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

In the Matter of	)	
	)	
N. N.	)	OAH No. 23-0112-PFD
	)	
2022 Permanent Fund Dividend	)	

DECISION

I. Introduction

After N. N. timely applied for a 2022 Permanent Fund Dividend (PFD), the Permanent Fund Dividend Division found her ineligible, and it denied the application initially and at the informal appeal level. Ms. N. requested a formal hearing by correspondence. During the briefing schedule set for the hearing by correspondence, both sides submitted detailed, competing analyses of Ms. N.'s time out state in 2021, culminating in Ms. N.'s analysis dated March 28, 2023. All of the submitted material has been reviewed with care.

The denial is upheld because the Division's analysis is the legally correct one, although certain details as to number of days have been corrected. Ms. N., although she apparently remained an Alaska resident, spent too much time out of the state in 2022 to qualify for a 2023 dividend.

II. Background Facts

Ms. N. is a longtime Alaskan, now in her twenties, who has been eligible for the PFD since she was six. When she applied for the 2022 PFD, Ms. N. disclosed being absent from Alaska for 288 days. Of this, she attributed 138 days to attending college and 150 days to "other" reasons.[1] It may be inferred that Ms. N. did not realize that the days in excess of time spent on an allowable educational absence are limited to 120, and hence did not give the allocation of her "other" time a great deal of thought. After the initial denial of her application on the basis of the excessive "other" absence, the matter proceeded to an informal appeal. There, Ms. N. and the Division both more closely analyzed her year, with the Division calculating 142 days of "other" absence in additional to bona fide educational time, and Ms. N.

1 Ex. 1, p. 5.

calculating a lower number. In the course of that interaction and this appeal, she has arrived at a calculation that she spent a maximum of 118 days out of state in addition to education time.

Broadly, Ms. N.'s 2021 broke down as follows:

Sec.	**Dates**	**Approx. Days**	**Activity**
A	Jan 1-6	6	In Alaska
B	Jan 7-17	10	A. College (WA) before withdrawal from one class, total credit load disputed
C	Jan 18-Mar 25	67	A. College, part-time status undisputed
D	Mar 26-Apr 7	13	Spring break (remained out of state)
E	Apr 8-Jun 15	69	A. College, full-time status undisputed
F	Jun 16-July 31	46	In Alaska
G	Aug 1-Sep 23	54	Soccer training for B. College (WA)
H	Sep 24-Dec 12	80	B. College, full-time status undisputed
I	Dec 13-Dec 31	19	In Alaska

These periods will be evaluated in the discussion section below according to the letter on the left margin of the table.

III. Discussion

The qualifying year for the 2022 dividend was 2021.[2] In order to qualify for a PFD, the applicant must have been physically present in Alaska all through the qualifying year, or only have been absent for one of the 17 allowable reasons listed in a statutory section entitled "Allowable Absences," AS 43.23.008.[3] There are two of the allowable absences that potentially apply to Ms. N..

One of the specifically allowable absences is an absence for any reason consistent with Alaska residency. Vacations and the like fit under this absence. However, an absence for this open-ended reason cannot have exceeded 180 days under any circumstances.[4] Since Ms. N. was absent for more than 180 days (indeed, she was only present in the state for about 72 days),

2 AS 43.23.295(6).
3 AS 43.23.005(a)(6).
4 AS 43.23.008(a)(17)(A).

this allowable absence cannot, *by itself*, save her eligibility for the dividend. She needs to qualify for a second type of allowable absence as well.

The second potentially applicable provision is an absence "receiving secondary or postsecondary education on a full-time basis."[5] This absence certainly applied to at least 150 days of Ms. N.'s time out of the state, and arguably more. Importantly, though, the educational allowable absence brings with it a limitation. A person who claims an educational absence *cannot* add onto it the full 180 days of the open-ended allowance discussed above. Instead, a person who claims the educational absence can have no more than 120 additional (non-educational) days of absence under the open-ended allowable absence.[6]

With these principles in mind, let us turn to Ms. N.'s periods of absence to determine which absence category each of them fits under.

A. January 1 to January 6 (Alaska)

Ms. N. started the year in Alaska. On January 6, she flew to Seattle, arriving the same day.[7] The departure day counts as a day in Alaska.[8] The total number of days in this period is six.

B. January 7 – January 17 (Full- or Part-Time College)

On January 7 Ms. N. began classes at A. College in City A., Washington. For the first 11 days of the term, the record contains conflicting information about her status. According to Records Official F. B., "N. N. was in fact full-time, however, she withdrew from one of her classes on 1/17/2021, which resulted in her status changing to part-time."[9] According to a communication of the same date from B. J., the Director of Enrollment Services,

> On 1/4/21 the student enrolled in 2 classes (10 credits). On 1/17/21 the student enrolled in a third class taking them to a total of 15 credits (full time). However, later that same day, the student dropped one of the original 2 courses resulting in a W grade for that class.[10]

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5 AS 43.23.008(a)(1).
6 AS 43.23.008(a)(17)(B).
7 Ex. 8, p. 4.
8 15 AAC 23.163(j).
9 Ex. 9, p. 2.
10 Ex. 8, p. 1.

Twelve credits is the threshold for full-time status at A. College. The more detailed account from the higher-ranking official is the most reliable evidence, and it shows Ms. N. as below a full-time load for all but one day of this period. For the other ten days, she was in part-time status, which does not fall within the absence category for receiving "postsecondary education on a full-time basis."[11]

C. January 18 – March 25 (Part-Time College)

For the remainder of the winter term, it is undisputed that Ms. N. was enrolled part-time at A. College.[12] The number of days in this period is 67.

D. March 26 – April 7 (Spring Break)

It has long been settled law within the Department of Revenue that "the break between consecutive terms during which [the applicant] was a full-time student" is to be "considered allowable time during which the student was receiving postsecondary education on a full-time basis."[13] This principle does not apply to Ms. N.'s spring break in 2021, however, because she was not a full-time student on both sides of the spring break. Instead, she did not *become* a full-time student until she enrolled in the spring term on April 8. The 13 days of spring break are part of her general absence time, not part of her educational absence.

E. April 8 – June 15 (Full-Time College)

On April 8, Ms. N. began a term of study as a full-time student at A. College, as verified by a statement from the registrar's office.[14] The semester continued to June 25,[15] but Ms. N. was able to leave early, on June 15. The number of days in this span, including the first and last, is exactly 69.

F. June 16 – July 31 (Alaska)

On the evening of June 15, Ms. N. flew from Washington to Alaska.[16] Because of a regulation that binds the department, the arrival day counts as a day absent,[17] but in this instance it falls within the allowable educational allowance described under E. She departed from Alaska

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11 AS 43.23.008(a)(1).
12 Ex. 2, p. 1.
13 *In re J.D.C.*, OAH Case No. 09-0122-PFD (Dep't of Revenue 2009), at 2-3 (citing a line of prior authority) (published at https://aws.state.ak.us/OAH/Decision/Display?rec=5347).
14 Ex. 2, p. 1.
15 *Id*.
16 Ex. 8, p. 5.
17 15 AAC 23.163(j).

on the evening of July 31,[18] a day that is counted as an in-state day.[19] The total number of days in Alaska in this period is 46.

G. August 1 – September 23 (Soccer Training)

Having arrived in Washington on July 31, Ms. N. remained there until she started full-time college for the next academic year. During those eight weeks, she was participating in the pre-season and the early part of the competitive season as a star soccer player for B. College.[20] Academic work did not start until late September.

In general, the summer vacation between academic years is not considered part of an educational absence, unless the student is enrolled in full-time summer classes or participating in "activities required of students."[21] Thus, a student who goes or remains out of state during that time is using the 120-day allowance, not the educational allowance.

Ms. N., of course, was participating in a school-related sports program, but this does not equate to "receiving . . . postsecondary education on a full-time basis." Although the Commissioner has recognized that many Alaskans compete in sports outside Alaska at very high levels, these periods of absence have not been given special status and have had to be conducted under the time-limited open-ended allowance (120-days, in Ms. N.'s case).[22] The sole, tightly-limited exception has been one created by the Legislature for athletes who are already members of a United States Olympic or national team.[23]

Alternatively, Ms. N. argues that part or all of this period should be treated as part of her educational allowance for the ensuing semester because:

> Students do not fly in the first day of classes. They need time to set up accommodations and address all details of school enrollment.[24]

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18 Ex. 8, p. 6.

19 15 AAC 23.163(j).

20 Ex. 7, pp. 3-6.

21 *In re B.G.,* OAH No. 11-0381-PFD (Dep't of Revenue 2012), at 2 (published at https://aws.state.ak.us/OAH/Decision/Display?rec=5569).

22 *See, e.g., In re D.C.*, OAH No. 20-0533-PFD (Deputy Commissioner Barnhill 2020), at 7 (published at https://aws.state.ak.us/OAH/Decision/Display?rec=6694).

23 AS 43.23.008(a)(15); 15 AAC 23.163(l).

24 Ms. N.'s statement for formal appeal, March 28, 2023.

This is certainly true. However, the department has formally construed most special allowance provisions, specifically including the one for education, not to encompass travel and set-up time.[25]

In sum, under existing law, the August-September time for soccer training and competition has to be fitted under the 120-day general absence provision. The total number of days in this segment of Ms. N.'s year is 54.

H. September 24 – December 12 (Full-Time College)

On September 24, Ms. N. began a semester of study as a full-time student at B. College in City B., Washington, as verified by a statement from the registrar's office.[26] The semester continued to December 15,[27] but Ms. N. was able to leave early, on December 12. The number of days in this span, including the first and last, is exactly 80.

I. December 13-31 (Alaska)

On the evening of December 12, Ms. N. flew from Washington to Alaska. She stayed for the remainder of the year. Because of a regulation that binds the department, the arrival day counts as a day absent,[28] but in this instance it falls within the allowable educational allowance described under H. The total number of days in Alaska in this period is 19.

* * *

It is now possible to add up the days in the different categories of absence and determine eligibility:

Sec.	**Dates**	**Alaska**	**Full Time Education**	**Other**
A	Jan 1 - 6	6		
B	Jan 7 - 17		1	10
C	Jan 18 - Mar 26			67
D	Mar 26 - Apr 7			13
E	Apr 8 - Jun 15		69	
F	Jun 15 - July 31	46		

25 *E.g., In re R.K.,* OAH Case No. 10-0541-PFD (Dep't of Revenue 2011), at 4 (published at https://aws.state.ak.us/OAH/Decision/Display?rec=5522).
26 Ex. 2, p. 2.
27 *Id.*
28 15 AAC 23.163(j).

G	Aug 1 - Sep 23			54
H	Sep 24 - Dec 12		80	
I	Dec 13 - Dec 31	19		
	TOTAL	71	150	144

As has previously been noted, Ms. N. had more than 180 days outside Alaska, and therefore she needs to use a special allowance category to retain PFD eligibility. The special category available to her is the one for receiving postsecondary education on a full-time basis. But if she uses that category, she can have only 120 days of additional absence. Ms. N. had 144 days of additional absence beyond full-time education. Therefore, she cannot receive a 2022 PFD.

IV. Conclusion

Because of her extended absences in 2021, Ms. N. is not eligible for the 2022 PFD. The decision of the Permanent Fund Dividend Division to deny the application of N. N. for a 2022 Permanent Fund Dividend is therefore AFFIRMED. She has not been shown to have lost her Alaska residency, and nothing in this decision precludes her from eligibility for future PFDs.

DATED this 4th day of April, 2023.

By: SIGNED
Christopher Kennedy
Administrative Law Judge

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 and Order 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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 8th day of May, 2023.

By: SIGNED
Signature

Adam Crum
Name

Commissioner, Department of Revenue
Title

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