

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

IN THE MATTER OF)
)
 F. L.)
) Case No. OAH 09-0171-PFD
)
2008 Permanent Fund Dividend)

DECISION

I. Introduction

F. L., Sr., timely applied for a 2008 permanent fund dividend on behalf of his minor daughter, F. L. The Permanent Fund Dividend Division (“the division”) determined that F. was not eligible, and it denied the application initially and at the informal appeal level. At Mr. L.’s request, a formal was held by teleconference on May 11, 2009. Mr. L. appeared by telephone, as did PFD Specialist Peter Scott, representing the division.

Because F. was not physically present in Alaska for at least 72 hours during 2006 or 2007, the division’s decision to deny her application is affirmed.

II. Facts

The facts in this case are not in dispute. During 2006 and 2007 F. was at a youth treatment facility in another state receiving necessary treatment that was not available in Alaska. F.’s treatment requirements made it impossible for her return to Alaska at any time during 2006 or 2007. Thus, Mr. L. is correct in his assertion that F. did not return to Alaska during this two-year period due to circumstances that were beyond either his or F.’s control. The division has not disputed that F. has remained an Alaska resident during her absence, or that the absence was for a reason that is allowable under AS 43.23.008.

III. Discussion

The basic statute regarding eligibility for permanent fund dividends is AS 43.23.008(a), which states:

An individual is eligible to receive one permanent fund dividend each year in an amount to be determined under AS 43.23.025 if the individual

- (1) applies to the department;
- (2) is a state resident on the date of application;
- (3) was a state resident during the entire qualifying year;
- (4) has been physically present in the state for at least 72 consecutive hours at some time during the prior two years before the current dividend year;

(5) is

- (A) a citizen of the United States;
- (B) an alien lawfully admitted for permanent residence in the United States;
- (C) an alien with refugee status under federal law; or
- (D) an alien that has been granted asylum under federal law;

(6) was, at all times during the qualifying year, physically present in the state or, if absent, was absent only as allowed in AS 43.23.008; and

(7) was in compliance during the qualifying year with the military selective service registration requirements imposed under 50 U.S.C. App. 453 (Military Selective Service Act), if those requirements were applicable to the individual, or has come into compliance after being notified of the lack of compliance.

While other statutes and regulations create additional rules that affect eligibility, the above statute defines the basic requirements that all people must meet in order to qualify for a dividend, unless another statute provides a contrary rule.

F. has met all of the seven listed requirements except for requirement number four, that she have “been physically present in the state for at least 72 consecutive hours at some time during the prior two years before the current dividend year.” The only exception to requirement number four, contained in AS 43.23.005(f), is for certain military members and their families during “a time of national military emergency.”

There has been no suggestion that Mr. L. filed F.’s application with any kind of fraudulent or deceptive intent. As noted above, the reason that F. is not eligible is due to circumstances that have been beyond the L.s’ control. Mr. L. filed the appeal in this case in good faith, and as he explained at the hearing, has taken some time to read the various rules and regulations for PFDs and made an effort to figure out how they all work together. However, although F. appears to still be an Alaska resident who meets many of the eligibility requirements, she has not met the statutory requirement that applicants be physically present in Alaska for at least 72 hours at some point in the two years prior to the dividend year.

IV. Conclusion

Because she was not physically present in Alaska for at least 72 hours at any time in 2006 or 2007, F. L. is not eligible for a 2008 dividend. The decision of the Permanent Fund Dividend Decision to deny the application filed on behalf of F. L. for a 2008 permanent fund dividend is AFFIRMED.

DATED this 18th 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.]