

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

In the Matter of)	
)	
S. L. P.)	
)	OAH No. 07-0576-PFD
<u>2006 Permanent Fund Dividend</u>)	Agency No. 06122367_4

DECISION & ORDER

I. Introduction

S. L. P. made a timely on-line application for a 2006 permanent fund dividend (PFD), claiming secondary/postsecondary education as the basis for an extended absence from the state during the qualifying year. The Permanent Fund Dividend Division found him ineligible on the basis that the college he attended was not accredited or otherwise qualified to sustain an allowable absence on the basis of secondary/postsecondary education. At the informal appeal level, attention shifted to whether the out-of-state course of study would qualify as a different type of allowable absence—one covering vocational and professional education—but the division remained convinced that Mr. P. was not eligible. Mr. P. requested a formal hearing by correspondence.

The denial is upheld because Mr. P.’s extended absence does not qualify as an allowable absence under the statute listing allowable absences, as that statute has been interpreted by Department of Revenue regulations. The Department of Revenue is bound by its own regulations.

II. Facts

S. P. is an articulate young man who moved to Alaska as a child and later attended the University of Alaska.¹ On or before January 1, 2005, when he was 22 years old, he enrolled in O. B. C. and I. as a full-time student with graduation anticipated in May of 2007.² The college

¹ Exhibit 1, p. 1 (2006 Adult Web Application, showing birth in 1982 and residency beginning in 1991); Exhibit 8, p. 4 (statement with Request for Informal Appeal).

² Exhibit 3, page 1 (2006 Education Verification Form executed by Clifford Hearnon, Registrar, O. B. C. and I.). During the year 2006—which is not the relevant year for this dividend—the nature of Mr. P.’s program seems to have changed somewhat from 2005 in three ways: (1) his anticipated graduation was pushed back to 2008; (2) he attended college throughout the year rather than just in the traditional spring and fall semesters; and (3) the college classified his program as both “collegiate” and “professional development.” First exhibit to Formal Hearing by Correspondence statement of S. P., Nov. 3, 2007 (2007 Education Verification Form). The 2006 Education Verification Form, which has never been amended, is the only evidence from the school regarding the nature of Mr. P.’s program *in 2005*.

certified in 2006 that the nature of his educational program in 2005 was “collegiate” as opposed to vocational-technical or professional development.³

On May 27, 2005, while still 22, he began a summer job with B. B. C. in Fairbanks.⁴ He assisted with the church’s ministries as directed by the pastor. His work included door-to-door visitation and working on a widow’s house.⁵ The work he did was “in preparation for becoming a pastor some day.”⁶ The job lasted twelve weeks.⁷

Mr. P. then returned to O. B. C. and I., where he remained for the rest of 2005 and on through 2006. The parties to this appeal agree that O.B. C. and I.⁸ is not accredited by the accreditation association for the region in which it is located and is not eligible for the federal educational programs listed in 15 AAC 23.163(c)(1)(C).⁹

Mr. P. wants to be an Independent Baptist minister, and he is attending the college to further that goal.¹⁰ Mr. P. and the Alaska Commission on Postsecondary Education agree that there is no comparable program reasonably available within Alaska.¹¹ Students at O. B. C. and I. are not, however, eligible for loans from the Alaska Commission on Postsecondary Education.¹²

It does not seem to be disputed that Mr. P. remained legally an Alaska resident during his absence. There is no evidence that he accepted any benefits of Oklahoma residency while he was away.¹³

The division denied Mr. P. a dividend on the basis that he had not been on an allowable absence and had exceeded the allowed number of days outside Alaska in the qualifying year, and it held to that position through an informal appeal. This formal appeal followed. At Mr. P.’s request,¹⁴ it was limited to written correspondence.

By notice dated September 24, 2007, Mr. P. and the division were given until October 24, 2007 to send any additional documents or correspondence for consideration in this formal

³ *Id.*

⁴ Exhibit 10, p. 7 (letter from K. A., Financial Secretary, B. B. C., Aug. 29, 2007).

⁵ Second exhibit to Formal Hearing by Correspondence statement of S. P.I, Nov. 3, 2007 (letter from K. A. Financial Secretary, B. B. C., Nov. 2, 2007).

⁶ *Id.*

⁷ Exhibit 10, p. 7 (letter from K. A., Financial Secretary, B.B.C., Aug. 29, 2007).

⁸ Readers should not confuse O. B.C. and I with Oklahoma Baptist University (OBU), a much older institution located in Shawnee, Oklahoma. OBU is accredited. Also not to be confused is the “O. B. C.” that operated in Blackwell, Oklahoma just before OBU was founded.

⁹ Formal Hearing by Correspondence statement of S. P., Nov. 3, 2007, p. 1.

¹⁰ Exhibit 8, p. 4 (statement with Request for Informal Appeal).

¹¹ *Id.*; Exhibit 5, p. 1 (letter from Alaska Commission on Postsecondary Education).

¹² Exhibit 5, p. 1 (letter from Alaska Commission on Postsecondary Education).

¹³ *See* Exhibit 1, p. 3 (2006 Adult Web Application).

appeal. Both were given until November 3, 2007 to respond to any documents received from the other. The division filed a position statement and Mr. P. filed a response.

III. Discussion

In this appeal, Mr. P. has the burden of proving that the denial of his PFD was incorrect.¹⁵ Specifically, he needs to prove that he qualifies for one of the allowable absences he is claiming.

The qualifying year for the 2006 dividend was 2005.¹⁶ 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 16 allowable reasons listed in a statutory section entitled “Allowable Absences,” AS 43.23.008.¹⁷ There are three of the allowable absences that potentially apply to Mr. P.

One of the specifically allowable absences is an absence for any reason consistent with Alaska residency. Vacations and the like fit under this absence. However, an absence for this open-ended reason cannot have exceeded 180 days under any circumstances.¹⁸ Since Mr. P. was absent for 248 days, this allowable absence cannot, by itself, save his eligibility for the dividend. He would need to qualify for a second type of allowable absence as well.¹⁹

The second potentially applicable provision is the one Mr. P. claimed when he originally submitted his application: an absence “receiving secondary or postsecondary education on a full-time basis.”²⁰ The Department of Revenue has adopted a regulation, 15 AAC 23.163(c)(1), defining the phrase “receiving secondary or postsecondary education on a full-time basis.” With respect to postsecondary education, that definition requires that the institution either be “accredited by the accreditation association for the region in which the college or university is located”²¹ or eligible for certain federal programs such as Nellie Mae.²² Through the appeal

¹⁴ Exhibit 10, p. 1 (Request for Formal Hearing).

¹⁵ 15 AAC 05.030(h).

¹⁶ AS 43.23.095(5).

¹⁷ AS 43.23.005(a)(6).

¹⁸ AS 43.23.008(a)(16)(A).

¹⁹ The maximum length of the catchall absence is reduced somewhat if the applicant is claiming certain other kinds of absences in the same year. *See* AS 43.23.008(16).

²⁰ AS 43.23.008(a)(1).

²¹ 15 AAC 23.163(c)(1)(B).

²² 15 AAC 23.163(c)(1)(C). The criteria are recognition under Title IV of the Higher Education Act of 1965 or eligibility for loans from Nellie Mae or The Educational Resources Institute.

process, Mr. P. and the PFD Division have come to agreement that O. B. C. and I. does not meet either of these criteria.²³

The third potentially applicable provision is an absence “receiving vocational, professional, or other specific education on a full-time basis for which, as determined by the Alaska Commission on Postsecondary Education [ACPE], a comparable program is not reasonably available in the state.”²⁴ This provision, which has likewise been further elucidated by regulation, is the centerpiece of Mr. P.’s current argument on appeal.

The regulation defining this category of absences is binding on the Department of Revenue.²⁵ It divides the category it into two subclasses. One type of qualifying program is “vocational-technical training as part of a career education program,” but this type of training is only recognized if the ACPE grants loans to students in the program.²⁶ The ACPE does not grant loans to attend O. B. C. and I., and Mr. P. therefore concedes that the subclass “does not describe my circumstances.”²⁷

The second subclass is the one Mr. P. now relies on. It permits absences to attend “an academic institution, seminar, or other recognized classroom course or classroom program for continuing professional educational development.”²⁸ There is no question that Mr. P. is attending “an academic institution,” nor any that the program it offers meets the general statutory prerequisite that “a comparable program is not reasonably available in the state.”²⁹ The only question is whether it is “for continuing professional educational development.”

It is here that Mr. P.’s argument finally falters. Mr. P. declares that being a minister of the Gospel is, and has been, his “profession,” and that the program in Oklahoma is continuing

²³ Mr. P.’s appeal conveys a tone of outrage that his PFD has been denied, as though its denial were a deliberate act of persecution. In fact, however, Mr. P. claimed an allowable absence on his application on a basis—secondary/postsecondary education—that he now concedes does not apply to him. It should not surprise him that his PFD was denied when the basis on which he claimed it was inapplicable. While the forgiving nature of PFD appeals allows him to raise new arguments at this time, his outrage over the prior handling of his application is misplaced.

²⁴ AS 43.23.008(a)(2).

²⁵ Thus, even if alternative readings of AS 43.23.008(a)(3) might be plausible, the Department of Revenue must adhere to the reading it has adopted by regulation. As the Alaska Supreme Court held in *Trustees for Alaska v. Gorsuch*, 835 P.2d 1239, 1243 (Alaska 1992):

An agency is bound by the regulations it promulgates. See 2 Kenneth C. Davis, *Administrative Law Treatise* § 7:21 at 98 (2d Ed.1979). An agency has not acted in the manner required by law if its actions are not in compliance with its own regulations.

²⁶ 15 AAC 23.163(c)(2)(A)(i).

²⁷ Exhibit 8, p. 9 (letter from P. to W., Oct. 11, 2006).

²⁸ 15 AAC 23.163(c)(2)(B)(i). This second subclass also has a provision for health professionals, such as hospital residents, that is clearly inapplicable here. 15 AAC 23.163(c)(2)(B)(ii).

professional education. If Mr. P. were the pastor of a church in Fairbanks and had gone to O. B. C. and I. to improve his preaching, his missionary skills, or some other aspect of his calling, this would be a wholly compelling argument. But when Mr. P. went to Oklahoma, he did not have a profession.

First, according to the evidence he has seen fit to provide, he did not begin his job at Bible Baptist Church until five months *after* his educational course in Oklahoma began.³⁰ One cannot embark on a program of “continuing” professional education before one’s profession has begun.³¹

More fundamentally, a 22-year-old’s twelve-week summer job does not a profession make. As his employer has acknowledged, Mr. P. did his summer work “in preparation *for becoming* a pastor some day.”³² A college student in business who finds a summer internship in a marketing department does not thereby become a professional marketer, entitled to claim all future education as continuing professional development. A theater major who finds one job in summer stock is not ready to be called a professional actor. Mr. P.’s twelve weeks of doing “some duties in the office, . . . door-to-door visitation, visiting people at Pastor’s request, working on a widow’s house and many other things”³³ may have been excellent preparation for a profession, but it did not bring him to the point where his education could plausibly be characterized as “continuing professional educational development.” That is still in the future.

Because he spent 248 days outside Alaska in the qualifying year, and has not carried his burden of showing that his absence was allowable, there is not a legal way to grant Mr. P. a 2006 dividend.

IV. Conclusion

Because of his extended absence, Mr. P. is not eligible for the 2006 PFD. He apparently remained an Alaska resident, and nothing in this decision precludes him from eligibility for future PFDs upon return to Alaska.

²⁹ AS 43.23.008(a)(2).

³⁰ Exhibit 10, p. 7 (letter from K. A., Financial Secretary, B. B. C., Aug. 29, 2007).

³¹ Note that if one were to accept that Mr. P. began a “profession” on May 28, 2005 and that his subsequent fall semester at the college was “continuing” professional education, the length of his spring semester absence would disqualify him from a dividend. *See* AS 43.23.008(a)(16)(B).

³² Second exhibit to Formal Hearing by Correspondence statement of S. P., Nov. 3, 2007 (letter from K. A., Financial Secretary, B. B. C., Nov. 2, 2007) (*italics added*).

³³ *Id.*

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of S. L. P. for a 2006 permanent fund dividend is AFFIRMED.

DATED this 31st day of January, 2008.

By: Signed
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 11th day of March, 2008.

By: Signed
Signature
Jerry Burnett
Name
Director, Admin Services
Title

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