

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

IN THE MATTER OF

J.B. and her children  
J. and J. S.

Case No. OAH 05-0355-PFD

2004 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

J.B. timely applied for 2004 permanent fund dividends for herself and her two children, J.S. and J.S. Permanent Fund Dividend Division determined that the applicants were not eligible, and it denied the applications initially and at the informal appeal level. Ms. B. requested a formal hearing by written correspondence.<sup>1</sup> The administrative law judge affirms the division's decision.

II. Facts

On their applications, Ms. B. indicated that she and both children had been absent from Alaska for more than 180 days during 2003, the qualifying year for a 2004 dividend. On all of the applications she indicated that she and her children had been out of Alaska from the beginning of the year until July 26, 2003, except for a return from an unknown date in April until an unknown date in May. On all of the applications, Ms. B. wrote the code letter "I" as the reason for the absence, which is the code letter for an absence for vacation. To the question, "why were you absent?" Ms. B. answered, "visiting." On her supplemental schedule, Ms. B. answered "no" to a question asking if she had maintained her principal home outside of Alaska, but she also filled in a bubble indicating that she had lived with her parents at an address in Lake Charles, Louisiana. On the children's applications Ms. B. wrote, "visiting grandmother" as the reason for their absences.

Ms. B. did not apply for a 2003 dividend, and the division sent her a form asking her to explain why she did not apply for a dividend in 2003. In answer to the first question on the form, Ms. B. explained, "in the year 2003 I had left AK to Calif, to visit early in that year and I couldn't make it back in time to file. Family & friends said it was too late. So, I didn't file." The

<sup>1</sup> Ms. B. checked boxes on the appeal form for both a telephonic hearing and a hearing by written correspondence only. In accordance with the instructions on the form, the hearing will be based only on written correspondence.

next question asked if Ms. B. had been absent from Alaska at any time from December 31, 2002 through December 31, 2003. Mr. B. first checked "yes," then crossed out that answer and checked "no." To the third question, which was to be answered only if the applicant answered yes to question 2, Ms. B. responded that she had been absent from Alaska from February 30, 2003, until approximately May 15, 2003, because she was visiting her boyfriend's family.

The division denied the applications because all of the applicants had been unallowably absent from Alaska during the qualifying year. After receiving the denial letters, Ms. B. stated that she did not know why she had indicated that the reason for her absence was vacation, but the real reason was that her son J. needed surgery for clubfeet. J. was seen at Alaska Native Medical Center on July 30, 2002, November 7, 2003, and May 24, 2004. Ms. B. has submitted records of visits to Shriner's Hospital for Children on May 28, 2002 and June 14, 2002. She has not submitted any records of J. receiving treatment out of state after June 2002. According to the records from May 28, 2002, J. was "diagnosed with clubfeet at birth. The patient was treated in Alaska with serial casting for a total of 6-8 weeks and subsequently with braces. The family moved to Louisiana and the patient was brought in today by his mother for evaluation and treatment." Under a section for "social history," the examining physician wrote, "the patient lives with his natural family, both parents, in Lake Charles, Louisiana."

### III. Discussion

In order to qualify for a permanent fund dividend, the applicant must either be physically present in Alaska all through the qualifying year, or only absent for specific allowable reasons listed in AS 43.23.008.<sup>2</sup> Absences for any reason consistent with continuing Alaska residency are allowable if they are less than 180 days total during the qualifying year.<sup>3</sup> An absence for a person receiving continuous medical treatment or convalescing as recommended by the treating physician is allowable.<sup>4</sup> An absence to accompany a minor receiving continuous medical treatment is also allowable.<sup>5</sup> If a person claims an absence for medical reasons, the person may only be absent for 45 days in addition to the days the person received medical treatment.<sup>6</sup> The 180-day absence may not

<sup>2</sup> AS 43.23.005(a)(6).

<sup>3</sup> AS 43.23.008(a)(14)(A).

<sup>4</sup> AS 43.23.008(a)(5).

<sup>5</sup> AS 43.23.008(a)(5).

<sup>6</sup> AS 43.23.008(a)(14)(C).

be combined with a medical absence. At a formal hearing, the person requesting the hearing has the burden of proving that the division's decision was in error.<sup>7</sup>

In her formal hearing request, Ms. B. writes,

Because we went to visit for a week and we got stuck and my son J. had casts on that needed to be removed within a week we ended up going to Shreveport Shriner's and they said that he needed surgery that the casting is not working then he needed a second one and that even made us stay longer after we left Louisiana we went back for more or another procedure.

J. may have received some medical treatment in Louisiana during 2003, but there is no evidence of it in the record except for Ms. B.'s statement. Ms. B. does not specify in which year J. was treated in Louisiana, and her statements do not indicate during which portions of the absences in 2003 that J. was receiving continuous medical treatment. Ms. B. does concede that she initially left the state "to visit" and that she then "got stuck." It is clear that at least a portion of the absence was not devoted to continuous medical treatment. Considering all the evidence available in the file, I find that Ms. B. has not proved that J. was receiving continuous medical treatment during all but forty-five days or less of the absence.

#### IV. Conclusion

Ms. B. has not proved that her absence, or the absences of the children, were allowable under AS 43.23.008. The division's decision to deny the applications should be affirmed.

#### V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of J.B., J.S., and J.S. 2004 permanent fund dividends be AFFIRMED.

DATED this 30th day of December, 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 J.B., J.S., and J.S. for a 2004 permanent fund dividend be adopted and entered in his 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 20th day of December, 2005.

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  
12/20/05