The Division's denial was based on the conclusion that Mr. N was not an Alaska resident for purposes of the governing statutes and regulations when he filed the application. Therefore, he was not eligible for the requested benefits.

The hearing was held June 17, 2020. The Division was represented by Jeff Miller, who provided testimony and presented two witnesses. Judi Zell testified as outlined above. Bradley Lightner, another Division worker, testified regarding his telephone contacts with Mr. N in March 2020 and the results of his investigation into Mr. N's whereabouts at that time. The Division argued that Mr. N severed his Alaska residency after his departure in 2014 and was ineligible at the time of his application on April 2, 2020.

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<sup>31</sup> Ex. 9.  
<sup>32</sup> Testimony J. Zell and J. N.  
<sup>33</sup> Id.  
<sup>34</sup> Id.  
<sup>35</sup> Testimony of J. N.  
<sup>36</sup> Ex. 13.1.  
<sup>37</sup> Ex. 12.  
<sup>38</sup> *Compare* Ex. 5 with Ex. 12.  
<sup>39</sup> Testimony of J. Zell.

Mr. N provided extensive testimony. He testified that after he left Alaska in 2014, he experienced unexpected difficulties landing permanent employment due to an old conviction unrelated to the vacated 2014 verdict. As a result, he traveled regularly and widely and did not have a reliable permanent address. It was bothersome for him to keep filing benefit applications as he moved between states, so he simply filed renewal requests with Alaska. People he knew in Alaska allowed him to use their addresses to receive mail even though he did not live there.<sup>40</sup>

He admitted he was not in Alaska when the April 2, 2020 benefit application was submitted. He admitted that he had not physically been in Alaska from some time in 2014 to May 14, 2020.<sup>41</sup> He obtained a driver’s license and applied for public benefits in Montana because it was convenient to do so. He felt that Alaska should nonetheless continue to pay his benefits, however, because he does not consider that he had a “permanent” residence anywhere else.<sup>42</sup>

### **III. Discussion**

The Division permits applicants to request several different benefits on a single application form.<sup>43</sup> Mr. N applied for two types of benefits on April 2, 2020. He applied for Adult Public Assistance (APA) and Medicaid.<sup>44</sup> The requirements for the two types of benefits are not identical, but both require the applicant be an Alaska resident at the time the application is filed.

#### *A. Medicaid Benefits*

To be eligible for Medicaid, a person must be a resident of the State where the application is filed. The definition of state residency for Medicaid eligibility is set by law. It provides:

Except as otherwise provided in (c) of this section, a resident of the state is an *individual who is physically present in the state and living in the state* voluntarily with the intent to remain in the state permanently or for an indefinite period of time. The department will determine if an individual is a resident of the state using the methodology established in 42 C.F.R. 435.403, revised as of October 1, 2005, and adopted by reference.<sup>45</sup>

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<sup>40</sup> Testimony of J. N. For example, he never lived at the Street B address he used on his Alaska. applications.

<sup>41</sup> Testimony of J. N.

<sup>42</sup> Id.

<sup>43</sup> Ex. 5.

<sup>44</sup> Id.

<sup>45</sup> 7 AAC 100.060(b) (emphasis added).

An applicant or recipient is not required to have a permanent mailing address as a condition of eligibility, but he must provide a reliable mailing address even if is general delivery care of a post office.<sup>46</sup> Once an applicant establishes state residency, the applicant retains state residency until the applicant establishes residency in another place.<sup>47</sup>

The facts demonstrate that Mr. N was a state resident prior to and during 2014. He, therefore, retained his Alaska residency and benefit eligibility unless he established residency in another place. The Division concluded that Mr. N did establish residency in another place, specifically Montana. According to the Division, it was irrelevant whether he had a permanent mailing address there just as it had been irrelevant for him to have a permanent mailing address to become an Alaska resident.

It was Mr. N's burden to prove that the Division's decision was incorrect.<sup>48</sup> Essentially, that means he was required to demonstrate he was still an Alaska resident as defined by law at the time his application was filed on April 2, 2020. He did not do so.

In 2014 Mr. N departed Alaska for an indefinite period. After he departed, he almost immediately obtained a Montana driver's license. A Montana driver's license is a benefit only available to residents of Montana.<sup>49</sup>

Mr. N also applied for and received Medicaid benefits in Montana. Mr. N testified he did apply for Medicaid in Montana, but he could not remember receiving them. He believed he did not, and that Alaska paid his Medicaid throughout the time he was absent from the state. This decision concludes that the documentation received by the Division from Montana stating benefits were paid to him from February 2016 to May 2017 is more reliable than Mr. N's recollection. Montana Medicaid benefits are only available to residents of Montana.<sup>50</sup>

A person cannot be a resident of two states.<sup>51</sup> Mr. N became a legal resident of Montana in 2014 as evidenced by his Montana driver's license and subsequent receipt of Montana public benefits.<sup>52</sup> His Alaska residency was severed.

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<sup>46</sup> 7 AAC 100.060(d).

<sup>47</sup> 7 AAC 100.060(e).

<sup>48</sup> 7 AAC 49.135 (burden of proof on applicant when new benefits are denied)

<sup>49</sup> Mont. St. Anno. 61-5-103.

<sup>50</sup> Administrative Rules of Montana (ARM) 37.38.402.

<sup>51</sup> *In Re O.N.*, OAH 13-1451-APA (Department of Health and Social Services Commissioner 2014); *available at*: <https://aws.state.ak.us/OAH/Decision/Display?rec=272>

<sup>52</sup> *Id.*

Mr. N’s argument that he remained an Alaska resident despite obtaining an out of state license, receiving out of state public benefits for more than a year, and being physically absent for six years because he always intended to return to Alaska is not persuasive.

*A. Adult Public Assistance*

A similar definition of state residency applies to APA eligibility. For purposes of APA benefits, a resident means *a person who is living in the state* voluntarily with the intention of making the state the person’s home and who is not living in the state for a temporary purpose.<sup>53</sup>

Again, it was Mr. N’s burden to prove that the Division’s decision was incorrect.<sup>54</sup> Mr. N was a former resident of the state of Alaska on April 2, 2020 as demonstrated by the analysis above. He was not “living in” Alaska as that term is commonly understood at the time the application was submitted.

Mr. N admitted he was not physically present in Alaska when he filed the application. He was physically present in Washington State and received his SSI benefits at an address there. He did not have a home, employment, or even stored belongings in Alaska. Mr. N’s sole connection to Alaska at the time the application was filed seems to have been an arrangement with someone to permit him to receive mail at their address.<sup>55</sup> That factor is not sufficient to establish Mr. N still lived in Alaska, especially as Mr. N appears to have had the same arrangement for mail in Montana, Oklahoma, Washington, and Virginia.

**IV. Conclusion**

Mr. N did not meet his burden of proving that he retained his Alaska residency during his lengthy absence from the state. Accordingly, the Division’s decision denying his April 2, 2020 application is Affirmed.

Dated: July 29, 2020

*Signed*  
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Carmen E. Clark  
Administrative Law Judge

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<sup>53</sup> AS 47.25.430(a) (emphasis added).

<sup>54</sup> 7 AAC 49.135 (burden of proof on applicant when new benefits are denied)

<sup>55</sup> Mr. N admitted he had never physically stayed at the address he submitted as his mailing address in Alaska on April 2, 2020.

## Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, 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 7<sup>th</sup> day of August, 2020.

By: Signed \_\_\_\_\_  
Name: Carmen Clark  
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.]