

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

IN THE MATTER OF

E.H.

Case No. OAH 05-0200-PFD

2002 Permanent Fund Dividend

DECISION AND ORDER

I. Introduction

E.H. timely applied for a 2002 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. H. was not eligible, and it denied the application initially and at the informal appeal level. Mr. H. requested a formal hearing by written correspondence. The administrative law judge finds that Mr. H. does qualify for a 2002 dividend.

II. Facts

Mr. H. concedes that he was absent from Alaska on two extended trips in 2001, the qualifying year for a 2002 dividend. Mr. H. lists his absence dates in 2001 as from January 7 to April 30, and from October 28 until December 19.¹ These two trips would total 165 days.

At one point, the division questioned whether Mr. H. might have actually left for the second trip as early as sometime in September, 2001.² Mr. H. documented that he flew from Seattle to Kodiak on Alaska Airlines on April 30, 2001 ;³ that he went to some kind of appointment in Kodiak on May 2, 2001 ;⁴ and that he had a root canal in Kodiak on August 24, 2001.⁵ Mr. H.

has not been able to document the date he left the state on the second trip, but he has proved that he returned from the second trip on December 19, 2001.⁶

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must have been physically present in Alaska all through the qualifying year, or only have been absent for one of the allowable reasons listed in AS 43.23.008.⁷ One of the specifically allowable absences is an absence for any

¹ Exhibit 5, p. 15.

² Exhibit 4, p. 2.

³ Exhibit 5, p. 25.

⁴ Exhibit 5, p. 26.

⁵ Exhibit 5, p. 27.

⁶ Exhibit 5, p. 29.

⁷ AS 43.23.005(a)(6).

reason consistent with Alaska residency. At a formal hearing, the person who has requested the hearing has the burden of proving that the division's decision was in error.⁹

In its informal conference decision, the division asserted that Mr. H. had not shown sufficient evidence to prove that he was not absent for more than 180 days in 2001, particularly from the period after September 26, 2001. In a letter of October 28, 2005, Mr. H.'s mother acting as his attorney-in-fact wrote,

I am having difficulty establishing E.'s presence in Alaska for the time period September 26 to October 28, 2001 as requested. I contacted his bank and the canneries that he fished for and learned nothing that would provide support.... [T]he time period in question is typically crab season and lack of evidence to support E.'s participation could simply be attributed to poor record keeping, as most fishermen are prone to, as are most 19-year-old males.

Young men and fishermen are subject to the same laws and burdens of proof as all other adults, and membership in these categories does not excuse an applicant from the burden of proving eligibility for a dividend. If there is no evidence that Mr. H. did stay in Alaska until October 28, 2001, as he claims, the division's decision to deny his application must be affirmed.

Both the division and Mr. H. have overlooked one item of evidence in the record. Early on in this case, Mr. H. submitted a copy of his driver's license along with a substantial amount of other evidence to show that he is an Alaska resident.¹⁰ This license expires on Mr. H.'s birthday on August 26, 2006. Examination of the license shows that it was issued on October 24, 2001. This means that Mr. H. was physically present in the state and was photographed at a DMV office just four days before the day he asserts that he left Alaska for his Fall 2001 vacation. Considering this evidence, Mr. H.'s assertion that he did not leave the state for the second trip until October 28, 2001, is very credible. In light of this information, I find it more likely than not that Mr. H. was not absent from Alaska for more than 180 days during 2001.

IV. Conclusion

Because Mr. H. was absent from Alaska for less than 180 days in the qualifying year and his absence was consistent with continuing Alaska residency, Mr. H.'s absences in 2001 were allowable under AS 43723.008(a)(14)(A). Mr. H. is therefore eligible for a 2002 permanent fund dividend.

⁸ AS 43.23.008(a)(14)(A).

⁹ 15 A A C 05.030

¹⁰ Exhibit 5, p. 18.

V. Order

IT IS HEREBY ORDERED that the application of E.H. for a 2002 permanent fund dividend be GRANTED.

DATED this 13th day of February, 2006.

By: DALE WHITNEY
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 44.33.010 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.

DATED this 13h day of February, 2006.

By: DALE WHITNEY
Administrative Law Judge

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

Case Parties
2/13/06