

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

IN THE MATTER OF

C.S.

Case No. OAH 05-0219-PFD

2004 Permanent Fund Dividend

ORDER GRANTING SUMMARY ADJUDICATION

I. Introduction

C.S. timely applied for a 2004 permanent fund dividend. The Permanent Fund Dividend Division determined that Ms. S. was not eligible, and it denied the application initially and at the informal appeal level. Ms. S. requested a formal hearing in person in Juneau. The PFD Division moved for summary adjudication, and Ms. S. opposed the motion. The administrative law judge grants the motion and affirms the division's decision to deny Ms. S.'s application for a 2004 dividend.

II. Facts

The facts in this case are not in dispute. Ms. S. left Alaska in January 2003 for what she expected to be a 135-day vacation. Unfortunately, an unanticipated medical need arose, and Ms. S. ended up receiving continuous medical treatment from March 2, 2003, until June 3, 2003. Ms. S. returned to Alaska on July 2, 2003. Later in the fall of 2003 Ms. S. took two vacations out of state of approximately a week for each trip.

Ms. S.'s total absences from Alaska in 2003 add up to 182 days. Of these days, 89 were for continuous medical treatment, and 93 were for vacation.

III. Discussion

The first issue in this case is whether the PFD Division is entitled to summary adjudication, or whether Ms. S. is entitled to a hearing. The purpose of a hearing is to resolve disputed facts. When facts are in dispute, a hearing is necessary in order to question the witnesses and evaluate their credibility. When facts are not in dispute, but legal issues are, a hearing is generally not necessary. Legal issues can be adequately argued in writing, and they are resolved by reference to

the law and application of the law to the known facts. The Alaska Supreme Court has held that "there is no right to an evidentiary hearing in the absence of a factual dispute."

This case presents a purely legal issue. The division does not dispute any of the facts as Ms. S. has presented them, and it concedes that in a summary adjudication motion the facts should be considered in the light most favorable to Ms. S. I therefore accept as true all the facts that Ms. S. has alleged. In her formal hearing request, Ms. S. argues that "it is my contention that since 45 days of continuous medical treatment days are allowed, then I should be allowed to deduct those days from the 183 total." The division disagrees. This is a legal not factual dispute. It can be resolved by reference to the law; a hearing on the record will not help to resolve the matter. While I fully respect Ms. S.'s right to be heard, I agree with the division that devoting public resources to a hearing is not appropriate when it would not help to resolve the case. The division's motion should be granted.

The second issue is the underlying legal dispute. Ms. S. argues that she is entitled to 180 days of absence for any reason, including vacation, and that she should be allowed to deduct the time she was receiving continuous medical treatment from her vacation time, which would result in vacation time of less than 180 days. The division asserts that a person claiming any absence time during the qualifying year for continuous medical treatment cannot also claim a 180-day absence for vacation or other general reasons. The following law applies to this case:

Alaska Statute 43.23.008. Allowable absences.²

(a) ...an otherwise eligible individual who is absent from the state during the qualifying year remains eligible for a current year permanent fund dividend if the individual was absent

(5) receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician that treated the illness if the treatment or convalescence is not based on a need for climatic change;

* * * * *

(14) for any reason consistent with the individual's intent to remain a state resident, provided the absence or cumulative absences do not exceed

¹ *Church v. State of Alaska, Department of Revenue*, 973 P.2d 1125 (Alaska 1999), citing *Human Resources Co. v. Alaska*, 946 P.2d 441, 445 n.7 (Alaska 1997), *Douglas v. State*, 880 P.2d 113, 117 (Alaska 1994) and *Smith v. State*, 790 P.2d 1352, 1353 (Alaska 1990).

² This version of the statute was in effect in 2004. The statute was changed some for 2005 dividends, but the changes would not affect the outcome of this case.

- (A) 180 days in addition to any absence or cumulative absences claimed under (3) of this subsection if the individual is not claiming an absence under (1), (2), or (4) - (13) of this subsection;

* * # * *

- (C) 45 days in addition to any absence or cumulative absences claimed under (1) - (13) of this subsection if the individual is claiming an absence under (4) - (13) of this subsection.

It should first be noted that Ms. S. is incorrect that "45 days of continuous medical treatment days are allowed." In fact, under subparagraph (5), all of the days a person is absent for continuous medical treatment is allowable. A person who is absent all 365 days of the qualifying year for continuous medical treatment could still receive the next year's dividend. The issue in this case concerns the vacation time in addition to the medical time.

The case can be resolved by careful reading of AS 43.23.008(a)(14)(A). In (14)(A), 180 days of absence for any reason are allowed, but only if the applicant is not claiming an absence under (1), (2), or (4) - (14) of the subsection. A medical absence is allowed under (5) of the subsection. Thus, a person claiming a 180-day absence under (14)(A) cannot also claim a medical absence under (5), and a person claiming a medical absence under (5) cannot also claim a 180-day vacation absence under (14)(A). The applicant must choose between a medical absence and a 180-day vacation absence; they cannot be combined.

A 45-day vacation absence may be claimed under (14)(C) and added to a medical absence under (5) of any length of time. But because Ms. S. was on vacation for more than 45 days in addition to her medical time, this section does not apply. However one looks at the case, some part of Ms. S.'s absence in 2003 was not allowable.

This law creates a situation that many people find surprising and counterintuitive. A person may be absent for medical reasons for the entire qualifying year. A person may be absent for almost half the year on vacation. But a person who is absent 135 days for medical reasons and 46 days for vacation would not qualify for the next year's dividend. This is true even if the person remained an Alaska resident at all times, and the need for a medical absence arose from an unforeseen emergency. Under this law, a person who goes on vacation out of Alaska for more than 45 days early in the year takes a certain amount of risk; if a medical emergency later in the year results in a second absence of 135 days or more, the person will not qualify for the next year's dividend.

IV. Conclusion

Ms. S. was absent from Alaska for more than 180 days in 2003. She was absent on vacation for more than 45 days in addition to the time she was receiving continuous medical treatment. The division is correct that some part of Ms. S.'s cumulative absences in 2003 is not allowable, and that she therefore does not qualify for a 2004 dividend.

V. Order

IT IS HEREBY ORDERED that the Permanent Fund Dividend Division's Motion for Summary Adjudication be GRANTED, and that no further proceedings be scheduled in this matter.

IT IS FURTHER ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of C.S. for a 2004 permanent fund dividend be AFFIRMED.

DATED this 3rd day of October, 2005.

By: DALE WHITNEY
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010.1, Dale Whitney, Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order relating to the eligibility of C.S. 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 3rd day of September, 2005

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

PFD Division
10/3/05

By: DALE WHITNEY
Administrative Law Judge