

out of Juneau.⁵ Her son remained in Juneau, living with his father, Ms. G.'s ex-husband, with whom Ms. G. had reconciled and shared a residence.⁶

Ms. G. took a seasonal position in California as a fisheries technician, still with the P.S.M.C., beginning May 8, 2006, and she worked in California through the summer until August 9, when she returned to Juneau.⁷ During that time, she shared responsibility with her sister for caring for their grandmother, whose condition continued to deteriorate. While Ms. G. was in Juneau, her grandmother was briefly hospitalized before she passed away on August 13, 2006.⁸ On August 15, 2006, Ms. G. returned to California where she resumed work on August 17.⁹

In October, 2006, Ms. G.'s father had a severe stroke and passed away. Ms. G.'s grandmother had left a substantial estate, and after she returned to California in mid-August, Ms. G. provided substantial assistance in settling her grandmother's affairs. After her father died in October, Ms. G. also provided substantial assistance in settling his affairs. Ms. G. returned to Juneau from November 17-25, 2006, and terminated her employment with the commission on January 19, 2007.¹⁰ Ms. G. continued to assist her sister in settling their father's and grandmother's affairs throughout this time. On January 31, 2007, she filed an online application for the 2007 Alaska Permanent Fund dividend.¹¹

III. Discussion

AS 43.23.005(a) establishes certain statutory requirements for eligibility for a permanent fund dividend. In addition to Alaska residency, required by AS 43.23.005(a)(2) and (3), AS 43.23.005(a)(6) requires that the individual was absent from the state during the qualifying year for no more than the period allowed by AS 43.23.008(a). The division does not dispute that Ms.

⁵ Exhibit 9, page 1; Exhibit 10.

⁶ Exhibit 5, page 4; Exhibit 8, page 10; Testimony of C. G.

⁷ Exhibit 8, page 13; Exhibit 9, page 2.

⁸ Exhibit 6, page 26; Exhibit 10.

⁹ Exhibit 8, page 13; Exhibit 9, page 2; Exhibit 10.

¹⁰ Exhibit 8, pages 3, 16; Exhibit 9, page 2.

¹¹ Exhibit 1, page 1.

G. is an Alaska resident. However, the division argues that she was absent from Alaska during 2006 for more than the time allowed by AS 43.23.008(a).¹²

Ms. G. and the division agree, and the evidence reflects, that she was absent from Alaska for 242 days in 2006.¹³ AS 43.23.008(a) provides that Ms. G. may claim an allowance for an absence of up to 45 days in addition to the time allowed when she was absent while either (1) providing care for a terminally ill family member,¹⁴ or (2) settling the estate of her deceased father.¹⁵

Ms. G.'s absences in 2006 are divided into four periods, for purposes of Permanent Fund dividend eligibility. First, during her initial absence of ten days in February, Ms. G. was relocating her mother from Louisiana to California. Her mother had suffered a severe stroke and was incapacitated, but there is no evidence that the stroke left her terminally ill. Therefore, this was not an allowable absence under AS 43.23.008(a)(7). Second, while absent from Alaska April 29 through August 9, 2006, the preponderance of the evidence is that Ms. G. was providing care for her terminally ill grandmother. This was an allowable absence under AS 43.23.008(a)(7). Third, after her grandmother had passed away, from August 15, 2006, through the date of her father's death in October, Ms. G. was absent from Alaska while providing care for her incapacitated mother, who, as in February, was not terminally ill. She also provided assistance in settling her grandmother's affairs during this time. This period was not an allowable absence under either AS 43.23.008(a)(7) or (8). Fourth, from the date her father passed away in October, 2006, until the end of the year, Ms. G. was absent from Alaska while assisting her sister in settling the estate of her deceased father. This was an allowable absence, under AS 43.23.008(a)(8).

Thus, Ms. G. was unallowably absent for two periods: ten days in February, and from August 15, 2006, until the date of her father's death in October. The precise date of Ms. G.'s

¹² In its informal conference decision, the division identified multiple grounds for denial of the dividend. *See* Exhibit 4, page 1. However, by the time the position statement was filed Ms. G.-S. had amended her tax return to eliminate the claimed deduction for moving expenses, and the division no longer asserted that she was disqualified under 15 AAC 23.143(d)(1). *See* Exhibit 5, pages 5-13. At the hearing the division abandoned the alternative grounds for denial, and relied solely on the argument that Ms. G. was absent during the qualifying year for more than 180 days for reasons not allowed by law. *See also* Position Statement at 3.

¹³ *See* Exhibit 9. In addition to the 232 days identified on the exhibit, the parties agree that Ms. G. was absent for ten days in February, to assist in relocating her mother to California. *See* Exhibit 10.

¹⁴ AS 43.23.008(a)(7).

¹⁵ AS 43.23.008(a)(8).

father's death is not established in the record. However, Ms. G. testified that it was approximately six weeks (42 days) after the date her grandmother died, and Ms. G. was absent from Alaska for all but three days of those six weeks, or approximately 39 days. Thus, Ms. G. was absent for a total of approximately 49 days in addition to the time allowed by AS 43.23.008(a)(7) and (8). For approximately 39 days of that period, from August 15 through the date of her father's death, Ms. G. was assisting with the settlement of her grandmother's estate, but AS 43.23.008(a)(8) allows absence only for settling a parent's estate, and no other ground for absence during that time or during her ten day February absence has been identified.

IV. Conclusion

Ms. G. has not shown by a preponderance of the evidence that she was absent from Alaska during 2006 for no more than 45 days in addition to the period allowed under AS 43.23.008(a)(7) and (8). The division's decision is therefore AFFIRMED.

DATED April 6, 2009.

Signed _____

Andrew M. Hemenway
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 6th day of May, 2009.

By: *Signed* _____
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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