

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

IN THE MATTER OF)
)
 L. & P. K.)
) Case No. OAH 09-0067-PFD
)
2007 Permanent Fund Dividend)

DECISION

I. Introduction

L. and P. K. timely applied for 2007 permanent fund dividends. The Permanent Fund Dividend Division (“the division”) determined that the K.s were not eligible, and it denied the application initially and at the informal appeal level. At Mr. and Mrs. K.’s request, a formal hearing was held on March 12, 2009. Mr. and Mrs. K. appeared by telephone. PFD Specialist Peter Scott represented the PFD Division by telephone. The division’s decision is affirmed.

II. Facts

Mr. and Mrs. K. are in their 80s and 70s, respectively, and they have remarkably strong ties to Alaska that go back to 1947. Mr. K. has provided evidence of active involvement in the development of the state’s history, including a voice in the establishment of the permanent fund itself. The K.s own a substantial home in No Name City, and are established members of the community on the Kenai Peninsula.

In 2002 Mr. K. underwent extensive heart surgery. As the specialists required for this procedure were not available in Alaska, Mr. K. went to California. He was advised that even after the lengthy procedures, there would be a very long period during which frequent follow up visits to the hospital would be necessary. With this in mind, the K.s purchased a mobile home and placed it on a lot in Thousand Palms, a town about eight miles from the office of Mr. K.’s cardiologist and twelve miles from the hospital. While the K.s are in Alaska, the mobile home remains vacant, and while they are in California or elsewhere their Alaska house is vacant, under the watchful eye of a trusted neighbor.

The K.s were absent from Alaska for a significant amount of time in 2006, the qualifying year for 2007 dividends. Based on information they have submitted, the division asserts that the K.s were absent from Alaska for 185 days in 2006. Mr. K. testified that he and Mrs. K. were present in Alaska for 182 days; as there were 365 days in 2006, they would therefore have been absent from Alaska for 183 days.

During 2006, Mr. K. made five visits to his cardiologist. Each of these appears to be an important and necessary checkup that took place on single-day visits. The dates of these visits are as follows:

January 26, 2006
February 23, 2006
March 2, 2006
April 1, 2006
November 28, 2006

During the summer and fall of 2006 Mr. K.'s cardiologist had wanted Mr. K. to return to California to undergo more regular checkups. Mr. K. declined to do so because he had strong opinions regarding the 2006 statewide election in Alaska, and he spent that period actively campaigning for a candidate.

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must have been physically present in Alaska all through the qualifying year, or only absent for one of the reasons listed in AS 43.23.008. That statute lists a number of reasons that a person may be absent from the state and still receive a dividend. Most of the absence reasons, such as military service, congressional service, or Olympic competition, do not apply to this case. Absences are allowed for people "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." Absences are also allowed for up to 180 days for any reason at all, so long as the absence is consistent with continuing Alaska residency. This absence, however, may not be combined with any other kind of absence except an absence for military service; it may not be combined with an absence for continuous medical treatment. An absence of up to 45 days for any reason, consistent with Alaska residency, may be combined with any amount of time for continuous medical treatment or convalescing. Absences are also allowed for a person accompanying a spouse who is absent for medical reasons.

Mr. K. argues that he is eligible for a 2007 dividend because he was physically present in Alaska for more than 180 days during 2006, the qualifying year. Mr. K. overlooks that the test, under the statute, is whether the applicant was *absent* from Alaska for more than 180 days, not whether the applicant was within the state for more than 180 days. There is some dispute as to whether the K.s were absent from Alaska for 182 days or for 185 days, but either way, this period of absence exceeds the allowable 180 days for general reasons.

Determining whether Mr. K.'s absences were for continuous medical treatment is a more difficult task. It is clear that before 2006 Mr. K. underwent lengthy periods of surgery, with attendant pre-operative and post-operative care, as well as periods of convalescence that would be allowable. However, during 2006 Mr. K.'s visits to the hospital or to his cardiologist were in the nature of scheduled appointments that did not last more than one day. These appointments were not in the nature of a general physical checkup or exam that a person might undergo on an annual basis, but rather were an important part of ongoing monitoring pursuant to Mr. K.'s earlier surgery.

Mr. K. testified that because of the need to attend the appointments on an approximately monthly basis, traveling back and forth between California and Alaska in between most of the appointments was not economically feasible. For this reason, Mr. K. argues that the entire period of both absences should be regarded as allowable time for continuous medical treatment.

There is a logical appeal to Mr. K.'s argument. His decision to spend lengthy periods of time in California rather than to travel to California once a month for a necessary appointment is by no means unreasonable under his circumstances. However, in order to be allowable under AS 43.23.008, the applicant must have been receiving "continuous medical treatment" or convalescing. While Mr. K. might have been continually absent for the principal purpose of receiving medical treatment once a month, he was only receiving treatment on the days of his appointments, not continually throughout the absence periods. And while Mr. K. continues to require regular post-operative monitoring by his cardiologist, it does not appear that during the qualifying year he would have been properly regarded as in a period of convalescence.

In the end, the K.s' case must be decided not by a broad measure of Mr. K.'s extraordinary ties to Alaska, and indeed his participation in the history of the state, or by a weighing of the K.s' love for Alaska, their intent to return to Alaska when they are absent, or their desire to continue participating in the affairs of the state. Ultimately, it comes down to a mere counting of days on a calendar, and a routine and dispassionate application of rules to the reasons the applicants happened to be absent for certain numbers of days during the qualifying year. While it may seem an inappropriately clinical manner of weighing the application of someone who has been a part of Alaska since 1947, the rules do serve the necessary purpose of providing the division with a method for uniformly and objectively processing the applications of over a half of a million people each year, all of whom have a history of some kind in the state.

IV. Conclusion

Mr. and Mrs. K. were absent from Alaska for more than 180 days during the qualifying year. Except for five days when he was attending appointments, Mr. K. was not receiving continuous medical treatment during the absences. The K.s' absences during the qualifying year do not fall within any other category of allowable absence under AS 43.23.008.

The division's decision to deny the applications of L. and P. K. for 2007 permanent fund dividends is AFFIRMED.

DATED this 29th day of July, 2009.

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 3rd day of September, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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