

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

IN THE MATTER OF)	
)	
J. D. C.)	
)	Case No. OAH 09-0122-PFD
<u>2008 Permanent Fund Dividend</u>)	Agency No. 2008-041-5196

DECISION

I. Introduction

J. C. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Mr. C. was not eligible, and it denied the application initially and at the informal appeal level. Mr. C. appeared by telephone at a formal hearing held on April 8, 2009. PFD Specialist Peter Scott represented the division by telephone.

Mr. C.’s absences from Alaska in 2007 were allowable under AS 43.23.008. Mr. C. is therefore eligible for a 2008 dividend.

II. Facts

Mr. C. is a recent graduate of Montana State University. In the fall of 2006, Mr. C. was a full-time student at MSU. Mr. C. continued as a full-time student in the spring 2007 term, apparently without coming back to Alaska over the winter break. In the summer of 2007, Mr. C. stayed in Montana and took three classes at MSU. These classes were offered as three consecutive “mini classes.” Each of these classes was a three semester-hour course. However, because one of the classes was a remedial level math class, it did not count toward the credit required for graduation. Mr. C. testified that although this class was technically a three-hour class, he put far more than that amount of time into the class as he worked to fill a gap in his education. Thus, Mr. C. enrolled for a total of nine semester-hours during the summer term, devoted more time to his education during the summer than would normally be called for to complete nine hours, and he completed six credits towards his degree. MSU considers twelve credits to be a full-time course load. Mr. C. continued as a full-time student in the fall of 2007 and also in the spring, summer, and fall terms of 2008, at which time he graduated.

III. Discussion

In order to be eligible for a dividend, the applicant must have been physically present in Alaska at all times during the qualifying year, or only absent as allowed by AS 43.23.008. That statute allows a person to be absent from Alaska while receiving full-time education on a full-time

basis and still qualify for the following year's dividend. In addition to the time a person is receiving full-time education, the statute allows a person to be absent for up to 120 days for any reason consistent with Alaska residency.

The division asserts that Mr. C. was absent for more than 120 days in addition to the time that he was receiving postsecondary education on a full-time basis. The division has characterized Mr. C.'s absence in 2007 as follows:

J. C. Absence Dates - 2007				
<i>Dates</i>	<i>In Alaska</i>	<i>Absent</i>	<i>Part-time School</i>	<i>Full-Time School</i>
1/1 - 1/9		9 days		
1/10 - 5/4				116 days
5/5 - 5/8		4 days		
5/9 - 8/3			87 days	
8/4 - 8/27		24 days		
8/28 - 12/14				109 days
12/15 - 12/31		17 days		
Total = 366	0	54	87	225

(2007 Leap Year = 366 days)

As can be seen from this table, the division calculates that Mr. C. was a part-time student for 87 days, and that he was absent for general reasons during the four periods during the year that are between terms. Combined, these absences come to 141 days.

The principal issue discussed at the hearing was whether any portion of the summer term should be considered full-time education, an issue that could be looked at several different ways, considering Mr. C.'s unusual schedule over the summer of 2007. However, there is a more important issue that has been overlooked. The first period identified above from January 1 through January 9, 2007, and the last period from December 15 through December 31, 2007, together make up 26 days that the division did not count as time that Mr. C. was enrolled on a full-time basis. There is no dispute that during these days Mr. C. was absent during the break between consecutive terms during which he was a full-time student.

In a line of cases going back to 1996, the commissioner has held that the days between academic terms during which a student is enrolled full-time should be considered allowable time

during which the student was receiving postsecondary education on full-time basis.¹ Thus, assuming that none of the time in the summer constituted full-time education, the only time that Mr. C. was not “receiving postsecondary education on a full-time basis” in 2007 is the period from May 5, 2007, through August 27, 2007. This period of time constitutes 115 days. Being less than 120 days in addition to the time Mr. C. was a full-time student, this time is allowable under AS 43.23.008.

IV. Conclusion

Even if Mr. C. was not a full-time student during the summer of 2007, his absence in addition to the time he was enrolled as a full-time student comes to 115 days, less than the 120 days allowed by AS 43.23.008(a)(16)(B). Mr. C.’s absences were allowable, and he is eligible for a 2008 permanent fund dividend.

DATED this 20th day of May, 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 16th day of June, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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

¹ See *ITMO C.*, OAH No. 06-0482-PFD (2006); *ITMO. F.*, Caseload No. 030631 (2004); *ITMO O.*, Caseload No. 950068 (1996); *In Re C.*, Caseload No. 950128 (1996). In *ITMO D.H.*, OAH No. 08-0060-PFD (July 2008), the “division apparently overlooked the prior decisions referenced above, and thus it provided no explanation as to why the interpretation previously afforded to 15 AAC 23.163(c)(1) should not be adhered to. Established agency precedent...” was therefore applied in the case. It appears that the division has again overlooked this line of precedent.