

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

IN THE MATTER OF)
)
C. C. &)
B. K.)
) Case No. OAH 05-0684-PFD
2005 Permanent Fund Dividend)

DECISION & ORDER

I. Introduction

C. C. timely applied for 2005 permanent fund dividends for himself and for his minor child B. K. The Permanent Fund Dividend Division determined that the applicants were not eligible, and it denied the applications initially and at the informal appeal level. Mr. C. requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on October 11, 2005. Mr. C. appeared by telephone. Susan Lutz represented the PFD Division by telephone. The administrative law judge affirms the division's decision.

II. Facts

During most of 2004, Mr. C. was working on finishing his master's degree in biology at Colorado State University. Mr. C. was enrolled as a part-time student receiving four credits at Colorado State from January 20, 2004, through August 23, 2004. He was enrolled for one credit from August 30, 2004, through December 17, 2004.

Mr. C. had completed the bulk of his coursework by the end of spring 2004 and had originally intended to graduate at that time. With more work to do before receiving his master's degree, he enrolled in the fall of 2004 for one credit and continued working on analyzing data, writing his thesis, and working as a volunteer research assistant. These are typical activities for graduate students in biology and many other sciences, who seldom actually finish a graduate degree within the official two-year schedule. Mr. C. received his master's degree in May 2005.

During summers Mr. C. has returned to Alaska and worked for the Alaska Department of Fish and Game. Mr. C. returned to Alaska after he graduated, and he intends to remain in the state and make his home here indefinitely.

III. Discussion

The following laws govern this case:

AS 43.23.005 Eligibility.

(a) an individual is eligible to receive one permanent fund dividend each year in an amount to be determined under AS 43.23.025 if the individual...(6) was at all times during the qualifying year physically present in the state or, if absent, was absent only as allowed by AS 43.23.008....

AS 43.23.008 Allowable absences.

(a) Subject to (b) and (c) of this section, 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 (1) receiving secondary or postsecondary education on a full-time basis....

15 AAC 23.163 Allowable absences.

* * * * *

(c) For purposes of (1) AS 43.23.008(a)(1), receiving secondary or postsecondary education on a full-time basis means...(B) enrollment and attendance in good standing, for the purpose of pursuing an associate, baccalaureate, or graduate degree, as a full-time student at a college, university, or junior or community college, accredited by the accreditation association for the region in which the college or university is located, or full-time participation in an internship program if the internship is required for graduation by the college or university; for the purposes of this subparagraph, an individual in the last academic year before graduation who was carrying enough credits to graduate, but fewer than full-time credits for any one term, semester, or quarter, is considered to have been a full-time student at that time....

In addition to these laws, AS 43.23.008(a)(14) allows an absence from the state for any reason for up to 180 days, or in the alternative, up to 120 days in addition to any time that is allowable for full-time education.

Mr. C.'s time out of state in 2004 can be easily categorized according to the above rules. Although he was a part-time student, some of Mr. C.'s time out of state was allowable in 2004 under the provision that "an individual in the last academic year before graduation who was carrying enough credits to graduate, but fewer than full-time credits for any one term, semester, or quarter, is considered to have been a full-time student at that time." However, this provision only applies to one "term, semester, or quarter." Mr. C. was part-time for two semesters in 2004, and only the fall term was in the last academic year before Mr. C. graduated. Because the time Mr. C. was part-time during the spring term in 2005 was not in the final academic year, it was not allowable.

The total time that Mr. C. was absent from Alaska in 2004, 289 days, exceeds 180 days. The total time that Mr. C. was absent in addition to the allowable final term was 173 days; this exceeds the allowable limit of 120 days in addition to allowable education time. The law is clear

that an applicant in Mr. C.'s situation would not qualify for a 2005 dividend. Mr. C.'s son B. was absent for more than 180 days in 2004, and his time was not allowable because he was not accompanying an eligible adult.

Mr. C. asserts that ineligibility for a dividend would cause hardship for his family, and he argues that his continuing status as an Alaska resident should be taken into account. Mr. C. is clearly sincere in his commitment to Alaska and his desire to bring back valuable skills for the benefit of this state. Dividend eligibility is based on several specific factors.¹ One of these is state residency, and there is no dispute that Mr. C. has maintained his Alaska residency at all times, even though he was out of the state for a prolonged period of time. Another separate eligibility criterion is physical presence in the state, or absence only for specified reasons. It does not suggest that he has done anything blameworthy or "wrong," but Mr. C. did not meet this particular eligibility requirement in 2004. The PFD program is not needs-based in nature, and there are no provisions of law that allow the division to consider the financial consequences of a decision on the applicant.

Mr. C. also expressed concern at the hearing that this decision will affect his eligibility for a 2006 dividend. The division has not disputed Mr. C.'s status as an Alaska resident, and nothing in this decision should affect his eligibility for any subsequent dividend years.

IV. Conclusion

Although the applicants remained Alaska residents, portions of Mr. C.'s absence in 2004 were not allowable, and B.'s absence was not allowable. The division was correctly applying the law when it made the decision to deny these applications for 2005 dividends.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of C. C. and B. K. for 2005 permanent fund dividends be AFFIRMED.

DATED this 31st day of March, 2006.

By: Signed _____
DALE WHITNEY
Administrative Law Judge

¹ AS 43.23.005(a).
OAH 05-0684-PFD

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.

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 of the date of this decision.

DATED this 26th day of April, 2006.

By: Signed Terry L. Thurbon for
DALE WHITNEY
Administrative Law Judge