

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

IN THE MATTER OF

J. and D. H.

Case No. OAH 06-0859-PFD

2006 Permanent Fund Dividends

DECISION

I. Introduction

J. and D. H. timely applied for 2006 permanent fund dividends. The Permanent Fund Dividend Division determined that the H.'s were not eligible, and it denied the application initially and at the informal appeal level. The H.'s requested a formal hearing by written correspondence. Upon review of the entire record and due deliberation, the administrative law judge affirms the division's decision.

II. Facts

The facts in this case are not in dispute. The H.'s are Alaska residents and have been residents for many years. The H.'s submitted their applications and appeals with honesty and in good faith; there is no allegation or evidence of any kind of deceptive behavior in this case.

The H.'s were out of Alaska on two extended trips in 2005. Ms. H. has constructed a table showing the couple's absences in a letter accompanying her appeal, categorizing all absence time as devoted either to "vacation/business" or "doctoring." The table shows that Ms. H. was absent from Alaska from Alaska for 213 days in 2005, and that Mr. H. was absent for 208 days. For purposes of this discussion, it is presumed that Ms. H.'s accounting of the absences is correct, and that all of the time attributed to doctoring constitutes time spent receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician that treated the illness.

III. Discussion

In the letter accompanying her appeal, Ms. H. states:

Now from the way my family and I read and understand the law, it seems to indicate that a resident may be gone from the state of Alaska for 180 days and if more than 180 days, there are certain things that apply. In my case, ongoing periodontal treatment, consistent with the same doctor affords one an additional 45 days. I know from reading the statute that considering the above appointments endured for my periodontal disease qualifies me for the

¹ Exhibit 7, page 6.

exception. And further my husband J. who was accompanying me, also qualifies under number 13.²

The applicable portion of the relevant statute, AS 43.23.008, reads as follows:³

(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

* * * * *

(5) receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician that treated the illness if the treatment or convalescence is not based on a need for climatic change;

* * * * *

(13) accompanying another eligible resident who is absent for a reason permitted under (1), (2), (5) - (12), or (14) of this subsection as the spouse, minor dependent, or disabled dependent of the eligible resident;

(14) for any reason consistent with the individual's intent to remain a state resident, provided the absence or cumulative absences do not exceed

(A) 180 days... if the individual is not claiming an absence under (1), (2), or (4) - (13) of this subsection;

(B) 120 days in addition to any absence or cumulative absences claimed under (1) - (3) of this subsection if the individual is not claiming an absence under (4) - (13) of this subsection but is claiming an absence under (1) or (2) of this subsection; or

(C) 45 days in addition to any absence or cumulative absences claimed under (1) - (13) of this subsection if the individual is claiming an absence under (4) - (13) of this subsection.

The resolution of this case turns largely on the correct reading of the three subparagraphs, (A), (B) and (C), of subsection (14). Subparagraph (B) deals with time claimed in addition to time the applicant is a student ("an absence under (1) or (2) of this subsection"). Thus, for the most part,

² *Id.*

³ This quote shows the law as it existed for 2006, which is applicable to this case. The statute was changed somewhat in 2007. The deleted portion of subsection (14)(A) reads, "in addition to any absence or cumulative absences claimed under (3) of this subsection." Thus, if the H.'s had been absent for active duty service in the military instead of for continuous medical treatment, Ms. H.'s reading of the statute would be correct, and she would be entitled to 180 days in addition to her military time during the qualifying year.

subparagraph (B) is not relevant to this case. But the tiny last word of subparagraph (B) contains a key to this entire case. Because all three of the subparagraphs are conjoined by "or," an applicant may choose to claim absences under any one of the three subparagraphs, but they may not be combined. A person may not claim time under both subparagraph (A) and subparagraph (C). A choice must be made.

Subparagraph (A) allows an applicant to claim up to 180 days of absence for any reason, but only if "the individual is not claiming an absence under (1), (2), or (4) - (13) of this subsection." An absence for continuous medical treatment is an absence under (5) of the subsection. Thus, a person claiming an absence under (A) for general reasons may not also claim an absence under (5) for medical treatment. Except for members of the military, covered by subparagraph (3), the 180-day absence stands alone, and a person electing to claim a 180 absence may not also claim other lands of absences. The H.'s readily admit that their total absences exceed 180 days during 2005, and that they were not serving in the military. Thus, if they claim 180-day absences under (14)(A), their absences will not be allowable and they will not be eligible for 2006 dividends.

The next possible alternative is a medical absence under subparagraph (5) combined with an absence under subparagraph (14)(C), which allows an applicant "45 days in addition to any absence or cumulative absences claimed under (1) - (13) of this subsection." An absence for continuous medical treatment, or doctoring, is an absence claimed under subparagraph (5), which is within "(1) - (13) of this subsection." An absence to accompany someone absent for doctoring is a claim under (13), which of course is also within "(1) - (13) of this subsection."

In her table of absences, Ms. H. claims 45 days of doctoring in addition to 168 days of vacation/business. Mr. H. is shown claiming 40 days of accompanying Ms. H. during time she spent on doctoring. This may be where Ms. H. has misinterpreted the statute. The law allows 45 days for general reasons, such as business or vacation, in addition to any time spent doctoring. Thus, a person could be gone for any amount of time, up to 365 days, in the year for doctoring and the absence would be allowable. If a person were absent for, say, eight months for doctoring, the person could also claim 45 days for other reasons such as vacation. Because (A) and (C) cannot be combined, a person absent for eight months of doctoring could not also claim 180 days of vacation. Ms. H. was absent for 45 days of doctoring. She could claim an additional 45 days of business/vacation time, but no more.

The division has correctly interpreted the statute. The H.'s are not eligible for 2006 dividends because their absences in 2005 exceed 180 days total, and their absences in addition to

doctoring time exceed 45 days. This fact in no way affects the H.'s status as Alaska residents, and nothing in this decision is intended to affect their eligibility for 2007 and subsequent dividends.

Ms. H. understandably expresses a feeling that "I am being unduly challenged trying to make sense out of the law that your office has cited vis-a-vis my absences."⁴ If the laws are unduly complex and confusing, it should be remembered that the division did not choose them. Like all state statutes, AS 43.23.008 was adopted by the members of the state Senate and state House of Representatives by the elected members of those bodies. The division, along with the administrative law judge and all PFD applicants, must do its best to figure out what the laws mean and how to correctly apply them, confusing as they may be. The division may have failed to adequately explain to the H.'s how it reached its conclusion, but it does appear that the division has correctly interpreted and applied the law in this case.

IV. Conclusion

The division has correctly determined that the H.'s were both unallowably absent during 2005, the qualifying year for a 2006 dividend. The division's decision should be affirmed.

V. Order

Upon adoption of this decision as the final administrative determination in this matter, the decision of the Permanent Fund Dividend Division to deny the applications of J.H. and D.H. for 2006 permanent fund dividend shall be AFFIRMED.

DATED this 28th day of August, 2007.

By: DALE WHITNEY
Administrative Law Judge

⁴ Exhibit 7, page 5. Ms. H. complains that the division's website "does not even direct a searcher to that law." *Id.*; Exhibit 7, page 8. The division's web page may have been updated. As of the date of this decision, the home page (www.pfd.state.ak.us) contains a link entitled Program Links to "navigate through our site." The Program Links page contains a link entitled "Statutes and Regulations" that leads to a printable booklet of all PFD laws.

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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 25th day of September, 2007.

By: Dale Whitney
Administrative Law Judge

The undersigned certifies that this date an exact copy of the foregoing was provided to the following individuals:

PFD Division
9/25/07