

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

In the Matter of)	
)	
C. R. C.)	OAH No. 09-0253-PFD
)	Agency No. 2008-052-6737
<u>2008 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

C. R. C. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division determined that he was not eligible, denying the application initially and at the informal appeal level. Mr. C. requested a formal hearing which was held on September 14, 2009. Mr. C. and his attorney, Joseph Ray Skrha, participated in person. PFD Specialist Peter F. Scott represented the division and appeared by telephone.

A preponderance of the evidence shows that Mr. C. is not eligible for the 2008 PFD dividend, and that the division was correctly applying the law when it made the decision to deny his application.

II. Facts

There is little factual dispute between the parties. Mr. C. spends each winter the same as many Alaskans, out of state. He typically leaves Alaska in September and drives to California. He typically arrives in California in early October, returning to Alaska in April. In 2007, he did not arrive in Alaska until late May 2007. His stay was extended because he was caring for his ailing sister.

Mr. C. has had a presence in Alaska going back to September 1992. The 2008 PFD is the first PFD he has applied for. His reasons for not applying in the past are irrelevant. Although many see receiving a PFD as the hallmark of an Alaska resident, receipt of a PFD is not a prerequisite to residency. In 2008, Mr. C. applied for a PFD because he wanted to receive a senior property tax exemption from the Kenai Borough. The Borough gives senior citizens an exemption for up to \$300,000 of the assessed value of their primary residence if the taxpayer is of a certain age, occupies the property as their primary residence, and “must also qualify for an Alaska Permanent Fund Dividend.”¹

¹ Exhibit 6 at 2. The information provided in the exhibit does not require that the taxpayer actually receive a PFD. Rather, it simply requires that the taxpayer meet PFD eligibility requirements, i.e. qualify.

When completing his application, Mr. C. provided the following information regarding his 2007 absences:

In 2007 I did not spend six months in Alaska. ... On March 12 while vacationing in Mexico I was informed that my sister was gravely ill and not expected to live. On April 22, 2007, my sister was released from the hospital and I left for Alaska. I arrived in Alaska on May 1, 2007 ... I had to leave Alaska for California on September 20, 2007 for an early October appointment ...for regular treatment for my heart condition.²

The division, relying upon the information provided, calculated that Mr. C. was absent from Alaska for 222 days in 2007, 42 days in excess of the allowable 180 days and denied his application on that basis.³ Mr. C. informally appealed. The division considered his appeal and supporting information and concluded that Mr. C.'s absences should be categorized as follows:

Beginning Date	Ending Date	Reason for absence	Days Absent
January 1, 2007	March 11, 2007	Vacation	69
March 12, 2007	May 1, 2007	Caring for sister (included in this time period is one day for Mr. C.'s medical care)	50
October 1, 2007	October 14, 2007	Vacation	13
October 15, 2007	October 24, 2007	C. medical treatment	9
October 25, 2007	October 28, 2007	Vacation	3
October 29, 2007	October 30, 2007	C. medical treatment	1
October 31, 2007	December 31, 2007	Vacation	61
		Total days absent	206
		Total medical related	60
		Total non medical related	146

Because the 180 day allowable absence cannot be combined with the allowable absences for medical reasons, the division denied Mr. C.'s application.⁴ This formal appeal followed.

² Exhibit 2 at 1.
³ Exhibit 3 at 1.
⁴ Exhibit 8.

The crux of Mr. C.'s appeal is that all but a few days of his absences should be allowable as continuous medical treatment and providing care for a family member. He asserts that his primary reason for going to California is to receive continuous health care. He has strong decade's-long relationships with his physicians in California and they have successfully treated him for heart conditions and cancer. "It is presumptuous to think that Mr. C. would find a cardiologist in Alaska who is not familiar with, and who does not know his heart, just to qualify for an Alaska Permanent Fund Dividend check."⁵ Mr. C. asserts that each cardiac appointment and corresponding tests take approximately 20 days to accomplish and he undergoes this work up twice a year in either October or November and again in March. The interim is spent seeing other health care providers. Therefore, Mr. C. reasons that except for the seven days he spent in Mexico, the majority of his time in California is for continuous medical purposes.

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 reasons listed in AS 43.23.008.⁶ The qualifying year for the 2008 PFD is 2007.⁷ The legislature has identified and set forth in AS 43.23.008(a) seventeen reasons that a person may be absent from Alaska and still qualify for a dividend the next year. Reason number (5) is an absence for someone who is "receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician that treated the illness if the treatment or convalescence is not based on a need for climatic change." Reason number (7) is providing care for the individual's terminally ill family member." "Family member" for purposes of reason number (7) includes an individual's sibling.⁸ Reason number (17) is "for any reason consistent with an individual's intent to remain a state resident...."

Reason number (17) may be used in conjunction with the other specifically identified 16 allowable absences, however, the number of days allowed under number (17) varies from 180 days to 45 days depending on which one of the 15 allowable absences it is combined. It is clear that some portion of the absences identified by Mr. C. in 2007 would be allowable, for instance, Mr. C.'s time spent caring for his sister who at the time was gravely ill.⁹ The difficult part of

⁵ C. December 23, 2009 Memorandum at 2.

⁶ AS 43.23.005(a)(6).

⁷ AS 43.23.095(6).

⁸ AS 43.23.008(d)(2).

⁹ Exhibit 7 at 9.

this case and what has been described in prior decisions as “counterintuitive”¹⁰ comes in understanding the interplay between the many categories of absences for purposes of PFD eligibility.¹¹

An absence for vacation and visiting family members is not necessarily an allowable absence, but it can fall within three kinds of absence allowed for any reason at all, so long as the absence is consistent with continuing Alaska residency. These three absence types are listed together in the statute as reason number (17) which provides that an absence is allowable:

for any reason consistent with the individual's intent to remain a state resident, provided the absence or cumulative absences do not exceed

(A) 180 days in addition to any absence or cumulative absences claimed under (3) of this subsection if the individual is not claiming an absence under (1), (2), or (4) - (15) of this subsection;

(B) 120 days in addition to any absence or cumulative absences claimed under (1) – (3) of this subsection if the individual is not claiming an absence under (4) - (15) of this subsection but is claiming an absence under (1) or (2) of this subsection; or

(C) 45 days in addition to any absence or cumulative absences claimed under (1) - (15) of this subsection if the individual is claiming an absence under (4) - (15) of this subsection.¹²

It should be noted that these three choices are conjoined with the word "or" at the end of subparagraph (B). This means that an applicant may choose an absence under any one of these choices, but the three choices may not be combined. Applicants must decide under which one of these three categories they will claim an absence.

Subparagraph (A) allows a person up to 180 days for any reason in addition to any days the person may have claimed for a military absence, so long as no other kind of absence is claimed. Since Mr. C. was not in the military, this option allows him to claim up to 180 days during the year for any reason, but not in combination with a medical absence under (5) or (7). Since Mr. C. was absent in excess of 180 days during the qualifying year, claiming an absence under this option will not make him eligible for a 2008 dividend.

¹⁰ *IMO S.H.*, OAH No. 08-0113-PFD at 3 (2008); *IMO C.S.*, OAH No. 05-219-PFD at 3 (2005).

¹¹ *See also IMO J. and D.H.*, OAH No. 06-0859-PFD (2007); *IMO R.L.H.*, OAH No. 07-0243-PFD (2007); *IMO P. and E.E.*, 08-0668-PFD (2009).

¹² AS 43.23.008(16).

Subparagraph (B) allows the applicant up to 120 days for any reason in addition to any time the person was absent for educational reasons under (1) or (2), so long as the person is not claiming any other kind of absence. Since Mr. C. was not absent for educational reasons, this choice allows only 120 days, and is less favorable than choice (A).

Subparagraph (C) allows absences of up to 45 days in addition to any other claimed absences, including medical absences claimed under (5) and (7). Under the law, a person could be absent from the state on vacation for 180 days, and the entire absence would be allowable. A person could be absent from the state for 365 days for medical reasons, and the absence would be allowable. But a person who takes a 46-day trip early in the year for a vacation or other non-allowable reasons, and then suffers an unforeseen accident or illness requiring an absence of more than 135 days later in the same year would not be eligible. The total absence in that case would be 181 days, and would include 46 days in addition to the medical absence.

Mr. C.'s argument that his time between doctor visits qualifies as an allowable absence under reason (5) is without merit. For purposes of this decision it will be presumed the appointments would qualify under reason (5).¹³ Mr. C.'s cardiologist wrote on April 6, 2009

Mr. C. has been under my care. He has had heart surgery and multiple coronary artery interventions. He is doing well from the cardiac standpoint. He lives permanently in Alaska. *He comes to California every six months* for cardiac checkups and followups {sic}. He does have a local primary care in Alaska. At this time he appears to be clinically stable.¹⁴

On May 27, 2008, the cardiologist wrote a substantially similar note in support of Mr. C.'s Request for Informal Appeal:

Mr. C. has been a long-term patient of mine. At this time from the cardiac standpoint he is extremely stable. I do see him on a 6-month interval to be certain that all of his risk factors and cardiac testings [sic] are up-to-date.¹⁵

The word "continuous" is not esoteric. The lack of a statutory definition for "continuous" poses no impediment to interpreting the word. Common words are given their ordinary meaning if not otherwise defined in the relevant statute.¹⁶ Courts consider the dictionary definition of

¹³ Because it is not necessary to the outcome of this decision, no determination is made regarding whether the appointment days would be allowable under reason (5).

¹⁴ Exhibit 10 at 3 (emphasis added).

¹⁵ Exhibit 4 at 3.

¹⁶ *Wilson v. Dep't of Corrections*, 127 P.3d 826, 829 (Alaska 2006).

words to discern the ordinary meaning.¹⁷ “Continuous” is defined as “marked by uninterrupted extension in space, time, or sequence.”¹⁸ Applying this definition to the facts presented, neither of these notes recommends continuous medical treatment as required by reason (5). A reasonable reading of the notes is that the physician is under the impression that Mr. C. returns to Alaska during the interim. There is nothing that indicates that the cardiologist is providing continuous medical treatment to Mr. C. Mr. C. also identified several dental appointments and an appointment with his dermatologist or oncologist scattered throughout his time in California. He provided no statement from any of these other providers recommending that he stay in California to receive continuous medical treatment.

Mr. C. testified that he chooses to travel by car and it would be unreasonable to travel back to Alaska between appointments. His preferred method of transportation may make it inconvenient to return to Alaska between appointments, however, that is not the standard. Therefore, the evidence presented by Mr. C. does not establish it is more likely than not that the time spent in California between cardiology appointments was allowable under reason (5).¹⁹

At the hearing’s conclusion, Mr. C. presented numerous credit card receipts for purposes of documenting his travels to and from Alaska. Mr. C. testified that he returned to Alaska by May 1, 2007 and commenced his return trip on September 29, 2007.²⁰ These dates are incorrect. The credit card receipts establish that it is more likely than not that Mr. C. entered Alaska on his return trip sometime after May 26, 2007.²¹ A credit card statement reveals a charge for lodging in the Yukon Territory on May 26, 2007. Similarly, a credit card receipt reveals it is more likely than not that he had entered Canada by September 16, 2007.²² The most reliable evidence of when Mr. C. arrived and departed are the credit card statements. Giving Mr. C. the benefit of the doubt, I find that he did not intend to deceive the division by providing incorrect dates. Rather, it was the passage of time and faulty recollection which resulted in incorrect arrival and departure dates.

Mr. C. does not dispute that his total days absent from Alaska in 2007 exceed 180 days. As reflected on Attachment A, even if the other appointments were allowable and the arrival and

¹⁷ *Id.* at 829, 830.

¹⁸ <http://www.merriam-webster.com/dictionary/continuous>.

¹⁹ AS 44.62.460(e); 44.64.290(e); 15 AAC 05.030(h).

²⁰ *See* Attachment A to Decision. This calendar was prepared by Mr. C. for purposes of hearing and corroborated his testimony.

²¹ Exhibit 15 at 97.

²² Exhibit 15 at 114, 115.

departure dates were left as recalled by Mr. C., he spent more than 45 days in California for reasons other than medical treatment. Therefore, Mr. C. is precluded by law from receiving a 2008 PFD.

IV. Conclusion

Mr. C. was absent from Alaska for more than 180 days or for more than 45 days in addition to any time he may have been receiving continuous medical treatment. Therefore, C. R. C. is not eligible for a 2008 PFD. The decision of the Permanent Fund Dividend Division to deny the application of Mr. C. is affirmed. This decision does not affect his status as an Alaska resident.

DATED this 11th day of February, 2010.

By: Signed
Rebecca L. Pauli
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 29th day of March, 2010.

By: Signed
Signature
Virginia Blaisdell
Name
Director, Administrative Services Division
Title

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