

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

IN THE MATTER OF )  
N. S. C. )  
and her children, C.G., N. S. )  
K.J. & S. B ) Case No. OAH 09-0411-PFD  
)  
)  
2008 Permanent Fund Dividends )

**DECISION & ORDER**

**I. Introduction**

N. S. C. applied for 2008 permanent fund dividends (PFD) for herself and her children, C., N., K., and S. The Permanent Fund Dividend Division (Division) determined that Ms. C., C., N., K., and S. were not eligible, and it denied the applications initially and at the informal appeal level. Ms. C. requested a formal hearing.

Administrative Law Judge Mark T. Handley heard the appeal on September 22, 2009. Ms. C. participated. Bethany Chase represented the Division by telephone. The administrative law judge finds the Division correctly denied Ms. C.'s 2008 PFD applications because Ms. C. and her children were absent more than 180 days in 2007 to accompany Ms. C.'s spouse who was not eligible for a 2008 PFD.

**II. Facts**

Ms. C. admitted that she left Alaska on June 13, 2007 to accompany her husband who was stationed outside Alaska by the military.<sup>1</sup> Ms. C.'s husband was not eligible for a 2007 PFD. He applied, but his application was denied. He appealed, requesting an informal appeal before the Division's informal appeal unit. The Division's informal appeal unit sent Ms. C.'s husband's appeal back to its review unit to investigate the issues raised in his appeal. The Division's review unit again denied his 2008 PFD application because it did not receive a timely response to a request for information. Ms. C.'s husband did not appeal this second denial before the appeal deadline.<sup>2</sup>

Ms. C. has returned to Alaska and has divorced her husband, but she and her children were absent for more than 180 days in 2007.<sup>3</sup>

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<sup>1</sup> Recording of Hearing & Exhibit 1, p. 4.

<sup>2</sup> Recording of Hearing.

<sup>3</sup> Recording of Hearing.

### **III. Discussion**

Ms. C., as the person challenging the Division's action, has the burden of proving that the Division is in error.<sup>4</sup>

In order to qualify for a permanent fund dividend, the applicant must have been physically present in Alaska all through the qualifying year, or must only have been absent for one of the reasons listed in AS 43.23.008.<sup>5</sup> Under that list, an Alaskan may be absent for up to 180 days for any reason consistent with Alaska residency.<sup>6</sup> Under that list, an Alaskan also may be absent for any length of time during the qualifying year while the person is "serving on active duty as a member of the armed forces of the United States or accompanying, as that individual's spouse, minor dependent, or disabled dependent ... an individual who is (A) serving on active duty as a member of the armed forces of the United States; and (B) eligible for a current year dividend."<sup>7</sup>

Because the Ms. C. and her children were absent from Alaska for more than 180 days in 2007, the allowable absence for general reasons available to all residents does not apply to this case. As someone who was absent as the spouse of someone serving on active duty as a member of the armed forces of the United States, who she believed was an Alaska resident, it is understandable that Ms. C. believed that she and her children are eligible for a 2008 PFD. But the law is clear that the exception to the rule requiring physical presence in Alaska is only available to those accompanying active-duty members of the armed forces who are eligible for a 2008 PFD. As an individual whose 2008 PFD application was denied and whose appeal deadline has past, Ms. C.'s former husband does not fall within this category. For purposes of PFD eligibility, Ms. C. and her children's absence of more than 180 days is disqualifying.

### **IV. Conclusion**

Having reached the finding that Ms. C. and her children's absence from Alaska in 2007 was not for one of the specific reasons listed in AS 43.23.008, the only possible result of this case is to conclude that Ms. C. and her children's 2008 PFD applications should be denied.

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<sup>4</sup> 15 AAC 05.030(h).

<sup>5</sup> AS 43.23.005(a)(6).

<sup>6</sup> AS 43.23.008(a)(16)(A).

<sup>7</sup> AS 43.23.008(a)(3).

**V. Order**

IT IS HEREBY ORDERED that the applications of N. S. C., for herself and her children, C., N., K., and S., for 2008 permanent fund dividends be DENIED.

DATED this 29th day of September, 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 27<sup>th</sup> day of October, 2009.

By: Signed \_\_\_\_\_  
Signature  
Mark T. Handley \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

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