

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

IN THE MATTER OF)
S. P. N.) OAH 09-0236-PFD
)
2008 Permanent Fund Dividend)

DECISION & ORDER

I. Introduction

S. P. N. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. N. was not eligible, and it denied the application initially and at the informal appeal level. Mr. N. requested a formal hearing by correspondence. Administrative Law Judge Mark T. Handley reviewed and decided the appeal. Mr. N. did not file any additional arguments or evidence. Kimberly Colby represented the PFD Division. The Division timely filed the agency record and a position paper.

This case is Mr. N.'s appeal of the Division's denial of his 2008 PFD application because he was on disqualifying absences from Alaska in 2007. Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that Mr. N. is disqualified from receiving a 2008 PFD.

II. Facts

It is now undisputed that, during 2007, the qualifying year for a 2008 dividend, Mr. N. was absent from Alaska for over 180 days to be a part-time and full-time student at the University of Nevada Las Vegas and that he was not a full-time student for more than 120 days of his absences in 2007.

In his request for a formal hearing, Mr. N. explained he thought that he should be eligible for a 2008 PFD because he returned to Alaska for more than 72 hours in 2007. Mr. N. returned to Alaska both for Christmas break and between his summer classes. Mr. N. explained he was not a full-time student for the part of the spring and all of the summer and fall of 2007 because his college counselor recommended that he withdraw from a class, reduce his course load and attend summer classes because he was falling behind in his school work.

Mr. N. did not dispute that he was absent more than 180 days and more than 120 days when he was not a full-time student in 2007. Mr. N. argues that he should not be disqualified because he would not have reduced his course load to less full-time status if he had known it would disqualify

him from receiving a PFD. Mr. N. provided information about his financial situation to show that he needed the 2007 PFD.¹

III. Discussion

Eligibility for permanent fund dividends requires meeting several requirements. They are listed in Alaska Statute 43.23.005. One of the requirements is that the applicant “was, at all times during the qualifying year, physically present in the state or, if absent, was absent only as allowed in Alaska Statute 43.23.008.”²

Alaska Statute 43.23.008(a) lists a number of reasons a person can be absent from Alaska and still qualify for a dividend. The list includes reasons such as military service, education, serving in Congress, caring for a terminally ill family member, receiving continuous medical treatment, and a few other reasons. Reason number (17) allows absences for any reason consistent with Alaska residency, so long as the cumulative absences total fewer than 180 days, or fewer than 120 days in addition to time as a full-time student, or fewer than 45 days in addition to absences for other listed reasons.

Absences from Alaska that do not meet the requirements of Alaska Statute 43.23.008 disqualify an individual from PFD eligibility. Alaska Statute 43.23.008(a)(17)(B) disqualifies individuals absent more than 120 days in addition to absences for the full-time educational reasons listed under Alaska Statute 43.23.008(a)(1)-(2), if absent more than 180 days cumulatively during the PFD qualifying year. Therefore, a college student absent more than 180 total days and more than 120 days with less than full-time student status during the qualifying year is not eligible for a PFD.

Mr. N.’s 2007 absences fall into this category. No law gives the PFD Division, or the administrative law judge, the legal authority to grant PFDs to people who were absent for reasons, no matter how good, that are disqualifying under the provisions of Alaska Statute 43.23.008(a)(17).

It is unfortunate that Mr. N. did not understand that taking less than a full-time course load in 2007 would make him ineligible for a 2008 PFD. Under the law, however, he does not qualify for a 2007 PFD.

¹ Ex. 6, page 3.

² AS 43.23.005(a)(6).
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IV. Conclusion

Mr. N.'s 2007 absences from Alaska fell within a category of absences that are disqualifying for the purpose of PFD eligibility. Mr. N. therefore does not qualify for a 2008 dividend.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of S. P. N. for a 2008 permanent fund dividend be AFFIRMED.

DATED this 14th day of July, 2009.

By: Signed
MARK T. HANDLEY
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 17th day of August, 2009.

By: Terry L. Thurbon for
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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