

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

IN THE MATTER OF

P. and S. R.

Case No. OAH 07-0012-PFD

2007 Permanent Fund Dividend

DECISION

I. Introduction

P. and S. R. timely applied for a 2007 permanent fund dividends. The Permanent Fund Dividend Division determined that the R.'s were not eligible, and it denied the applications initially and at the informal appeal level. The R.'s requested a formal hearing. The PFD Division moved for summary adjudication. Administrative Law Judge Dale Whitney heard the motion on February 14, 2008. Mr. R. appeared by telephone. Susan Pollard represented the PFD Division by telephone. The administrative law judge grants the division's motion for summary adjudication. The R.'s are not eligible for 2007 dividends as a matter of law.

II. Facts

The facts in this case are not in dispute. The R.'s are currently Alaska residents and have been for 28 continuous years. They own property and an ongoing business in Alaska. In the 28 years they have lived in Alaska, the R.'s have not been out of the state for more than two weeks at a time. Late in 2005, the R.'s left Alaska for an extended vacation in their motorhome. They traveled around the Lower 48 and visited relatives, intending to return to Alaska around May 1, 2007.

The nature of the R.'s trip changed when doctors in Nashville diagnosed Mr. R. with cancer and recommended immediate surgery followed by chemotherapy and radiation treatment. Mr. R. was accepted for treatment in Pennsylvania and he began an aggressive treatment program. There is no dispute that after March 15, 2006, the trip was no longer a vacation, but an absence for cancer treatment. It was not until the middle of August, 2007, before Mr. R. was released for travel, and the R.'s returned home on August 24, 2007. During this time, Ms. R. flew home for a four-week period from May 26, 2006, through June 25, 2006. Otherwise she was accompanying Mr. R. the entire time.

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must have either been present in Alaska all through the qualifying year, or only absent for reasons listed in AS 43.23.008.¹ There are sixteen reasons listed that a person may be absent from Alaska and still qualify for a dividend the next year. Reason number (5) is an absence for someone who is "receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician who treated the illness if the treatment or convalescence is not based on a need for climatic change."² It is clear that the portion of Mr. R.'s absence after March 15, 2006, would be allowable under this provision. Reason number (13) includes an absence for a spouse who is accompanying someone absent under (5). Ms. R.'s absences after March 15, 2006, are allowable under this provision.

The difficult and somewhat counterintuitive part of this case is the first portion of the R's absence of 73 days for vacation. Vacationing is not necessarily an allowable absence, but it can fall within three kinds of allowable absence for any reason at all, so long as the absence is consistent with continuing state residency. These three absence types are listed together in the statute as reason number 16:

(16) 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 in addition to any absence or cumulative absences claimed under (3) of this subsection 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) - (15) 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) - (15) of this subsection if the individual is claiming an absence under (4) - (15) of this subsection.

It should be noted that these three choices are conjoined with the word "or" at the end of subparagraph (B). This means that an applicant may choose an absence under any one of these choices, but they may not be combined. Applicants must decide under which one of these three categories they will claim an absence.

¹ AS 43.23.005(a)(6).

² AS 43.23.008(a)(5).

Subparagraph (A) allows a person up to 180 days for any reason in addition to any days the person may have claimed for a military absence, so long as no other kind of absence is claimed. Since the R.'s were not in the military, this option allows them up to 180 days during the year for any reason, but not in combination with a medical absence under (5). Since Mr. R. was absent for 235 days and Ms. R. was absent for 203 days in the qualifying year, claiming absences under this option will not make them eligible for dividends the next year.

Subparagraph (B) allows the applicant up to 120 for any reason in addition to any time the person was absent for educational reasons under (1) or (2), so long as the person is not claiming any other kind of absence. Since the R.'s were not absent for educational reasons, this choice allows only 120 days, and is less favorable than choice (A).

Subparagraph (C) allows absences of up to 45 days in addition to any other claimed absences, including medical absences claimed under (5). Because the R.'s vacation time comes to 73 days in addition to the medical absence time, their vacation absence is not allowable under this provision either. However one looks at the case, some portion of the R.'s absence in 2006 is not allowable.

Although they did not intend to be absent from Alaska longer than the statute allows and were detained by unfortunate circumstances beyond their control, the R.'s run afoul of a provision of the PFD laws that many people find surprising and counterintuitive. Under the law, a person could be absent from the state on vacation for 180 days, and the entire absence would be allowable. A person could be absent from the state for 365 days for medical reasons, and the absence would be allowable. But a person who takes a 46-day vacation early in the year, and then suffers an unforeseen accident or illness requiring an absence of more than 135 days later in the same year would not be eligible. The total absence in that case would be 181 days, and 46 days in addition to the medical absence.

The R.'s "agree that based on the AK Statute AS 43.23.008(a)(16)(C) that we exceeded the maximum allowable days absent in addition to an allowable absence," but they argue that their case presents extenuating circumstances.³ There is no provision in the law, however, that allows the division or the administrative law judge to consider extenuating circumstances on a case-by-case basis. It is undisputed that the R.'s were unallowably absent in 2006; therefore they do not qualify for 2007 dividends.

³ Exhibit 6, page 3.
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Because this case does not concern the R.'s status as state residents, there is no need for them to go through the long process of reestablishing Alaska residency before they can qualify for subsequent dividends. Nothing in this decision is intended to affect the applicants' eligibility for 2008 and subsequent dividends.

IV. Conclusion

Because the R.'s were unallowably absent in 2006, the division was correctly applying the law when it denied their applications for 2007 dividends.

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 P. and S. R. 2007 permanent fund dividend shall be AFFIRMED.

DATED this 3rd day of March, 2008.

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

DATED this 2nd day of April, 2008.

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
4/2/08