

progressed through Randolph-Macon at the normal rate, earning a B.A. in Environmental Studies in the spring of 2007 after two-and-a-half years at the college.⁵

This case focuses on how Mrs. H. progressed toward her degree in 2005. A normal full-time load at Randolph-Macon is 12 semester-hours. Because some courses she needed in order to continue progressing in the fall of 2005 were not offered in the spring 2005 semester at Randolph-Macon, on the recommendation of her advisor she took nine semester-hours of courses at Randolph-Macon from January to May of 2005 and nine semester-hours of courses at a nearby campus, Central Virginia Community College, from May to July of 2005.⁶ The net result was that she assembled 18 semester-hours of credit usable at Randolph-Macon prior to continuing at that college in the fall semester of 2005. It is undisputed that she then continued with a conventional full-time course load through graduation.

For the approximately 30 days between completing her courses at the community college in July and beginning the fall semester at Randolph-Macon, Mrs. H. returned to Alaska.⁷ She was absent from Alaska for the balance of the year. Mr. H. accompanied her throughout her absence.

It is not disputed that the H. remained legally Alaska residents during their absence. There is no evidence that they accepted any benefits of Virginia residency while away, and indeed Mrs. H. declined tuition assistance that would have been available to her had she declared Virginia residency.

III. Discussion

The qualifying year for the 2006 dividend was 2005.⁸ 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 43.23.008.⁹ There are three 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 and the like fit under this absence. However, an absence for this

⁵ *Id.*

⁶ *Id.*; Exhibit 17 (letter of Kim Sheldon, Director, Prime Time and Adult Programs).

⁷ The period of return appears to have been between 26 and 33 days; the evidence is slightly in conflict on this point.

⁸ AS 43.23.095(6).

⁹ AS 43.23.005(a)(6).

open-ended reason cannot have exceeded 180 days under any circumstances.¹⁰ Since the H. were absent for about 335 days, this allowable absence cannot, by itself, save their eligibility for the dividend. They must qualify for a second type of allowable absence as well.¹¹

The second applicable provision is absence “receiving secondary or postsecondary education on a full-time basis.”¹² The Division concedes that Mrs. H. was absent receiving postsecondary education on a full-time basis from August to December of 2005, but it contends that from January to July her education was not full-time. This is the central dispute in the present case.

This issue of whether Mrs. H. was a full-time student is a close one, because Mrs. H. was technically enrolled at Randolph-Macon for slightly less than a full-time load during the regular spring semester of 2005. A single-minded focus on that fact, however, would overlook two broader truths: that Mrs. H. continued to progress toward her degree as fast or faster than a full-time student would, and that she divided her course load between two institutions on advice of her Randolph-Macon advisor precisely because, if she did not do so, she could not continue to make timely progress. The 18 credits she amassed between January and July of 2005 exceeded the number an ordinary full-time undergraduate would accumulate in half a year. In light of all these circumstances, I conclude that she was “receiving secondary or postsecondary education on a full-time basis” throughout 2005, exclusive of vacations.

The third relevant provision is an absence “accompanying another eligible resident who is absent for a reason permitted (1), (2) [the educational absence quoted above], (5) – (12), or (16) of this subsection as the spouse . . . of the eligible resident.”¹³ This provision covers Mr. H. while he was accompanying his wife on her allowable educational absence. The Division conceded at the hearing that if Mrs. H. is eligible for a 2006 dividend, Mr. H. is eligible as well.

Although they returned to Alaska between semesters, both H.s were absent from the state for a little bit more than the time absolutely required for R. H. to attend college. This additional absence consisted of 16 days before the spring semester and 14 days after the end of the fall semester.¹⁴ It is covered by the open-ended provision, AS 43.23.008(a)(16), described at the beginning of this section. That provision permits a person using an educational absence to be out

¹⁰ AS 43.23.008(a)(16)(A).

¹¹ 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).

¹² AS 43.23.008(a)(1).

¹³ AS 43.23.008(a)(13).

of the state an additional 120 days “for any reason consistent with the individual’s intent to remain a state resident,” and permits an accompanying spouse to be out of the state an additional 45 days for any such reason. Neither H. exceeded these maximums.

IV. Conclusion

Because both Mr. and Mrs. H. were absent from Alaska for allowable reasons during the qualifying year and they met all other requirements for eligibility, they are entitled to receive 2006 PFDs.

V. Order

IT IS HEREBY ORDERED:

(1) that the decisions of the Permanent Fund Dividend Division to deny the applications of R. and M. H. for 2006 permanent fund dividends are REVERSED; and

(2) that the applications of R. and M. H. for 2006 permanent fund dividends be GRANTED.

DATED this 30th day of June, 2008.

By: Signed
James T. Stanley
Administrative Law Judge

¹⁴ See Exhibit 4, p. 1.

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 25th day of July, 2008.

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

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