

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

In the Matter of)	
)	
A. C. B.)	OAH No. 09-0180-PFD
)	Agency No. 2008-046-7984
<u>2008 Permanent Fund Dividend</u>)	

DECISION & ORDER

I. Introduction

A. C. B.'s application for a 2008 permanent fund dividend (PFD) was denied on the basis that he spent an excessive amount of time outside Alaska during the qualifying year while not on one of the types of absences the Legislature has deemed allowable. At the informal appeal level, the agency maintained the denial. Mr. B. requested a formal hearing, which took place before this office on May 8, 2009. Mr. B. attended in person.

The denial is upheld because Mr. B.'s extended absence does not qualify as an allowable absence under the statute listing allowable absences. The Department of Revenue is bound by the rules laid down by the Legislature.

II. Facts

A. B. is a lifelong Alaskan, now in his mid-forties, who has received a PFD in the past.¹ By stipulation entered on the record at the formal hearing, his status as a legal resident of Alaska throughout the entire period relevant to this case is not contested.

The single issue in this case is how Mr. B. spent 2007, the qualifying year for this dividend. During that year, he was absent from Alaska a total of 196 days.²

Mr. B. began 2007 in Colorado. He had traveled there late in the previous year to assist a close family member who was struggling with a severe chemical dependency problem. The person Mr. B. was assisting had lived in Colorado for more than fifteen years, and did not travel there from Alaska for the purpose of receiving treatment.³

¹ Exhibit 1, p. 3 (2008 Adult Supplemental Schedule); testimony of Mr. B.
² Exhibit 1, p. 2 (2008 Adult Application); testimony of Mr. B.
³ Testimony of Mr. B.

While in Colorado, Mr. B. assisted the family member in dealing with the dependency problem, which Mr. B. regarded as life-threatening.⁴ He also helped with business affairs and home improvement. He began to think about returning to Alaska in May of 2007, but had difficulty getting airline seats under the terms of his open-return ticket.⁵ He was eventually able to return on July 15, 2007, and has remained in Alaska since that time.⁶

III. Discussion

The qualifying year for the 2008 dividend was 2007.⁷ In order to qualify for a Permanent Fund Dividend in 2008, the applicant had to have been physically present in Alaska all through the qualifying year, or only have been absent for one of the 17 allowable reasons listed in a statutory section entitled “Allowable Absences,” AS 43.23.008.⁸ There are four of the allowable absences that potentially apply to Mr. B.

One of the specifically allowable absences is an absence for any reason consistent with Alaska residency. Vacations and the like fit under this absence. However, an absence for this open-ended reason cannot have exceeded 180 days under any circumstances.⁹ Since Mr. B. was absent for 196 days, this allowable absence cannot, by itself, save his eligibility for the dividend. He would need to qualify for a second type of allowable absence as well.¹⁰

The second potentially applicable provision is the one Mr. B. primarily relies on in this case, Alaska Statute 43.23.008(a)(6). It is an absence while

providing care for a parent, spouse, sibling, child, or stepchild with a critical life-threatening illness whose treatment plan, as recommended by the attending physician, requires travel outside the state for treatment at a medical specialty complex[.]

The difficulty with relying on this provision in Mr. B.’s case is that the close relative whom he was assisting in Colorado was not an Alaskan and was not required to “travel outside the state” upon a doctor’s recommendation; in addition, there is no evidence that he was treated at a medical specialty complex. The plain language of this provision does not encompass Alaskans who travel outside the state, not to accompany ill Alaskan relatives required to travel for treatment, but instead to assist ill

⁴ *Id.* The person Mr. B. assisted states that he had become unable to manage “my household, personal affairs, or even work.” Ex. 3 at 4.

⁵ *Id.*; testimony of Mr. B.

⁶ *Id.*

⁷ AS 43.23.095(6).

⁸ AS 43.23.005(a)(6).

⁹ AS 43.23.008(a)(17)(A).

¹⁰ The maximum length of the catchall absence is reduced somewhat if the applicant is claiming certain other kinds of absences in the same year. *See* AS 43.23.008(17).

relatives who already live elsewhere. The provision has not been interpreted in any way contrary to its plain language in the past.¹¹

The third potentially applicable provision is an absence “providing for the individual’s terminally ill family member”¹² This provision does not apply because, as Mr. B. acknowledges, his relative was not terminally ill.

The fourth potentially applicable provision is an absence “settling the estate of the individual’s” immediate family member; absences of this kind are allowable up to 220 days.¹³ Mr. B. suggests this provision because “In a way, I WAS ‘settling’ the estate . . . because, had he died as a result of my not being there to help him, I would most likely have had to claim 220 cumulative days.”¹⁴ The argument is inventive but the fact remains that Mr. B. cannot use a provision for settling an estate when there was no estate to settle.

Mr. B. persuasively points out that his assistance to a relative in distress in Colorado was commendable work similar in character to some of the reasons the Legislature has designated as allowable absences. However, as the Commissioner of Revenue has held in the past, “no provision in the law . . . allows the division or the administrative law judge to consider extenuating circumstances on a case-by-case basis.”¹⁵ Mr. B. must fit in one of the actual categories the Legislature has provided.

Mr. B. also protests that he did nothing whatsoever inconsistent with maintaining Alaska residency. This seems to be so, but again: “Even an Alaska resident will not qualify for a PFD if each of the person’s absences in the qualifying year are not allowable.”¹⁶

Because he spent 196 days outside Alaska in the qualifying year for the 2008 dividend, and has not carried his burden of showing that his absence was allowable, there is not a legal way to grant Mr. B. a 2008 dividend.

IV. Conclusion

Because of his extended absence, Mr. B. is not eligible for the 2008 PFD. He remained an Alaska resident, and nothing in this decision precludes him from eligibility for future PFDs.

¹¹ An example is *In re D.D.*, No. 040242 (Dep’t of Revenue 2004): where an Alaskan traveled to another state for 211 days to assist her mother, who required 24-hour care, the AS 43.23.008(a)(6) provision was not considered as a basis for making her absence allowable.

¹² AS 43.23.008(a)(7).

¹³ AS 43.23.008(a)(8).

¹⁴ Ex. 6, p. 3 (letter from B. to C.).

¹⁵ *In re S.H.*, OAH No. 08-0113-PFD (Commissioner of Revenue 2008), at 4.

¹⁶ *In re M.C.*, No. 040173 (Dep’t of Revenue 2004).

The decision of the Permanent Fund Dividend Division to deny the application of A. C. B. for a 2008 permanent fund dividend is AFFIRMED.

DATED this 8th day of May, 2009.

By: Signed
Christopher Kennedy
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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 8th day of June 2009.

By: Signed
Signature
Christopher Kennedy
Name
Deputy Chief Administrative Law Judge
Title

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