

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

In the Matter of :)	
)	
D. M. D.,)	
)	OAH No. 09-0412-PFD
<u>2008 Alaska Permanent Fund dividend</u>)	DOR No. 2008-0343-1189

DECISION

I. Introduction

D. M. D. filed a timely application for a 2008 Alaska Permanent Fund dividend. Following an informal conference, the Permanent Fund Dividend Division denied the application. Mr. D. filed a timely appeal and the case was referred to the Office of Administrative Hearings.

The assigned administrative law judge conducted a hearing on October 15, 2009. Mr. D. participated on his own behalf. Bethany Chase represented the division.

Because Mr. D. was absent from Alaska for more than the time allowed to maintain eligibility for the dividend, the division's decision is sustained.

II. Facts

D. M. D. is a permanent seasonal employee of the railroad in No Name City. Every year when his term of employment ends, he travels outside of Alaska, returning in the spring. In 2007, Mr. D. returned from his annual winter sojourn on April 20, 2007, and he left on September 25, 2007. He was absent from the state for 206 days in 2007.

During his absence from January until April 20, 2007, Mr. D. traveled in the Southwest and Southern California, visiting Palm Springs, San Diego, Phoenix and Albuquerque. Albuquerque is where Mr. D.'s mother had lived prior to her death in 2003.

During his absence from September 25, 2007, through December 31, 2007, Mr. D. traveled from the Pacific Northwest to his usual winter haunts in the Southwest. In October, he visited a doctor in Oregon for treatment of gout, and in November he visited a dentist in Arizona.

Mr. D.'s absences in 2007 were his usual annual trips for the purpose of traveling to areas with a warmer climate during the winter. His medical visits occurred during his travel, but were not the primary reason for his travel. He did not, in 2007, engage in settling his deceased mother's estate.

III. Discussion

AS 43.23.005(a) establishes certain statutory requirements for eligibility for a permanent fund dividend. In addition to Alaska residency, required by AS 43.23.005(a)(2) and (3), AS 43.23.005(a)(6) provides that the individual may be absent from the state during the qualifying year for no more than the period allowed by AS 43.23.008(a). The division argues that Mr. D. was absent from Alaska during 2006 for more than the time allowed by AS 43.23.008(a).

Mr. D. and the division agree, and the evidence reflects, that he was absent from Alaska for 206 days in 2007. Mr. D. argues that he is entitled to an allowance because during some of the time he was gone he was undergoing medical treatment, and at other times he was dealing with grief from his mother's death in 2003.

AS 43.23.008(a)(5) provides that an individual may claim an allowance if the person "was absent...receiving continuous medical treatment recommended by a licensed physician." The statute expressly provides an allowance only for continuous medical treatment. It does not provide an allowance for a person who, like Mr. D., receives intermittent medical treatment while absent for other reasons. Mr. D., therefore, is not entitled to an allowance for any of the time he spent obtaining medical treatment.

AS 43.23.008(a)(8) provides that an individual may claim an allowance if the person "was absent...settling the estate of the individual's deceased parent." Mr. D. makes no mention of any actions taken in 2007 to settle his deceased mother's estate. His claim for an allowance for that purpose was considered and rejected in 2006,¹ and has no more merit today than it did then.

IV. Conclusion

None of the time that Mr. D. was absent in 2007 qualifies as an allowable absence. He is ineligible for the 2008 dividend, and the division's decision is therefore sustained.

DATED December 7, 2009.

Signed

Andrew M. Hemenway
Administrative Law Judge

¹ In Re Dobbs, OAH No. 06-0240 (Department of Revenue 2006).

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 6th day of January, 2010.

By: Signed
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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