

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

IN THE MATTER OF)
)
R. K. and her children)
K. & L. K.)
) Case No. OAH 08-0427-PFD
2007 Permanent Fund Dividend)

DECISION

I. Introduction

R. K. timely applied for 2007 permanent fund dividends for herself and her children K. and L. The Permanent Fund Dividend Division (“the division”) determined that Ms. K. and her children were not eligible, and it denied the applications initially and at the informal appeal level. Ms. K. requested a formal hearing by written correspondence only. Review of the record and consideration of the applicable laws show that the division’s decision to deny the applications was correct.

II. Facts

The facts are not in dispute. The division asserts that Ms. K. and the children were absent from Alaska for 184 days during 2006, the qualifying year for 2007 dividends. The division does not dispute any of the facts that Ms. K. asserts in a letter explaining her absence:

We (R., K. & L.) took a vacation to the Philippines in January 2006. Before making a reservation to come back to Alaska, I got a phone call from my husband telling me to stay a little longer because he got a mail from the visa center in New Hampshire that they approved the petition. Documents were needed for my father to get his visa. I’ve been waiting this for a long time and finally came while in the Phils. I helped him to go to the U.S. Embassy. Instead of us going back to Alaska we stayed there and waited until my father is done with his paperwork and visa. He needed help because he is in his old age. We are one income family that can’t afford to spend money to go back and forth. We haven’t been away from our Chugiak home for more than a month and this is the only time – a long time. We usually go on vacation together as a family. It was just an avoidable circumstance that we stayed there longer.

While there in the Phils, we made reservation in May thinking that we are done with our paperwork. However, the U.S. embassy made a mistake they forgot to get my father’s passport and so we waited longer. We were planning to leave in June however we haven’t heard from the U. S. embassy at that time. And so we cancelled the reservation. After we knew we were done with everything the flights were full. No available seats until Sept. The airline employees told us if there is vacant seat(s) and they will let us know. Time came and there were seats available. However, they knew how to make you pay more. The tickets is only limited for 6 months after that you get new ones and pay for the extension fee. That’s what we did pay for the extension fee and because I don’t want to wait ‘til Sept and so we

paid extra more. And that's why we are looking forward for the Permanent Fund so that it can help us for the unnecessary unavoidable expenses we made.

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must have been "at all times during the qualifying year, physically present in the state or, if absent, . . . absent only as allowed in AS 43.23.008." While there is a list of reasons in AS 43.23.008 that a person may be absent from the state and still qualify for a dividend, there is no provision in the law that allows the division to consider unusual or extenuating circumstances surrounding a person's absence. The law does not allow the division to consider whether the absence was for good reasons or bad reasons, or whether it was for reasons that might have been beyond the person's control. The law only allows the division to consider whether the absence was for one of the reasons listed in AS 43.23.008.

The division has considered whether the absences in this case might fit within one of the allowable reasons listed in AS 43.23.008. One allowable absence is an absence for any reason that is less than 180 days. The absences in this case exceed that amount by four days. There is an absence exception for care of a terminally ill parent, but while Ms. K.'s father is elderly, there is no evidence that he is in ill health; as the division points out, he was preparing to travel. Other allowable absence reasons, such as military service, congressional service, service in the Peace Corps, or training as an Olympic athlete do not apply to this case.

IV. Conclusion

Although they have remained Alaska residents and were absent for understandable reasons, the applicants were absent from Alaska during the qualifying year for reasons that are not specifically allowed by AS 43.23.008. The division was correctly applying the law when it made the decision to deny these dividend applications. The division's decision to deny the applications of R. K., K. K. and L. K. for 2007 permanent fund dividends is AFFIRMED.

DATED this 25th day of November, 2008.

By: Signed
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 30th day of December, 2008.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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