

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

IN THE MATTER OF)
)
 E. H.)
) Case No. OAH 09-0137-PFD
)
2008 Permanent Fund Dividend)

DECISION

I. Introduction

E. H. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Ms. H. was not eligible, and it denied the application initially and at the informal appeal level. Ms. H. has requested a formal hearing by written correspondence only.

Review of the record shows that Ms. H. is eligible for a 2008 dividend.

II. Facts

The parties agree that Ms. H. was absent from Alaska for 231 days in 2007, the qualifying year for a 2007 dividend. The division agrees that for 116 days Ms. H. was enrolled as a full-time student receiving postsecondary education at the University of Montana. The division agrees that for another five days Ms. H. was at a mandatory orientation session for new students at the University of Montana. The university has verified that orientation is required of freshmen before they are allowed to attend classes, and that Ms. H. registered for and attended orientation, and paid a \$60.00 orientation fee. For the remaining 117 days she was absent in 2007, Ms. H. was attending a program called Discipleship Training School with an institute called University of the Nations that is based in England, and she spent some time traveling in Europe.

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must have either been present in Alaska all through the qualifying year, or have been absent only for a reason allowed by AS 43.23.008.¹ That statute allows absences for Alaskans receiving postsecondary education on a full-time basis.² It also allows, in addition to any time receiving full-time education, up to 120 days of absence for any reason consistent with Alaska residency.³

¹ AS 43.23.005(a)(6).

² AS 43.23.008(a)(1).

³ AS 43.23.008(a)(17)(B).

Ms. H. argues that because her orientation was required for her to attend the University of Montana, the time she spent in orientation should be counted as time spent receiving postsecondary education on a full-time basis. If this argument were accepted, the time Ms. H. was absent in addition to her University of Montana time would be just under 120 days, and Ms. H. would be eligible for a 2008 dividend.

The division concedes that “Ms. H. was required to be in attendance for this school orientation, which usually is a condition for incoming freshmen.” But the division argues that “because school orientation is not part of the education enrollment, which is verified by the school registrar’s completion of the education verification form, that time cannot be included as part of her educational absence, only as ‘other’ absence.”

Ms. H. advances the correct application of the statute to the facts of the case. The department has consistently held that

Periods of full-time enrollment include a new student’s participation in orientation classes and a graduating student’s participation in his or her own graduation ceremony. These are periods of expected attendance at the beginning and end of a student's career. Between a student's first term and graduation, participation in orientation classes and graduation ceremonies is not expected, thus presence at school before and after the school year are not periods of fulltime enrollment for continuing students. Graduation activities may not be reflected in the dates of enrollment on an education enrollment form because these classes generally follow the end of the school year for returning students. However, a graduating student's attendance is expected through the graduation ceremony, not the last day of regular classes. Because absences to participate in formal orientation for new college students and absence to participate in graduation activities for graduating seniors are absences primarily for the purpose of full-time college enrollment, these periods of time are covered under [former regulation] 15 AAC 23.163(c)(5).⁴

Ms. H. has correctly identified her orientation time as time spent receiving postsecondary education on a full-time basis. Therefore, Ms. H. was absent 117 days in addition to the time that was allowable for educational reasons. Being under 120 days, the time in addition to time in school is also allowable.⁵

⁴ *ITMO S.C.*, caseload no. 980624 (Department of Revenue, December 1998), citing caseload no. 950276. See also *ITMO S.S.*, caseload no. 970578 (Department of Revenue, November 1997); *ITMO L.M.*, caseload no. 980229 (Department of Revenue, October 1998).

⁵ Because the time in addition to documented time at the University of Montana is less than 120 days, it is unnecessary to consider whether any time at University of the Nations might be allowable as time spent receiving education on full-time basis.

IV. Conclusion

During the qualifying year, Ms. H. was absent from Alaska receiving postsecondary education on a full-time basis for part of the year, and she was also absent an additional 117 days for other reasons that are consistent with continuing Alaska residency. Because Ms. H. was either physically present in Alaska or absent as allowed by AS 43.23.008, she is eligible for a 2008 permanent fund dividend.

DATED this 4th day of August, 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.]