

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

IN THE MATTER OF
A.G.

OAH No. 05-0134-PFD

2004 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

A.N. filed a Permanent Fund Dividend application for her daughter, A.G. for a 2004 permanent fund dividend. The Permanent Fund Dividend Division (Division) determined that A.G. was not eligible. The Division denied her application because the Division determined that A. was on a disqualifying absence in 2003.

The Division denied the application initially and at the informal appeal level. Ms. N. requested a formal hearing. The Division filed a Motion for Summary Adjudication. The motion was denied and the case was scheduled for a formal hearing.

Administrative Law Judge Mark T. Handley heard the appeal on April 18, 2005. Ms. N. did not participate. Wendy Hughes represented the PFD Division by telephone.

The Administrative Law Judge affirms the denial.

II. Facts

During the qualifying year and the application period for a 2004 dividend, A.G. was a student attending a public middle school in California. It is undisputed that she was absent from Alaska more than 180 days to attend school and that she lived with her father, who was not eligible for a 2004 PFD.¹

III. Discussion

AS 43.23.008(a)(1) provides that an absence is allowable "if the individual was absent receiving secondary or postsecondary education on a full-time basis." A student who is absent attending boarding school is presumptively absent for the purpose of education; a person who is living with an ineligible parent is presumptively not absent for the purpose of attending school.²

¹ Ex. 6.

² 15 AAC 23.163(d).

It is difficult to prove that a child in A.'s situation was allowably absent under the statute. As the regulation recognizes, when a child is outside Alaska living with a parent, the reason is usually the custody arrangement. The fact that a child enrolls for school while living with a parent in another state is not enough to convert the child custody arrangement into an allowable absence. Something more is needed to show that school is the reason for the absence.

In a PFD eligibility hearing, the person who filed the appeal, in this case, Ms. N., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.³ Ms. N.'s hearing was scheduled for April 18, 2005. Ms. N. did not appear or call in for the hearing as instructed on the notice of hearing sent to her address of record. The record was held open to give Ms. n. ten days to request that the hearing be rescheduled. She did not request that the hearing be rescheduled.

Since Ms. N. missesher hearing, she failed to meet her burden of proof to show that the Division's order was incorrect.⁴ There is not enough evidence in the record to show that A. is eligible. Ms. N. was given an opportunity to show that A.'s absence was primarily for education in an evidentiary hearing, but she did not appear.

IV. Conclusion

The appeal is denied for failure to meet the burden of proof. A.G. was on a disqualifying absence from Alaska during the 2004 PFD qualifying year. She is ineligible for a 2004 permanent fund dividend.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of A.G. for a 2004 permanent fund dividend be AFFIRMED.

DATED this 28th day of September, 2005.

By: MARK T. HANDLEY
Administrative Law Judge

³ Alaska Regulation 15 A A C 05.030(h).

⁴ This decision is issued under the authority of 15 A A C 05.030(j), which authorizes the entry of a decision if "a person requests a hearing and fails to appear at the hearing."

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010.1, Mark T. Handley, Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order relating to the eligibility of A.G. for a 2004 permanent fund dividend be adopted and entered in her file as the final administrative determination in this appeal.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the date of this decision, pursuant to 15 A A C 05.035(a). The motion must state specific grounds for relief, and, if mailed, should be addressed to: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 within 30 days of the date of this decision.

DATED this 28th day of September, 2005

By: MARK T. HANDLEY
Administrative Law Judge

The undersigned certifies that this date an exact copy of the foregoing was provided to the following individuals:

PFD Division
9/28/05