

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

IN THE MATTER OF:)
)
 K. G.)
) OAH No. 06-0392-PFD
 2005 Permanent Fund Dividend)

DECISION AND ORDER

I. Introduction

K. G. of Valdez timely applied for a 2005 permanent fund dividend (PFD). The Permanent Fund Dividend Division denied the application initially and at the informal appeal level on the basis of that she was absent from the state for the most of the qualifying year for a reason not allowable under the PFD program. Ms. G. requested a formal hearing by correspondence. After a review of the record, the division’s denial is affirmed because, although Ms. G. has maintained Alaska residency, her absence disqualifies her from the dividend for the year in question.

II. Facts

Ms. G. has been entirely candid about her situation from the outset, and there is no dispute about the facts relevant to this appeal.

Ms. G. is a lifelong Alaska resident.¹ She maintains many ties to the state. At all relevant times her plan has been to remain an Alaskan indefinitely.² She expects to practice rural primary care medicine here when she completes her medical degree.

In 2004, Ms. G. volunteered for the Peace Corps. Her period of service, which she spent in E. T., was from April 12, 2004 through May 12, 2006, when she was evacuated due to civil unrest.

The division denied Ms. G. a 2005 dividend on the basis that she was absent from Alaska in 2004, the qualifying year, for more than 180 days for a reason “not allowed under the PFD program.”³ Ms. G. filed an informal appeal, which was similarly denied.⁴ Ms. G. timely filed this formal appeal.⁵

By notice dated June 5, 2006, Ms. G. was given until July 5, 2006 to send any additional documents or correspondence for consideration in this formal appeal. The division was given the

¹ Exhibit 3, p. 2 (Request for Informal Appeal).
² Exhibit 5, p. 3 (Statement of K. G.).
³ Exhibit 2 (2005 Denial Letter).
⁴ Exhibit 4 (Informal Appeal Decision).
⁵ Exhibit 5 (Request for Formal Hearing).

same deadline. Both were given until July 17, 2006 to respond to any documents received from the other. The division filed a position statement; Ms. G. filed no additional materials.

III. Discussion

The qualifying year for the 2005 dividend was 2004.⁶ In order to qualify for a permanent fund dividend under the laws that were in effect at the time, the applicant must have been physically present in Alaska all through the qualifying year, or only have been absent for one of the 14 allowable reasons then listed in a statutory section entitled “Allowable Absences,” AS 43.23.008.⁷

One of the specifically allowable absences was an absence for any reason consistent with Alaska residency, but an absence for this open-ended reason cannot have exceeded 180 days.⁸ Since Ms. G. was absent for 263 days in 2004, this allowable absence did not apply to her. The other 13 allowable absences were for specific reasons such as military service, service in Congress, caring for a terminally ill family member, or receiving education. Service in the Peace Corps was not one of the listed reasons.

Ms. G. correctly points out that Peace Corps service is important work under a federal program. She argues eloquently that as a matter of good public policy it ought to be an allowable absence. However, the Department of Revenue is not able to decide her case based on these policy arguments. It is bound by the law as the legislature has written it for each dividend year.

Prior to 1999, former AS 43.23.095(8)(G) effectively made it possible for Peace Corps volunteers to continue to receive dividends. In the 1997-98 Legislature the statutory structure was revised somewhat—with an effective date of January 1, 1999—and the present section entitled “Allowable Absences” came into being. When first introduced in 1997, this legislation made Peace Corps service an allowable absence,⁹ and it passed the House later that session with the Peace Corps absence intact. In the Senate, the Peace Corps provision was dropped, then added back, then dropped again before passage. The House refused to concur in the Senate changes, and the matter went to a conference committee. The compromise bill that eventually emerged did not include the Peace Corps absence.¹⁰

⁶ AS 43.23.095(6).

⁷ See AS 43.23.005(a).

⁸ Former AS 43.23.008(a)(14)(A) [now renumbered as AS 43.23.008(a)(16)(A)].

⁹ HB 2, sec. 3 (1998). The bill, along with all of the subsequent developments as it made its way through the Legislature, can be viewed at <http://www.legis.state.ak.us/basis/>.

¹⁰ The following URL, pasted into a browser, should display the convoluted history of this provision:

http://www.legis.state.ak.us/basis/get_bill.asp?session=20&bill=hb2&submit=Display+Bill+Root

This history illustrates that the decision not to make Peace Corps service an allowable absence was a controversial one, but also one that the Legislature made quite deliberately. The omission was not an oversight, and the intent of the body was clear. With the Legislature having made this choice, the Department of Revenue was not free to treat Peace Corps service as an allowable absence.

In 2006, the Legislature revisited the question of a special provision for Peace Corps volunteers. CCS SB 104, recently signed into law by the Governor, added service in the Peace Corps and membership in the U.S. Olympic Team to the list of allowable absences.¹¹ The change was made “retroactive to January 1, 2006.”¹² This means that a Peace Corps-related absence in 2006 is covered by the new provision and is allowable. An absence in 2004 is still governed by the old law, however, and is not among the list of allowable absences that apply to that year.¹³

IV. Conclusion

Because Ms. G. was absent from the state throughout 2004 to serve in the Peace Corps, and Peace Corps service was not at that time an allowable reason for so long an absence, she is not eligible for a 2005 permanent fund dividend.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of K. G. for a 2005 permanent fund dividend is AFFIRMED.

DATED this 13th day of September, 2006.

By: Signed _____
Christopher Kennedy
Administrative Law Judge

¹¹ CSS SB 104, sec. 20 (2006). Senator Gene Therriault, representing Ms. G.’s district, was a co-sponsor of this bill.

¹² *Id.*, sec. 35.

¹³ The qualifying year for a 2006 dividend is 2005. Since she was absent for Peace Corps service in 2005 and that year is still governed by the old law, Ms. G. is probably ineligible for a 2006 dividend for exactly the same reason that she cannot receive a 2005 dividend. Looking farther into the future, however, her 4½ months of Peace Corps absence *in 2006* should be covered by the new law, clearing a potential obstacle to receiving a 2007 dividend. Also, because she remained an Alaska resident during her absence, it should not be necessary for Ms. G. to reestablish residency for 2007 and future dividends. Ms. G. should retain this decision and bring it to the attention of the PFD Division should she encounter difficulty with her 2007 application.

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 9th day of October 2006.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

[This document has been modified to conform to technical standards for publication.]