

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

IN THE MATTER OF)
)
 L. D.)
) Case No. OAH 09-0086-PFD
)
2008 Permanent Fund Dividend)

DECISION

I. Introduction

L. D. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Ms. D. was not eligible, and it denied the application initially and at the informal appeal level. Ms. D. requested a formal hearing by written correspondence only. The division filed a position statement in response to Ms. D.’s appeal, and Ms. D. submitted a written response.

Ms. D. is not eligible for a 2008 dividend because she did meet the requirement of having been physically present in Alaska through the entire qualifying year or only absent as allowed by AS 43.23.008.

II. Facts

At the beginning of 2007, Ms. D. was a student at the University of Oregon, home in Alaska for the holidays. On January 7, Ms. D. returned to Oregon for winter quarter, taking fifteen credits. The University of Oregon is on a quarterly calendar. It considers twelve credits or more to be full-time attendance, and anything less to be part-time. Ms. D. completed winter quarter, was out of Alaska for nine days over spring break (March 24 to April 1), and then she began attending classes for spring quarter. Ms. D. started spring quarter taking thirteen credits, but on May 5, 2007, she withdrew from a two-credit class.¹ Spring quarter ended June 16. Ms. D. remained in Oregon until August 9, when she returned to Alaska for nine days. On August 18, 2007, Ms. D. went back to Oregon. Fall quarter began on September 24, and Ms. D. went back to school taking six credits. Fall quarter ended December 7, and on December 14, Ms. D. returned to Alaska. She stayed until December 29, and then went back to Oregon and spent the last two days of the year there. Ms. D. took four credits in winter quarter 2008 and four credits in spring quarter of 2008, and then graduated.

¹ It appears that Ms. D. also effectively withdrew from a one-credit class she was taking on a passed/not passed basis, but instead of listing this as a withdrawal the university simply listed it on her transcript as not passed, with no grade.

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must have either been physically present in Alaska all through the qualifying year, or only absent for a reason listed in AS 43.23.008. Two absence reasons apply to this case: an absence for a person “receiving secondary education on a full-time basis,” and an absence “for any reason consistent with the individual’s intent to remain a state resident, provided the absence or cumulative absences do not exceed...120 days in addition to any absence or cumulative absences claimed under (1) – (3) of this section,” i.e. in addition to time the applicant is receiving postsecondary education on a full-time basis.

The issue in this case is how to characterize the days during spring quarter after Ms. D. dropped the class on May 5. The division agrees that Ms. D. was receiving postsecondary education on full-time basis up to that day, but it asserts that she was not receiving education on a full-time basis for the balance of the quarter. If the division is correct, the time that Ms. D. was absent from Alaska during 2007 but not receiving postsecondary education on a full-time basis would be more than 120 days, and Ms. D. would not qualify. Ms. D. argues that she was receiving postsecondary education on a full-time basis for the entire quarter, even after she dropped the two-credit class on May 5. If Ms. D. is correct, then she was arguably not absent more than 120 days in addition to the time she was receiving postsecondary education on a full-time basis (there is also a question about whether Ms. D.’s attendance during fall quarter can be considered education on a full-time basis).

“Receiving secondary or postsecondary education on a full-time basis” is defined in 15 AAC 23.163(c)(1). Three definitions are provided; the first, for high school students does not apply to this case, nor does the third, which applies to students attending non-accredited schools. The second definition reads as follows:

For purposes of (1) AS 43.23.008(a)(1), receiving secondary or postsecondary education on a full-time basis means...(B) enrollment and attendance in good standing, for the purpose of pursuing an associate, baccalaureate, or graduate degree, as a full-time student at a college, university, or junior or community college, accredited by an accrediting agency that the United States Secretary of Education recognizes under 34 C.F.R. Part 602, or full-time participation in an internship program if the internship is required for graduation by the college or university; for the purposes of this subparagraph, an individual in the last academic year before graduation who was carrying enough credits to graduate, but fewer than full-time credits for any one term, semester, or quarter, is considered to have been a full-time student at that time.

The division takes the position that before she dropped the class spring quarter, Ms. D. complied with the requirement for “enrollment and attendance...as a full-time student,” but she did not meet this definition for the remainder of the quarter after May 5. Ms. D. argues as follows:

The Department is mistaken in its position that I failed to meet the definition of a full-time student during the 2007 spring term. The Department has attempted to re-write the regulation to require that each term be *completed* with a sufficient number of credits to qualify as full-time. The Department states, “Ms. D. argues in error that she should be deemed to have completed the 2007 spring semester as a full-time student....” The Department has missed the point. I am not arguing that I should be deemed to have completed the spring semester as a full-time student. The applicable regulation (15 AAC 23.163(c)(1)(B)) does not require that each term be completed in full-time status. The regulation requires only enrollment and attendance for the purpose of pursuing a degree as a full-time student.

The Department concedes that I enrolled as a full-time student during the spring term. The Department also concedes that I attended the University in good standing throughout the spring term. The fact that roughly one-half way through the term I dropped one class, reducing my load from 13 to 11 credit hours, is not in dispute.... Even though I dropped a class, I still meet the requirements of the regulation. I enrolled (and paid non-resident tuition for full-time status) and attended the University in good standing for the entire term for the purpose of *pursuing* my degree.

Ms. D. appears to argue that enrollment and attendance are not ongoing statuses, but that they can be measured for the entire term as of the beginning of the quarter. While Ms. D. did enroll as a full-time student and was attending class on a full-time basis up to May 5, it is very difficult to see how it could be said that after she withdrew from one class and stopped attending it on May 5, Ms. D. could be said to have been enrolled and attending the University on a full-time basis.

If, as Ms. D. appears to argue, a student could enroll as a full-time student at the beginning of the term and be considered full-time for the entire term even if the student dropped classes and became part-time, part-time students could always qualify for dividends by signing up for at least twelve credits at the beginning of each term and then dropping classes they never intended to complete the next day. Such an interpretation would create an untenable loophole for students’ intent on defeating the legislature’s intent that absent students only continue to qualify for dividends if they are receiving education on a full-time basis.

Ms. D. argues that she should be considered a full-time student because the division has failed to define “full-time,” instead deferring to the academic institutions to define what is full-time at their schools. Ms. D. argues that

the varying standards used by education institutions in classifying students as full-time or part-time create disparate and inconsistent standards being applied to students applying for

dividends. The lack of regulatory guidance providing a consistent definition of full-time status results in the arbitrary approval or denial of PFD applications. Pursuing an Honors Degree in Journalism at the University of Oregon, whether enrolled for 11 or 13 hours, should be deemed to be full-time status given the lack of any regulatory definition of full-time status.

Ms. D. overlooks that the whole point of 15 AAC 23.163(c) is to define “receiving secondary or postsecondary education on a full-time basis.” The regulation defers to standards adopted by institutions that are accredited by accrediting agencies recognized by the United States Secretary of Education. The regulation recognizes that the division has neither the resources nor the expertise to determine what constitutes full-time study at every school in the nation, and it therefore defers to the institutions, agencies and officials that do have the proper expertise to make this determination. With the oversight of a regional accreditation agency and the United States Secretary of Education, the University of Oregon has determined that a person enrolled in and attending classes for eleven hours per week is a part-time student. After May 5, 2007, Ms. D. was not enrolled in and attending the University of Oregon as a full-time student.

The number of days that Ms. D. was absent in the qualifying year in addition to the time she was receiving education on a full-time basis exceeds 120 days even if her enrollment in four credits for fall quarter of 2007 could be considered full-time under the regulatory provision that “an individual in the last academic year before graduation who was carrying enough credits to graduate, but fewer than full-time credits for any one term, semester, or quarter, is considered to have been a full-time student at that time.” It is therefore unnecessary to examine Ms. D.’s argument that her attendance fall quarter of 2007 should be considered full-time.

IV. Conclusion

After May 5, 2007, Ms. D. was not enrolled in and attending the University of Oregon as a full-time student for the remainder of that term. Ms. D. was absent from Alaska more than 120 days during the qualifying year in addition to the days she was absent receiving postsecondary education on a full-time basis. The division’s decision to deny the application of L. D. for a 2008 permanent fund dividend is AFFIRMED.

DATED this 16th day of April, 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 13th day of May, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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