

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

IN THE MATTER OF)

C. J.)

2008 Permanent Fund Dividend)

Case No. OAH 09-0265-PFD

DECISION

I. Introduction

C. J. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Ms. J. was not eligible, and it denied the application initially and at the informal appeal level. At Ms. J.’s request, a formal hearing was held on June 16, 2009. Ms. J. appeared by telephone. PFD Specialist Kim Colby represented the division.

Because Ms. J. was unallowably absent during the qualifying year, the division’s decision is affirmed.

II. Facts

A long-time Alaska resident, Ms. J. is a fisherman from Cordova. During 2007 Ms. J. was absent from Alaska for 235 days. The reason for Ms. J.’s absence was to attend the International Miracle Institute in Pensacola, Florida.

According to its literature, the International Miracle Institute (“IMI”) “is an end-time Bible training center.” Ms. J. studies at IMI part of the year through correspondence and online classes, and part of the year by attending IMI’s Miracle Faith Center in Pensacola.

IMI is not accredited by any government accrediting agency. It is accredited by the “Accreditation Commission International,” or ACI, a nonprofit corporation in Arkansas. According to ACI’s literature,

We are primarily a religious school accrediting agency. Due to the view of most of our schools concerning the separation of church and state, we have never applied to the U.S. Department of Education for any affiliation with the government. We are an independent accrediting agency. We specialize in the seminary, Bible College, and small specialized school that does not fit into the programs of other accrediting agencies.

ACI also does accreditation for Specialized schools which teach non-religious subjects. We accredit some schools which offer the MBA and MPA programs. We appeal to foreign schools who offer business programs, as long as they meet the laws in the country of residence and the guidelines of the Accrediting Commission International.¹

ACI is not recognized by the United States Department of Education as an agency that may accredit specialized schools or institutions for purposes of receiving Title IV student financial assistance.

¹ Exhibit 11.

IMI students are not eligible to receive financial assistance from Nellie Mae or The Educational Resources Institute. The Alaska Commission on Postsecondary Education does not grant loans to individuals attending IMI.

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must have been physically present in Alaska all through the qualifying year, or only absent for a reason allowed by AS 43.23.008.² One of the allowed absence reasons is receiving postsecondary education on a full-time basis. According to the applicable regulation, “receiving secondary or postsecondary education on a full-time basis” means:

(A) enrollment and attendance in good standing as a full-time student at an academic institution for any of the 7th - 12th grades consistent with (d) of this section;

(B) enrollment and attendance in good standing, for the purpose of pursuing an associate, baccalaureate, or graduate degree, as a full-time student at a college, university, or junior or community college, accredited by an accrediting agency that the United States Secretary of Education recognizes under 34 C.F.R. Part 602, or full-time participation in an internship program if the internship is required for graduation by the college or university; for the purposes of this subparagraph, an individual in the last academic year before graduation who was carrying enough credits to graduate, but fewer than full-time credits for any one term, semester, or quarter, is considered to have been a full-time student at that time; or

(C) enrollment and attendance in good standing, for the purpose of pursuing an associate, baccalaureate, or graduate degree, as a full-time student at a Title IV institution recognized under 20 U.S.C. 1001 - 1155 (The Higher Education Act of 1965) and 34 C.F.R., Part 600 or at a non-accredited college or university if students attending the college or university may qualify as eligible to receive a student loan from Nellie Mae or a student loan from The Educational Resources Institute (TERI)...^[3]

In addition, postsecondary education includes vocational training if the Alaska Commission on Postsecondary Education recognizes the program by granting loans to students attending the program, and states that no comparable program is available in Alaska.

Attendance at IMI does not fall within the definition of “postsecondary education” for purposes of PFD eligibility. While ACI may be a reputable member of the business community, it is not a recognized academic accrediting agency. IMI is not a Title IV institution, and students attending IMI are not eligible for financial aid from private, non-governmental lending organizations such as TERI or Nellie Mae.

Ms. J. asserts that denying her application constitutes unfair discrimination against students attending religious institutions. Many religious-based educational institutions decline to seek

² AS 43.23.005(a)(6).
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government-recognized accreditation in order to preserve academic freedom. However, by expanding the allowable absence exception not just to students attending accredited schools, but also to students able to obtain financial aid at non-accredited schools, the Department of Revenue has made it possible for many students attending non-accredited, religious-based schools to be absent from Alaska and still qualify for dividends.⁴ However, the Permanent Fund Dividend Division is not an agency that is in a position to make determinations regarding the legitimacy of academic institutions. The division necessarily relies on other agencies and organizations with more suitable expertise, including government-recognized accreditation agencies, The Alaska Commission on Postsecondary Education, and private lending organizations.

In her appeal, Ms. J. writes, “I believe that I am eligible based on the facts that I am an Alaska resident (for life!) who, for furthering the proper education needed to fulfill my God-given desires of being able to minister to Alaskans, has had to go to a cutting-edge bible training school.” It is true that most recognized mainstream institutions and ideas were at one time considered “cutting edge.” Cutting edge ideas and institutions drive innovation and progress, and it may be that in the future IMI will be a widely recognized academic institution. But in the administration of a government program, the division is constrained to limiting the provisions of AS 43.23.008(a)(1) to students attending schools that have, in at least some way, been officially recognized as academic institutions. This is not to say there is anything wrong with Ms. J.’s choice of a school. However, those who study on the very cutting edge of academic thinking must accept that, at least initially, their ideas and institutions may take some time to gain general recognition. In the meantime, Alaska residents who are absent from the state to study at such institutions will be categorized with residents who are absent for other reasons that, while worthy and commendable, are not exceptions to the requirement that the applicant have been physically present in Alaska all through the qualifying year in order to qualify for a dividend.

IV. Conclusion

Ms. J. was not physically present in Alaska all through the qualifying year. Her absence was not spent “receiving secondary or postsecondary education on a full-time basis” as defined by 15

³ 15 AAC 23.163(c).

⁴ See, e.g., ITMO J.J., caseload no. 020815 (Department of Revenue, Nov. 2003)(student at Bob Jones University eligible even under old regulations that did not provide for students able to receive loans from TERI or Nellie Mae).

AAC 23.163(c). The division was correctly applying the law when it made the decision to deny Ms. J.'s application for a 2008 permanent fund dividend.

DATED this 4th day of September, 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 2nd day of October, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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