

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

In the Matter of:)	
)	
T.N.)	OAH No. 21-0014-CMB
_____)	Agency No. 05898303

DECISION

I. Introduction

T.N. was receiving Adult Public Assistance (“APA”), Supplemental Nutrition Assistance Program (“SNAP”), and Medicaid benefits when she left the state in September 2020, intending to return a week later. T.N. has not returned. The Division of Public Assistance (“Division”) thus concluded that T.N. is no longer living in Alaska and terminated her benefits.

Because T.N. has not demonstrated an allowable absence for purposes of APA, or that she is living in Alaska for purposes of SNAP or Medicaid, the Division correctly closed her benefits.

II. Facts

T.N. was receiving APA, SNAP, and Medicaid benefits as of September 2020 when she drove from Alaska to Montana.¹ T.N. testified that she does not recall the exact date she left Alaska, but estimates it was around the middle of the month.

T.N. called the Division on November 9, 2020 to report that she was out of state and stated that she was unable to cross the Canadian border.² The Division spoke to and corresponded with T.N. numerous times to gather additional information.³ T.N. told the Division she went to Montana to hand deliver legal documents.⁴ According to T.N., she planned to return within seven days but did not because of “unexpected and unforeseen legal issues.”⁵ She also submitted a letter from a licensed counselor stating that she was receiving medical and mental health care.⁶ Medicaid has not authorized T.N. for out-of-state medical treatment.⁷

At the hearing, T.N. testified that she went to Montana to hand deliver documents related to a legal dispute. She also later testified that she left Alaska because she was unable to qualify for public housing or legal assistance in Alaska and went to Montana to seek legal assistance.

¹ Ex. 1, 9.1.
² Ex. 2, 3.
³ Exs. 4-12.
⁴ Ex. 5.
⁵ Ex. 5, 9.
⁶ Ex. 9.2.
⁷ Ex. 17.

T.N. stated that she planned to remain in Montana for only seven days, but that the State of Montana brought criminal charges against her related to the legal dispute she travelled to Montana to address. T.N. stated that she had several court dates and that the State was going to dismiss the charges on March 22. She was unwilling to provide other information about this or any other legal matter. The record does not include any information about a state or federal civil or criminal case.

T.N. did testify that whatever legal disputes she may have do not prevent her from leaving Montana. Instead, she claims a Canadian border official told her when leaving Alaska that she would not be able to return across the border if she was involved in a lawsuit.

T.N. admitted that she has not attempted a border crossing or contacted the Canadian government to inquire about returning to Alaska. She testified that she contacted a meditation retreat in Canada about visiting the facility and was advised she would be unable to enter Canada for that purpose because of COVID-19 border restrictions.

T.N. testified that while in Montana, she attempted to apply for a Montana resident ID, but was unable to because of issues with her birth certificate. T.N. also started the process to apply for public benefits in Montana, but stopped after getting into a dispute with an organization that was assisting her with the process.

T.N. testified that she has possessions in a storage unit in Alaska.

III. Discussion

To receive SNAP, APA, or Medicaid assistance from the State of Alaska, a person must be a resident of the state.⁸ A person may temporarily leave Alaska but must continue to live here to receive benefits. T.N. has the burden of demonstrating that she continues to be an Alaska resident despite being physically present in Montana for several months.

A. T.N. Has Not Demonstrated an Allowed Absence for Continued APA Benefits.

An Alaska resident who leaves the state cannot receive APA during that absence unless (1) the absence is less than 30 days; (2) the resident leaves Alaska for postsecondary education or for medical treatment or special education unavailable in Alaska; or (3) the resident is prevented from returning because of illness.⁹ T.N. has not demonstrated any of these allowed absences.

⁸ 7 C.F.R. § 273.3(a); 7 AAC 40.110(a).

⁹ 7 AAC 40.110(b)-(d).

T.N.'s absence is not temporary. She testified to leaving Alaska in approximately mid-September and remains in Montana. This is far longer than the 30-day limit for a temporary absence.

T.N. did not leave Alaska for education or medical purposes. T.N. told the Division that she left Alaska to deliver legal documents.¹⁰ At the hearing, T.N. testified that she also left Alaska because she had not qualified for public housing assistance and went to Montana to seek legal assistance she was unable to find in Alaska. These are not medical or education reasons. T.N. did submit a letter from a counselor stating that she was receiving medical treatment while out of state.¹¹ But there is no indication in the record that this medical treatment is unavailable in Alaska. Nor is there evidence this medical case was planned or pre-approved and thus a reason for leaving the state.

T.N. has not claimed or demonstrated that an illness prevented her from returning to Alaska either. For an allowed absence because of illness, T.N. would need to have notified the Division of an illness, provided a statement from a physician corroborating that she is prevented from returning because of illness, not established residency outside Alaska, and intended to return once the illness ends.¹² T.N. submitted a letter from a licensed counselor stating she was receiving medical and mental health treatment.¹³ But this letter is neither from a physician nor identifies an illness preventing T.N. from returning to Alaska. Nor has T.N. described a particular illness preventing her return, either in the record or in testimony. To the contrary, T.N. has consistently maintained that it is legal disputes and Canadian border restrictions that prevent her return.

APA regulations impose very specific restrictions on receiving benefits while physically absent from the state. T.N.'s absence does not fall within any of these exceptions for continued benefits.

B. T.N. Has Not Demonstrated That She Continues to Live in Alaska for SNAP.

SNAP is a federal program administered by the State.¹⁴ Persons seeking these benefits must apply in the state where they reside.¹⁵

¹⁰ Ex. 5.
¹¹ Exs. 9.2, 17.
¹² 7 AAC 40.110(d).
¹³ Ex. 9.2.
¹⁴ 7 C.F.R. § 271.4(a).
¹⁵ 7 C.F.R. § 273.3(a).

SNAP regulations do not address absences from a state. But the residency requirements themselves are instructive. A person must “live in the State.” It does not matter how long a person has lived in the state, whether the person is living in a permanent dwelling, has a fixed mailing address, or has an intent to reside permanently in that state.¹⁶ What matters is where the person is currently living. The fact that SNAP residency does not require a demonstrated intent to remain in the state distinguishes residency for SNAP eligibility from other Alaska residency laws.¹⁷

A person can be physically absent from Alaska and still be living in the state for purposes of SNAP. For example, in *In re EL*, a woman travelled out of state for three months to care for a daughter and granddaughter who underwent successive surgeries during that time.¹⁸ Because she maintained a home with her possessions in Alaska, continued to vote in Alaska, and held a return plane ticket, EL was found to be still living in Alaska and therefore eligible for SNAP benefits from Alaska despite her absence.¹⁹

T.N., however, has not demonstrated that she is living in Alaska. T.N. testified that she has possessions in a storage unit in Alaska, but did not provide other facts demonstrating ongoing residency in the state. To the contrary, her testimony demonstrates attempts to become a Montana resident. T.N. testified that she applied for a Montana resident ID, but was unable to obtain one because of issues with her birth certificate. Thus, she continues to hold an Alaska ID, but only by default. T.N. also began the process to apply for public benefits in Montana. Her stated reason for not completing the process was a dispute with the organization that was assisting her with the application, not because she did not want to receive benefits from Montana.

The fact that T.N. has not taken steps to return to Alaska for the past five months also indicates that she is no longer maintaining her residence in Alaska. The only time McRaine inquired about crossing the border was to visit a meditation retreat in Canada. When it comes to returning to Alaska to live, T.N. has neither attempted nor inquired with the Canadian government about border crossing. As of the time T.N. left Alaska and through the date of this decision, the Canadian government has restricted United States citizens from entering Canada “for an optional

¹⁶ *Id.*

¹⁷ *See, e.g.*, AS 01.10.055(a), (c) (requiring intent to remain in Alaska and specifying that when a resident departs Alaska and “establishes or claims residency in another state” or acts inconsistent with an intent to remain in Alaska, that person is no longer an Alaska resident); 15 AAC 23.143 (requiring demonstrated intent to remain in Alaska to establish residency for Permanent Fund Dividend).

¹⁸ *In re EL*, OAH No. 18-1174-SNA (DHSS 2018) (available online: <https://aws.state.ak.us/OAH/Decision/Display?rec=6407>) at 1.

¹⁹ *Id.* at 3.

or discretionary purpose, such as tourism, recreation or entertainment” or if they are exhibiting COVID-19 symptoms.²⁰ But Canada has not prohibited United States citizens from crossing through Canada to return from the lower 48 to a residence in Alaska because of COVID.²¹

On balance, the record does not support a finding that T.N. continues to live in Alaska. Thus, she no longer meets the residency requirements for SNAP.

C. T.N. Has Not Demonstrated That She Continues to Live in Alaska for Medicaid.

A Medicaid recipient “retains state residency until the applicant establishes residency in another place.”²² A temporary absence does not change a person’s residency if the person “intends to return to the state when the purpose of the absence has been accomplished” and no other state has determined the person to be a resident for public benefits.²³

It is not clear that T.N.’s absence from Alaska has been temporary. The regulations do not define a specific time period for “temporary.” Temporary generally means “lasting for a time only: existing or continuing for a limited time: impermanent, transitory.”²⁴ T.N. has been gone from Alaska for nearly five months. She has neither articulated nor demonstrated a timeline or travel plans for returning.

Nor did she leave Alaska for temporary reasons. For a temporary absence, T.N. would need to show an intent to return “when the purpose of the absence has been accomplished.”²⁵ This language indicates the purpose itself must be temporary. T.N. initially stated that she travelled to Montana to deliver legal papers. But then she later added that she also left Alaska because she had not qualified for public housing or free legal assistance here and was hoping to find legal assistance in Montana. Public housing and legal assistance are not temporary purposes for leaving a state.

But assuming for argument that it is temporary, has she nonetheless changed her residency? The record does not show that Montana or any other state has determined T.N. to be a resident. Indeed, T.N. testified that she began but did not complete the application process for Montana benefits.

²⁰ Canada Order in Council 2020-0565 (Aug. 20, 2020), available at <https://orders-in-council.canada.ca/attachment.php?attach=39536&lang=en> at Prohibitions 2 and 3.

²¹ *Id.*

²² 7 AAC 100.060(e).

²³ 7 AAC 100.064(a).

²⁴ *Rosenblum v. Perales*, 303 P.3d 500, 505 (Alaska 2013) (citing common definitions of “temporary”).

²⁵ 7 AAC 100.064(a).

That leaves the issue of intent: Does T.N. intend to return to Alaska once she has accomplished her purpose for leaving?

T.N. has consistently stated that she intends to return to Alaska. But what matters here are actions, not just words.²⁶ And many of T.N.'s actions have been inconsistent with an intent to return to Alaska. T.N. testified that she applied for a resident ID in Montana and began the process of applying for public benefits there. She also testified that she took the initiative to inquire about entering Canada to attend a meditation retreat, but has not inquired about or attempted to cross the border to return to Alaska. T.N. believes she would be unable to cross the Canadian border, but there is no evidence in the record to support this belief.

Despite T.N.'s stated intent, her actions, or lack thereof, do not demonstrate this intent. That lack of intent, coupled with Ms. N's physical absence from the state for an extended period, fails to demonstrate her continued Alaska residency for purposes of Medicaid.²⁷

IV. Conclusion

For each of the benefits T.N. was receiving, she has failed to demonstrate continued residency in Alaska. T.N. is not necessarily ineligible for public benefits. But she is ineligible to continue receiving them from Alaska because she no longer lives here. Accordingly, the Division's determination closing T.N.'s APA, SNAP, and Medicaid benefits is affirmed.

DATED: February 10, 2021.

By Signed _____
Rebecca Kruse
Administrative Law Judge

²⁶ Cf. *E.H. v. State, Dep't of Health and Social Services*, 23 P.3d 1186, 1189 (Alaska 2001) (considering actions manifesting intent for residency, which contradicted testimony regarding intent); *Suydam v. State, Commercial Fisheries Entry Comm'n*, 957 P.2d 318 (Alaska 1998) (affirming residency finding based on actions demonstrating intent, despite contradictory testimony of intent).

²⁷ There are currently restrictions on states terminating Medicaid because of the COVID-19 public health emergency, but these restrictions do not apply when a person "eases to be a resident of the State." 42 U.S.C. § 1396d note (as amended by H.R. 6201, Families First Coronavirus Response Act).

Adoption

The undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

Dated this 9th day of March, 2021.

By: Signed
Signature
Jillian Gellings
Name
Project Analyst
Title

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