

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

IN THE MATTER OF

S.H.

Case No. OAH 08-0113-PFD

2006 Permanent Fund Dividend

DECISION

I. Introduction

S.H. timely applied for a 2006 permanent fund dividend. The Permanent Fund Dividend Division determined that Ms. H. was not eligible, and it denied the application initially and at the informal appeal level. Ms. H. requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on April 28, 2008. Ms. appeared by telephone. PFD Specialist Kim Colby represented the PFD Division. A preponderance of the evidence shows that Ms. H. is not eligible for a 2006 dividend, and that the division was correctly applying the law when it made the decision to deny her application.

II. Facts

There is no dispute that Ms. H. is an Alaska resident and has been at all times. In December of 2004 Ms. H. left Alaska, returning to the state on February 25, 2005. Ms. H. left again March 14, 2005. Ms. H. left the state both times to provide support for her son and other members of her family, who were enduring a number of very difficult challenges during this period that need not be detailed in this decision, except to mention that these circumstances involved serious and compelling circumstances other than terminal or life-threatening illnesses or continuous medical treatment.

On June 17, 2005, Ms. H. had been about to return to Alaska when the nature of her absence took a dramatic turn. A tragic car accident on that date left Ms. H. severely injured. Ms. H.'s testimony and the voluminous medical records in the file show that it is difficult to overstate the seriousness of the injuries Ms. H. sustained. Ms. H. was receiving medical treatment from the date of the accident until she returned to Alaska on September 27, 2005. On October 26, 2005, she again left Alaska for treatment and was absent through the remainder of the year. The division does not dispute that all of Ms. H.'s absences from June 17 through the end of 2005 were for the purpose of receiving continuous medical treatment.

The total number of days that Ms. H. was absent from Alaska before the date of the accident was 150 days, and the number of days she was absent after the accident for continuous medical treatment was 189 days. Ms. H. was absent for a total of 339 days in 2005.

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 have only been 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 Ms. H.'s absence after June 17, 2005, would be allowable under this provision.

The difficult and somewhat counterintuitive part of this case comes in addressing the first portion of Ms. H.'s absence of 150 days while she was caring or providing family support for her son. An absence of this nature is not necessarily an allowable absence, but it can fall within three kinds of absence allowed for any reason at all, so long as the absence is consistent with continuing Alaska 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

¹ AS 43.23.005(a)(6).

² AS 43.23.008(a)(5).

choices, but the three kinds of absences may not be combined. Applicants must decide under which one of these three categories they will claim an absence.

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 Ms. H. was not in the military, this option allows her to claim up to 180 days during the year for any reason, but not in combination with a medical absence under (5). Since Ms. H. was absent for a total of 339 during the qualifying year, claiming an absence under this option will not make her eligible for a 2006 dividend.

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 Ms. H. was 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 time Ms. H. was absent before her accident comes to 150 days in addition to the medical absence time, her non-medical absence is not allowable under this provision either. However one looks at the case, some portion of Ms. H.'s absences in 2005 was is not allowable.

Although she did not intend to be absent from Alaska longer than the statute allows and was detained by unfortunate circumstances beyond her control, Ms. H. runs 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 trip early in the year for a vacation or other non-allowable reasons, 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.

Ms. H. correctly points out that she did not intend to be gone from Alaska for as long as she ultimately was, that the circumstances that detained her were beyond her control, that she remains an Alaska resident and has not done anything deceptive or improper, and that the reasons for her first absence were not mere vacationing, but rather an important matter of family obligation that most Alaskans would undertake in the same circumstances. All of these assertions appear to be true, and taken together they can easily be regarded as unusual and extenuating circumstances.

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, because of unfortunate circumstances beyond her control, Ms. H. was unallowably absent in 2005; therefore she does not qualify for a 2006 dividend.

Because this case does not concern Ms. H.'s status as a state resident, there is no need for her to go through the long process of reestablishing Alaska residency before she can qualify for subsequent dividends. Nothing in this decision is intended to affect Ms. H. eligibility for 2007 and subsequent dividends.

IV. Conclusion

Ms. H was unallowably absent from Alaska during a part of 2005, the qualifying year for 2006 permanent fund dividends. Because the division was correctly applying the law when it made the decision to deny Ms. H.'s application for a 2006 dividend, the decision is AFFIRMED.

DATED this 5th day of May, 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 3rd day of June, 2008.

By: Dale Whitney
Administrative Law Judge

The undersigned certifies that this is a true and correct copy of the original and that on this date an exact copy of the foregoing was provided to the following individuals:

PFD Division
6/3/08