

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

IN THE MATTER OF

E.W. and her children E. and T.

OAH 06-0335-PFD

2005 Permanent Fund Dividends

DECISION & ORDER

I. Introduction

E.W. timely applied for 2005 permanent fund dividends for herself and her children, E. and T. The Permanent Fund Dividend Division determined that Ms. W. and her children were not eligible, and it denied the applications initially and at the informal appeal level. Ms. W. requested a formal hearing by correspondence. Administrative Law Judge Mark T. Handley was assigned to Ms. W.'s appeal.

This case is Ms. W.'s appeal of the Division's denial of her 2005 PFD applications because the Division determined that she and her children were absent from Alaska for more than 180 days in 2004. Having reviewed the record in this case and after due deliberation, I conclude that Ms. W. and her children are disqualified from receiving 2005 PFDs.

II. Facts

It is undisputed that, during the qualifying year and the application period for a 2005 dividend, Ms. W. was absent from Alaska for several months for various personal reasons. In its position statement for the hearing, the Division asserted that Ms. W. and the children had been absent from Alaska for at least 181 days in 2004. Ms. W. had earlier provided airline boarding passes indicating that she and the children had left departed Anchorage, Alaska on a flight to Houston, Texas at 9:00 P.M. on June 22, 2004.¹ Ms. W. had also provided an airline itinerary indicating that she and the children had left departed Houston, Texas on a flight scheduled to leave at 5:28 P.M. on December 19, 2004, stop in Arizona, and arrive at Anchorage, Alaska at 12:41 A.M. on December 20, 2004.² In her request for the hearing, Ms. W. asserted that they

¹ Ex. 1, page 12.

² Ex. 1, page 11 & Ex. 8, page 3-5.

did not leave Alaska air space until June 23, 2004, and re-entered Alaska air space on December 19, 2004.³

In her request for a hearing, Ms. W. stated that the flight did not leave at the scheduled time on June 22, 2004, and asserted that it would take at least three hours for a flight from Anchorage to leave Alaska airspace.

Based on the evidence in the record, I conclude that it is more likely than not that Ms. W. and her children left Alaska on June 22, 2004 and did not return to Alaska until December 20, 2004.⁴

III. Discussion

In a PFD appeal, the person who filed the appeal, in this case Ms. W. has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.⁵ Ms. W. did not prove by a preponderance of the evidence that the Division's order denying her and her children's 2005 PFDs is incorrect.

The day that one leaves Alaska is not counted as a day of absence, but the day on which one returns to Alaska is counted as a day out of the state.⁶ Ms. W.'s absence exceed 180 days in 2004; the absences are disqualifying under AS 43.23.008(a)(14).

Ms. W. did not present persuasive evidence that it took three hours after her flight's scheduled departure for the jet to leave Alaska air space. Ms. W. simply asserted that: "[It] takes a good three hours to depart Alaska Airspace."⁷ Since the Anchorage airport runway is on the south coast of Alaska, and Alaska's jurisdiction ends three miles south of that coast, and south is the direction Ms. W. was heading, it is probable that Ms. W.'s flight left Alaska before midnight on June 22, 2004. Similarly, because her return flight was not scheduled to land until 12:41 A . M . on December 20, 2004, it is likely that she was more than three miles off the coast of Alaska at 12: 00 A . M on December 20, 2004. It is possible that Ms. W. did not leave Alaska until after June 22, 2004, or that she returned before December 20, 2004, but based on the record, it is more likely that she did neither. In order to show that it was more likely that she had, Ms. W. would have had to provide more reliable evidence, for example, better documentation of the take off and landing times and the flight path. Thus, Ms. W. failed to prove by a preponderance of the evidence that she and her children were absent less than 181 days in 2004.

³ Ex. 1, page 11 & Ex. 8, page 3.

⁴ Ex. 1, pages 1- 19 & Ex. 8, pages 3-5.

⁵ Alaska Regulation 15 A A C 05.030(h).

⁶ 15 A A C 23.163(j).

Eligibility for permanent fund dividends requires meeting several requirements. They are listed in AS 43.23.005(a). One of the requirements is that the applicant "was, at all times during the qualifying year, physically present in the state or, if absent, was absent only as allowed in AS 43.23.008." AS 43.23.008(a) lists a number of reasons a person can be absent from Alaska and still qualify for a dividend. The list includes reasons such as military service, education, serving in Congress, caring for a terminally ill family member, receiving continuous medical treatment, and a few other reasons. Reasons number (14) allows absences for any reason consistent with Alaska residency, so long as the cumulative absences total fewer than 180 days, or fewer than 120 days in addition to time in school, or fewer than 45 days in addition to absences for other listed reasons.

AS 43.23.008 allows absences for several reasons selected by the legislature. Many other good reasons an Alaska resident might want to leave the state temporarily are not listed. Every year, people leave Alaska for reasons like volunteering in other states and countries, performing church missions, taking advantage of unique business opportunities, high-level sports competitions like the Olympics, caring for sick or dying friends, or caring for the children of friends with health or other problems. All of these may be good reasons to leave Alaska, but under the law, if the total absences exceed 180 days in the qualifying year, the person will not be eligible for a dividend the next year, regardless of how laudable the reason for the absence.

Ms. W. and her children's absences fall into this latter category. Regardless of whether the absences were for good reasons, unless the absences fall within one of the fourteen categories listed in AS 43.23.008(a), Ms. W. would not be eligible for a dividend. No law gives the PFD Division, or the administrative law judge, the legal authority to grant PFDs to people who were absent for reasons, no matter how good, that are not specifically listed in the statute as allowable.

Ms. W. provided examples of her ties to Alaska as evidence of her continued Alaska residency.⁷ Under the law, however, she does not qualify for a dividend.

IV. Conclusion

While Ms. W.'s reasons for leaving Alaska in 2004 are entirely understandable, they do not fall within the category of absences that are allowable for the purpose of PFD eligibility. Ms. W. therefore does not qualify for a 2005 dividend.

⁷ Ex. 8, page 3.

⁸ AS 43.23.005(a)(6).

⁹ Ex. 1, pages 14-19 & Ex. 6.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of E.W. for herself and her children, E. and T., for 2005 permanent fund dividends, be AFFIRMED.

DATED this 3rd day of January, 2007.

By: MARK T. HANDLEY
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 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 after the date of this decision.

DATED this 1st day of February, 2007.

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
2/1/07