

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

In the Matter of)
)
 B. M.)
)
 2007 Permanent Fund Dividend) OAH No. 08-0062-PFD
 Agency No. 2007-044-6181

DECISION AND ORDER

I. Introduction

B. M. timely applied for a 2007 permanent fund dividend (“PFD”). The Permanent Fund Dividend Division (“Division”) determined that he was ineligible, and denied his application initially and at the informal appeal level. Mr. M. appealed and requested a formal hearing, which was held on April 10, 2008. He appeared by telephone, as did the Division’s representative, Susan Pollard.

Based on the record as a whole and after due deliberation, the Division’s denial of Mr. M.’s 2007 PFD is affirmed because he was absent from Alaska for more than 180 days without an allowable absence in 2006, the qualifying year for the 2007 PFD.

II. Facts

The facts in this appeal are undisputed. In 2006, Mr. M. was a senior in high school. In an attempt to become more competitive and therefore earn a scholarship to play hockey in college, Mr. M. was outside Alaska during most of 2006 playing Junior Hockey. He spent the first part of the year in Bozeman, Montana, where he attended Bozeman Senior High School on a part-time basis, took college courses and played hockey. He was in Bozeman from January 1st through May 21st, a period of 141 days.¹ He returned to Anchorage and on June 2nd, Mr. M. graduated Summa Cum Laude from South Anchorage High School, where he ranked 15th in his graduating class.²

Mr. M. spent the summer of 2006 in Alaska. On August 19th, he went to British Columbia, Canada, where he played for the P. V., a Junior “A” Hockey team, and stayed, or “billeted,” with a local family while he was there. Mr. M. returned to Alaska on December 17th, apparently for the holiday break, then went back to Canada on December 25th, and was there through the end of 2006. His absences in the second half of the year totaled 126 days, so he was

¹ Mr. M. left Alaska on December 28, 2005. Exh. 1 at pg. 2.

² Exh. 1 at pg. 5.

absent from the State of Alaska for 267 total days in 2006. Mr. M. realized his goal of obtaining a scholarship and began his college career playing hockey for the University of Alaska at Fairbanks (UAF) 2007.

The Division denied Mr. M. a 2007 dividend on the basis that he had exceeded the allowed number of days outside Alaska in 2006, the qualifying year for the 2007 PFD. He filed an informal appeal, but the Division maintained its position that his 2006 absence was unallowable, so he filed this formal appeal.

III. Discussion

A PFD applicant must meet several eligibility requirements.³ One of the eligibility requirements is that a person must have been physically present in Alaska throughout the qualifying year, or only absent as allowed by AS 43.23.008.⁴ The qualifying year for the 2007 dividend was 2006.⁵

An otherwise eligible individual may be absent from Alaska “for any reason consistent with the individual’s intent to remain a state resident,” provided the cumulative absences “do not exceed 180 days”⁶ Absences in excess of 180 days during the qualifying year must be for a specifically allowable reason.⁷ Since Mr. M. was absent for 267 days total in 2006, he needs to qualify for an allowable absence.

Mr. M. has not met his burden of proving by a preponderance of the evidence⁸ that he was absent from Alaska for an allowable reason in 2006. His 2007 PFD application states that all three of his absences were for “[other] reasons, including business.”⁹ However, playing competitive level Junior Hockey is not an allowable absence for PFD purposes.

One of the specific named absences listed in AS 43.23.008 – the education absence – should be examined to determine if it applied to Mr. M.’s situation while he was in Montana attending school and playing hockey for the first part of 2006. The statute indicates that an otherwise eligible individual who is absent from Alaska during the qualifying year remains eligible if the individual is “receiving secondary or postsecondary education on a full-time

³ AS 43.23.005.

⁴ AS 43.23.005(a)(6).

⁵ AS 43.23.095(6).

⁶ AS 43.23.008(a)(16)(A).

⁷ *Id.*

⁸ *See* 15 AAC 05.030(h).

⁹ Exh. 1 at pg. 2.

basis.”¹⁰ A statute must be read in conjunction with the regulations that implement it. The regulation that defines the phrase “receiving secondary or postsecondary education on a full-time basis” reads:

(A) enrollment and attendance in good standing as a full-time student at an academic institution for any of the 7th - 12th grades consistent with (d) of this section;

(B) enrollment and attendance in good standing, for the purpose of pursuing an associate, baccalaureate, or graduate degree, as a full-time student at a college, university, or junior or community college, accredited by the accreditation association for the region in which the college or university is located, or full-time participation in an internship program if the internship is required for graduation by the college or university; for the purposes of this subparagraph, an individual in the last academic year before graduation who was carrying enough credits to graduate, but fewer than full-time credits for any one term, semester, or quarter, is considered to have been a full-time student at that time; or

(C) enrollment and attendance in good standing, for the purpose of pursuing an associate, baccalaureate, or graduate degree, as a full-time student at a Title IV institution recognized under 20 U.S.C. 1001-1155 (The Higher Education Act of 1965) and 34 C.F.R. Part 600 or at a con-accredited college or university if students attending the college or university may qualify as eligible to receive a student loan from Nellie Mae or a student loan from The Educational Resources Institute (TERI)^[11]

Mr. M. is not entitled to the education allowance for the period of time he was absent from Alaska from January 1, 2006, through May 21, 2006. While in Montana, he attended high school, but only on a part-time basis while he played hockey. He also took some college courses, but his primary purpose for being in Montana was to play hockey and gain experience in order to be able to compete for a hockey scholarship in college.

Even if he did qualify for the education allowance for his first absence from Alaska in 2006, Mr. M.’s second absence would defeat it. A person who would otherwise qualify for the education absence can have no more than 120 additional (non-educational) days of absence

¹⁰ AS 43.23.008(a)(1).

¹¹ 15 AAC 23.163(c)(1).

under the open-ended allowable education absence.¹² Here, Mr. M. was absent a total of 126 days at the end of 2006, from August 19th through December 17th and also from December 25th through December 31st. His absences at the end of the year would have defeated the educational allowance, if he had qualified for it. Thus, regardless of how his absences are analyzed, there is not a legal way to grant Mr. M. a dividend for 2007.

IV. Conclusion

Mr. M. was unallowably absent from Alaska a total of 267 days in 2006, the qualifying year for the 2007 PFD. He is thus not eligible for a 2007 PFD. This decision does not affect his status as a resident or his eligibility for 2008 and future dividends.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of B. M. for a 2007 permanent fund dividend is AFFIRMED.

DATED this 15th day of April, 2008.

By: Signed
Kay L. Howard
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 AS 25.27.210 and Alaska Rule of Appellate Procedure 601(a)(2) within 30 days after the date of this decision.

DATED this 12th day of May, 2008.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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

¹² AS 43.23.008(a)(16)(B).