

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

In the Matter of)	
)	
P. M. R.)	OAH No. 09-0285-PFD
)	Agency No. 2008-003-8036
<u>2008 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

P. M. R. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division determined that she was not eligible, and denied the application initially and at the informal appeal level. Ms. R. requested a formal hearing by correspondence. The division’s denial of her application for a 2008 permanent fund dividend is affirmed.

II. Facts

The material facts are not in dispute. Ms. R. is a long time Alaskan and remains so for purposes of PFD eligibility. In 2007 Ms. R. was absent from Alaska in excess of 180 days. Her absences were a combination of family and business trips, vacations and caring for her terminally ill father. Her application for the 2008 PFD contained the following specific information about her absences, which has been inserted into the chart below:¹

Absence Code	Beginning Date	Ending Date	Reason for absence	Days Absent
K	12/18/06	1/16/07	Christmas w/ family; business trip	16
K	2/13/07	3/7/07	Convention & business meetings	22
K	4/14/07	5/02/07	Business & Uncle’s funeral	18
I	8/02/07	8/13/07	Vacation & business meeting	11
N	8/23/07	9/19/07	Taking care of my Dad who is dying	27
N	9/26/07	12/31/07	“ “	96
Total				190

¹ Although Ms. R.’s first absence in 2007 began at the end of 2006, for simplicity, only her absences from January 1, 2007 through December 31, 2007 have been counted. See Exh. 1 at pg. 2.

Based on these numbers, Ms. R. was absent from Alaska for 190 days in 2007. Using the dates she signified by using the “N” code, Ms. R. was absent to take care of her terminally ill father for 123 days in 2007. The other absences totaled 67 days.

By notice dated May 21, 2009, Ms. R. was given until June 21, 2009, to send any additional documents or correspondence for consideration in this formal appeal. The division was given the same deadline. Both were given until July 1, 2009, to respond to any documents received from the other. The division filed a position statement; Ms. R. did not file any additional documents.

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 43.23.008.² The qualifying year for the 2008 PFD is 2007.³ 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 (7) is “providing care for the individual’s terminally ill family member.” 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 16 specifically identified 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 with which it is combined. It is clear that some portion of the absences identified by Ms. R. in 2007 would be allowable under AS 43.23.008(a)(7) and (17).

The difficult part of this case and what has been described in prior decisions as “counterintuitive”⁴ comes in understanding the interplay between the many categories of absences for purposes of PFD eligibility.⁵ 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:

² AS 43.23.005(a)(6).

³ AS 43.23.095(6).

⁴ *IMO S.H.*, OAH No. 08-0113-PFD at 3 (2008); *IMO C.S.*, OAH No. 05-219-PFD at 3 (2005).

⁵ *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).

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.⁶

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 Ms. R. is not in the military, this option allows her to claim up to 180 days during the year for any reason, but it may not be combined with an absence to care for a terminally ill family member under (7). Since Ms. R. was absent in excess of 180 days during the qualifying year, claiming an absence under this option will defeat her eligibility for a 2008 dividend.

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 Ms. R. 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 absences to care for a terminally ill family member claimed under (7). Because the time that Ms. R. was absent for family and business trips and vacations was in excess of 45 days in addition to the allowable time for caring for her father, her absences for

⁶ AS 43.23.008(17).

general reasons are not allowable under this provision either. However one looks at the case, some portion of Ms. R.'s absences in 2007 are not allowable.

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 to care for a terminally ill family member, and the absence would be allowable. But a person who is absent for 46 days or longer early in the year for a vacation or other non-allowable reasons, and then has to respond to a family member's terminal illness that results in a total absence of more than 180 days in the same year would not be eligible. The total absence in that case would include 46 days in addition to the medical absence.

In this case, Ms. R.'s combined absences exceed 180 days. In addition to the allowable absence for caring for her terminally ill father, she spent more than 45 days on vacation and family and business trips. Therefore, Ms. R. is precluded by law from receiving a 2008 PFD.

IV. Conclusion

Ms. R. was absent from Alaska for more than 45 days in addition to the time she spent caring for her terminally ill father. This exceeds the absence allowed under Alaska Statute 43.23.008(a)(7) and (17), and therefore, Ms. R. is not eligible for a 2008 PFD. The decision of the Permanent Fund Dividend Division to deny the application of Ms. R. is affirmed. This decision does not affect her status as an Alaska resident or her eligibility for future PFDs.

DATED this 16th day of September, 2009.

By: *Signed* _____
Kay L. Howard
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. of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 15th day of October 2009.

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

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