

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

In the Matter of)	
)	
P. M. H.)	
)	
<u>2007 Permanent Fund Dividend</u>)	OAH No. 08-0124-PFD Agency No. 2007-022-2377

DECISION & ORDER

I. Introduction

P. H. is a young girl, turning seven years old this May, who was born in Alaska and now lives here full-time. In 2006, however, when she was in the lawful physical custody of her grandmother, C. H., she left the state for about half the year on visits to her mother in Washington.

When P.'s grandmother applied on her behalf for a 2007 Permanent Fund Dividend (PFD), the PFD Division had concerns about the nature of the custody arrangement. It denied P.'s application initially on the theory that C. H. could not form the required "intent to remain in Alaska indefinitely" on P.'s behalf. At the informal appeal level, it held to the denial both for that reason and for the reason that it deemed C. to be an ineligible sponsor for P.

C. H. requested a formal hearing. During the formal hearing process, the division dropped the prior theories for denying P.'s PFD, but calculated that she had been absent from Alaska too many days in 2006 to be eligible for a 2007 dividend. The Division therefore continued to contest the appeal.

A hearing took place on April 25, 2008. P. attended in person and was a model of good behavior. Based on the evidence taken at the hearing, the Division appears to be correct that P. spent too many days outside Alaska in 2006 to retain her eligibility, and the denial will be affirmed

This appeal has not been a useless exercise on P.'s behalf. Under the Division's earlier theories for denying this application, P. would have lost her Alaska residency and therefore would likely have been ineligible for a 2008 PFD.¹ The Division's formal concession on the residency issue clears the way for P. to receive this year's dividend.

¹ Since P.'s mother did not return to Alaska until about May of 2007, the Division would likely have maintained that P. started a new residency in Alaska at that time. Because one must be a state resident during the entire qualifying year, this analysis would have rendered her ineligible for the following year's dividend.

II. Facts

In light of the Division's concession of the residency and sponsorship issues,² the only issue in this appeal is the length of P.'s absences from Alaska during the 2006. All of P.'s absences were for the purpose of visiting her mother in Seattle.³

According to her grandmother's testimony, P. began 2006 in Seattle.⁴ On February 9, 2006, she flew to Alaska.⁵ On February 20, 2006, she returned to Seattle.⁶ On June 4, 2006, she flew to Alaska, arriving about noon.⁷ On July 11, 2006, she left Anchorage at 9:22 a.m. and flew to Seattle.⁸ On August 20, 2006, she left Seattle at 12:45 p.m., presumably reaching Anchorage the same afternoon.⁹ She remained in Alaska the rest of the year, attending kindergarten here.¹⁰

III. Discussion

The qualifying year for the 2007 dividend was 2006.¹¹ A PFD applicant must meet several eligibility requirements.¹² 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 Alaska Statute 43.23.008.¹³

Most of the allowable absences in AS 43.23.008 relate to specialized reasons to be out of state, such as serving in the military or serving in Congress. The only absence potentially applicable to P. is the catchall category in AS 43.23.008(a)(16)(A): a person may be allowably absent "for any reason consistent with the individual's intent to remain a state resident" up to a maximum of 180 days.¹⁴

² The concession regarding sponsorship is found at Exhibit 14, page 4. The concession regarding residency is implicit in that document, and was made explicit on the record at the hearing.

³ Testimony of C. H.

⁴ There is a document, Exhibit 2, that suggests P. left Alaska and traveled Outside on January 1, 2006, but the testimony indicates she was already in Seattle at the turn of the year.

⁵ Testimony of C. H.; Exhibit 2, page 1.

⁶ *Id.*

⁷ Testimony of C. H.; Exhibit 11.

⁸ This date is drawn from Exhibit 12, page 3, showing that P. flew with her Aunt P. L. R. on Alaska Airlines flight 190 at 9:22 a.m. on July 11. C. H. believes the travelers only checked in on the 11th and did not travel until the 12th, but the bottom of the printout shows this to be mistaken. July 12 was the day originally planned for Ms. R.'s travel (Ex. 12, pp. 4-5), but the departure was changed.

⁹ Exhibit 11.

¹⁰ Testimony of C. H..

¹¹ AS 43.23.095(6).

¹² AS 43.23.005(a).

¹³ AS 43.23.005(a)(6).

¹⁴ When claimed in combination with other allowable absences, the 180 days is often reduced. AS 43.23.008(a)(16)(B), (C).

A Department of Revenue regulation, 15 AAC 23.163(j), requires the department to “count whole days when determining the number of days an individual was absent from Alaska.” The regulation also provides that the department must “count the day an individual arrives or returns to Alaska as a day absent unless the individual previously left Alaska that same day.” The day the individual leaves Alaska does not count as a day absent.

The Department has no discretion in its application of 15 AAC 23.163(j). While this rigidity in application is sometimes frustrating, it does promote the consistent administration of a program with 600,000 beneficiaries.

The calculation of P.’s 2006 absences under this regulation is as follows:

<u>Departure Date</u>	<u>Return Date</u>	<u>Calculation</u>	<u>Days absent</u>
Before 1/1/06	2/9/06	31 + 9	40
2/20/06	6/4/06	8 + 31 + 30 + 31 + 4	104
7/11/06	8/20/06	20 + 20	40
Total			184 days

Because the total of 184 days exceeds the number allowable for P., she is not eligible for the 2007 dividend.

IV. Conclusion

Due to an overlength absence during the qualifying year, P. H. is not eligible for a 2007 PFD. She remained an Alaska resident in 2006, and nothing in this decision precludes her from eligibility for future PFDs. The H.s should retain a copy of this decision as a record of the matters discussed at the bottom of page 1 and in footnote 2 on page 2, for use in the event that eligibility for P.’s 2008 dividend is questioned.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of P. M. H. for 2007 permanent fund dividends is AFFIRMED.

DATED this 28th day of April, 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 27th day of May, 2008.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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