

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

In the Matter of	)	
	)	
M. E. H.,	)	
P. H., and	)	
T. H.	)	
	)	OAH No. 06-0407-PFD
<u>2005 Permanent Fund Dividend</u>	)	Agency No. 05606704_4

**DECISION & ORDER**

**I. Introduction**

M. E. and P. H. and their minor son T. timely applied for a 2005 permanent fund dividend (PFD). The Permanent Fund Dividend Division determined that they were ineligible because they were absent from the state for most of the qualifying year, and it denied the application initially and at the informal appeal level. The H.s requested a formal hearing, which took place on July 12, 2006.

The denial is upheld because the H.s, although they remained Alaska residents, spent too much time out of the state in 2004 to qualify for a 2005 dividend. Although a portion of their absence was for allowable reasons, they exceeded the time limits of the allowable absences that apply to them.

**II. Facts**

The facts of this case are not in dispute; only their legal significance is at issue. Except where otherwise indicated, the factual background given below is based on testimony at the formal hearing.

E. H. and his family moved to Alaska in 1993.<sup>1</sup> They are members of a missionary order, S. I., and since their arrival in the state they have worked at A. B. C., a S. affiliate.<sup>2</sup> P. H. is the librarian at the college.

On July 30, 2003, the H.s left Alaska and remained out of the state until August 10 of 2004. Hence they were away from the state for 223 days in 2004. The purpose of the trip was twofold. First, and most important, it was a requirement of their missionary organization that

---

<sup>1</sup> Exhibit 3, p. 7 (letter from C. D., Treasurer, S. I. A.).  
<sup>2</sup> *Id.*

they raise funds to support their work.<sup>3</sup> Second, Mrs. H. needed to upgrade her credentials to continue as the librarian at A. B. C. The fundraising trip offered an opportunity for her to pursue her Master of Library Science degree; she did so by studying at Kutztown University in Pennsylvania.

P. H. was enrolled at Kutztown as a part-time student during the spring semester of 2004, taking three credit hours.<sup>4</sup> She attended class for three hours on one night of each week.<sup>5</sup> In regular semesters, graduate students are considered full-time at Kutztown if they are carrying nine credit hours.<sup>6</sup>

From June 1 through July 22, 2004, Mrs. H. participated in two successive summer sessions, taking three credit hours in the first, shorter session and six in the second, longer one, a load that required 16 hours of class time per week. Although the school has not stated whether this is considered full-time enrollment, it is fair to say that it constitutes full-time study.

The 2004 courses were not the final stages of Mrs. H.'s degree. She took more courses in the summers of 2005 and 2006. By the time of this writing, she has likely completed her coursework.

While they were in the lower 48, the H.s retained their residence in No Name, Alaska, and preserved strong ties to the state. They did not accept in-state tuition in Pennsylvania<sup>7</sup> or take other actions inconsistent with continuing Alaska residency.

The division denied the H.s a dividend on the basis that they had exceeded the allowed number of days outside Alaska in the qualifying year,<sup>8</sup> and it held to that position through an informal appeal. This formal appeal followed.

### **III. Discussion**

The qualifying year for the 2005 dividend was 2004.<sup>9</sup> In order to qualify for a permanent fund dividend, 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

---

<sup>3</sup> The requirement and its importance to their trip are well explained in P. H.'s statement with her Request for Informal Appeal (Exhibit 3, p. 10).

<sup>4</sup> Exhibit 8, p. 1 (letter from Office of the Registrar).

<sup>5</sup> Exhibit 3, p. 11 (statement of P. H. with Request for Informal Appeal).

<sup>6</sup> *Id.*

<sup>7</sup> Exhibit 3, p. 15 (tuition bill).

<sup>8</sup> In T.'s case, the initial denial was for the reason that his only actual or potential sponsors (his parents) were not eligible; at the informal appeal level the division added his own extended absence as a second reason.

<sup>9</sup> AS 43.23.095(5).

statutory section entitled “Allowable Absences,” AS 43.23.008.<sup>10</sup> There are two of the allowable absences that potentially apply to the H.s.

One of the specifically allowable absences is an absence for any reason consistent with Alaska residency. Vacations, sabbaticals, work assignments, and the like fit under this absence. However, an absence for this open-ended reason cannot have exceeded 180 days under any circumstances.<sup>11</sup> Since the H.s were absent for 223 days, this allowable absence cannot, *by itself*, save their eligibility for the dividend. They need to qualify for a second type of allowable absence as well.

The second potentially applicable provision is an absence “receiving secondary or postsecondary education on a full-time basis.”<sup>12</sup> Mrs. H. received postsecondary education while out of state. This absence, if applicable, could then carry over to rescue the applications of her two accompanying family members, since a spouse or dependent “accompanying another eligible resident who is absent for a reason permitted” by the educational absence provision can likewise claim an allowable absence.<sup>13</sup>

The permissible educational absence certainly applied to Mrs. H.’s summer session from June 1 through July 22, 2004. It did not, however, apply to her during the spring semester, when she was attending school only one night a week and carried only one-third of the minimum full-time load at Kutztown.

Unfortunately, the educational allowable absence brings with it a limitation. A person who claims an educational absence *cannot* add onto it the full 180 days of the open-ended allowance discussed above. Instead, a person who claims the educational absence can have no more than 120 additional (non-educational) days of absence under the open-ended allowable absence.<sup>14</sup> Mrs. H. and, derivatively, her spouse and dependent, can claim 52 educational days of absence, but they are then left with 171 non-educational days, in excess of the limit.

Thus, regardless of how one works with the allowable absences during the 2004 qualifying year, there is not a legal way to grant the H.s a dividend for 2005.

The H.s make a number of policy arguments to the effect that their absence was similar in general character to various absences that are allowed, and hence that they fall within the spirit,

---

<sup>10</sup> AS 43.23.005(a)(6). The list of allowable absences in AS 43.23.008 was lengthened in 2006, but the changes do not apply to the 2005 dividend and, in any event, have no relationship to the facts of this case.

<sup>11</sup> Former AS 43.23.008(a)(14)(A) (now renumbered as AS 43.23.008(a)(16)(A)).

<sup>12</sup> AS 43.23.008(a)(1); *see also* 15 AAC 23.163(c)(1)(B).

<sup>13</sup> AS 43.23.008(a)(13).

<sup>14</sup> Former AS 43.23.008(a)(14)(B) (now renumbered as AS 43.23.008(a)(16)(B)).

if not the letter, of the PFD eligibility laws. These arguments cannot prevail. The requirements for PFD eligibility are, in some situations, quite exacting. When the rules as the Legislature has written for a given year exclude an individual from eligibility, the Department of Revenue has no discretion to pay the dividend, regardless of the worthiness of the individual, the seeming technicality of the exclusion, or even the individual's extensive Alaska connections outside the context of the exclusion. While this rigidity is sometimes frustrating, it is probably necessary for the fair and consistent administration of a program with so many beneficiaries.

#### **IV. Conclusion**

Because of their extended absences, the H.s are not eligible for the 2005 PFD. They remained Alaska residents, and nothing in this decision precludes them from eligibility for future PFDs.

#### **V. Order**

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of M. E. H., P. J. H., and T. W. H. for 2005 permanent fund dividends is AFFIRMED.

DATED this 18<sup>th</sup> day of September, 2006.

By: \_\_\_\_\_  
Christopher Kennedy  
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 16th 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.]