

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

In the Matter of)	
)	
N. D. S.)	OAH No. 09-0276-PFD
)	Agency No. 2008-009-6946
<u>2008 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

N. S.'s application for a 2008 permanent fund dividend (PFD) was denied on the basis that she spent nearly all of the qualifying year outside Alaska while not on one of the types of absences the Legislature has deemed allowable. At the informal appeal level, the agency maintained the denial. Ms. S. requested a formal hearing, which took place before this office on July 20, 2009. Ms. S. attended in person.

The denial is upheld because Ms. S.'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

N. S. has been an Alaskan for the last 20 of her 26 years.¹ Her status as a legal resident of Alaska throughout the entire period relevant to this case has not been contested in this proceeding.

The single issue in this case is how Ms. S. spent 2007, the qualifying year for this dividend. During that year, she was absent from Alaska a total of 309 days.²

Ms. S.'s 2007 absence resulted from enrollment, for two successive terms from late 2006 through the spring of 2008, in the AmeriCorps program. She was posted at the Sea Mar Community Health Centers in Seattle, Washington.³

Beginning in March of 2007, as part of her AmeriCorps service, Ms. S. pursued certification as a doula. A doula is a person with training and experience in childbirth who assists mothers in labor. The assistance takes the form primarily of emotional support and advice on comfort measures; doulas perform no clinical tasks.⁴ Doula certification of the type Ms. S. was seeking

¹ Exhibit 1, p. 1 (2008 Adult Web Application).

² Exhibit 1, p. 4 (Current Eligibility Record -- Absences).

³ Testimony of Ms. S.; Exhibit 2, p. 2 (letter from AmeriCorps coordinator).

⁴ Doulas of North America [DONA], "Position Paper: The Doula's Contribution to Modern Maternity Care" (1998) at 1 (attached to Ms. S.'s August 4, 2009 submission).

requires completion of a specified set of requirements. The requirements include a training workshop; the other requirements must be completed within four years of attendance of the workshop.⁵ The significant requirements are the following:

1. Completion of a reading list consisting of five books.
2. Completion of a self-assessment tool.
3. Attendance of an approved doula training course (the workshop mentioned above) of 16 or more hours.
4. Unless the applicant is a labor and delivery R.N. or has training in childbirth education or midwifery, completion of a childbirth education class of 12 hours *or* an Introduction to Childbearing class of 7 hours.
5. Attendance at three births for an overall total of at least 15 hours, and submission of birth records and short descriptions of these three births.
6. Assembly of evaluation forms from these three (or three other) births.
7. An essay of 500-1000 words on the role of a doula.⁶

In short, the required in-class training component can be as little as 23 hours (16 under item 3 and 7 under item 4), and the required clinical component can be as little as 15 hours.

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 three of the allowable absences that potentially apply to Ms. S.

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 Ms. S. was absent for 309 days, this allowable absence cannot, by itself, save her eligibility for the dividend. She would need to qualify for a second type of allowable absence as well. Moreover, the maximum length of the catchall absence is reduced somewhat if the applicant is claiming certain other kinds of

⁵ DONA, “Birth Doula Certification Packet,” at 2 (attached to Ms. S.’s August 4, 2009 submission).

⁶ *Id.*

⁷ AS 43.23.095(6).

⁸ AS 43.23.005(a)(6).

absences in the same year.¹⁰ Notably, the maximum length of the catchall absence drops to 120 days if an applicant is claiming an absence under the provision for professional education, discussed later in this section.

The second potentially applicable provision is the one Ms. S. relied initially on when she submitted her application, although she has not pressed it vigorously on appeal. It is Alaska Statute 43.23.008(a)(14), which provides for an allowable absence while “serving as a volunteer in the federal peace corps program.” Although AmeriCorps is similar to the Peace Corps, the two programs are not the same and AmeriCorps is not in any sense a subsidiary of the Peace Corps.¹¹ Thus, the Legislature’s provision of a special exception for Peace Corps volunteers does not encompass AmeriCorps volunteers.

The third potentially applicable provision, and the one on which Ms. S. has rested her appeal, is an absence “receiving vocational, professional, or other specific education on a full-time basis for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state.”¹² The Department of Revenue has, by regulation, defined this category to include an absence while “completing a hospital residency, internship, or other full-time training program as a health professional.”¹³ Ms. S. contends that, by virtue of her doula training, she was absent to complete a training program as a health professional.

Because the definition of a doula expressly excludes any clinical tasks, it is questionable whether a person training to be a doula can be said to be training as a “health professional.” There is, however, a more fundamental reason why Ms. S.’s doula certification project cannot qualify her for an allowable absence under this provision. To qualify, a training program must, under both the statute and the implementing regulation, be “full-time.” Doula certification requires just 23 hours of classroom time and 15 hours of clinical observation. If pursued “full-time,” such a program could account for at most a few weeks of absence. Ms. S., who can attribute only 120 days of her absence to unspecified causes under the “catchall” provision, would have to attribute 189 days of her 309-day absence to *full-time* training to become a doula in order to make the whole absence

⁹ AS 43.23.008(a)(17)(A).

¹⁰ AS 43.23.008(17).

¹¹ The Peace Corps, established in 1961, is an independent agency reporting directly to Congress and the President. AmeriCorps, established by the National and Community Trust Act of 1993, is administered by a different independent agency, the Corporation for National & Community Service. AmeriCorps assignments require a shorter commitment and, in contrast to Peace Corps postings, are served within the United States (indeed, they can be served in Alaska).

¹² AS 43.23.008(a)(2).

allowable. Given the minimal quantity of training required to achieve doula certification, this is not plausible.

In Ms. S.'s case, the program was pursued as a sideline and on a part-time basis; indeed, it does not appear, two years later, that she has yet completed all of the requirements, although she has completed the classroom and clinical elements. The statutes and regulations do not provide an allowable absence for part-time professional development.

Ms. S. has pointed out that her AmeriCorps service was commendable work similar in character to some of the reasons the Legislature has designated as allowable absences.¹⁴ 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 Ms. S. must fit in one of the actual categories the Legislature has provided. Moreover, "[e]ven 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 she spent 309 days outside Alaska in the qualifying year for the 2008 dividend, and has not carried her burden of showing that her absence was allowable, there is not a legal way to grant Ms. S. a 2008 dividend.

IV. Conclusion

Because of her absence, Ms. S. is not eligible for the 2008 PFD. She remained an Alaska resident, and nothing in this decision precludes her from eligibility for future PFDs.

The decision of the Permanent Fund Dividend Division to deny the application of N. D. S. for a 2008 permanent fund dividend is AFFIRMED.

DATED this 31st day of August, 2009.

By: Signed
Christopher Kennedy
Administrative Law Judge

¹³ 15 AAC 23.163(c)(2)(B)(ii).

¹⁴ Exhibit 4 at 2 (statement accompanying request for formal appeal).

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).

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 25th day of September, 2009.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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