

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

In the Matter of :	)	
	)	
R. A. B.,	)	
	)	OAH No. 09-0428-PFD
<u>2008 Alaska Permanent Fund dividend</u>	)	DOR No. 2008-058-0281

**DECISION**

**I. Introduction**

R. A. B. filed a timely application for a 2008 Alaska Permanent Fund dividend. Following an informal conference, the Permanent Fund Dividend Division denied the application. Mr. B.'s timely appeal was referred to the Office of Administrative Hearings.

The assigned administrative law judge conducted a telephonic hearing on September 28, 2009. Mr. B. participated on his own behalf. Pete Scott represented the division.

Because Mr. B. established by a preponderance of the evidence that he was not absent from Alaska for more than the time allowed to maintain eligibility for the dividend, his application is granted.

**II. Facts**

R. A. B. is a long-time resident of Alaska. He is a retired teacher. He lives in No Name City, in the Aleutian Islands, and he is seasonally employed as a fishing guide. Mr. B. remained a resident throughout 2007, the qualifying year for the 2008 dividend, and through the date of the hearing in this case.

In 2006, R. B.'s brother S. B., who had been living in his parent's former home in Ellensburg, Washington, became terminally ill. In the fall of 2006, R. went down to Ellensburg to be with his brother. S.'s condition deteriorated, and by the end of the year he had to go to live in an assisted living facility. R. rented an apartment in Ellensburg and, while not providing living assistance for his brother, he gradually sorted through his brother's belongings accumulated over the course of his lifetime at the Ellensburg home, storing items in a rented storage unit.

From January 1 through February 23 (54 days), R. B. was absent in Ellensburg, Washington, while providing care for his brother, S., during S.'s terminal illness. S. B. passed away on February 23.

After his brother's death, R. B. remained in Washington until May 27 (62 days). During that time, Mr. B. continued to sort through his brother's possessions that had been temporarily placed in storage. In addition, he took on responsibility for the legal aspects of settling his brother's estate, which, because S. was developmentally disabled, resulted in more than the usual amount of legal work related to an estate. All of this time was associated with settling his brother's estate.

R. returned to Alaska on May 27 for a brief visit to attend a funeral before returning to Washington from May 29 through June 10, during which time he and other family members attended ceremonies relating to the establishment of a scholarship in S. B.'s name at Ellensburg High School, and he continued to sort through, divide and dispose of S.'s belongings. In addition, during that time Mr. B. purchased supplies for his upcoming seasonal employment in Alaska and transported them to Seattle for shipment. Approximately 6 days of this time were associated with settling his brother's estate.<sup>1</sup>

From the time he returned to Alaska in June, through the end of 2007, Mr. B. remained in Alaska except for a trip to Ellensburg from August 19-September 5 (17 days) and for a winter getaway from December 1-31 (31 days).<sup>2</sup> During a portion of his time outside the state on those two occasions, Mr. B. completed the task of going through his brother's belongings. In addition, he designed a monument for his brother's grave and worked with the stonemason to arrange for its completion, and he dealt with mortgage issues related to his brother's property.<sup>3</sup> Approximately 17 days of this time were associated with settling his brother's estate.<sup>4</sup> Mr. B. returned to Alaska from his winter getaway on February 4, 2008.

### **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

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<sup>1</sup> Ex. 11, p. 2.

<sup>2</sup> Ex. 1, p. 2.

<sup>3</sup> R. B. testimony.

year for no more than the period allowed by AS 43.23.008(a). The division argues that R. B. was absent from Alaska during 2007 for more than the time allowed by AS 43.23.008(a).

Mr. B. was absent from Alaska for 206 days in 2007. From January 1 through February 23 (54 days), Mr. B. was absent while providing care for a terminally ill sibling. His absence during that time is allowable under AS 43.23.008(a)(7). From February 24-May 27 (93 days), Mr. B. was absent while settling his brother's estate. His absence during that time is allowable under AS 43.23.008(a)(8). The division allowed both these periods in its informal conference decision.

At issue on appeal are an additional 23 days that Mr. B. claims as allowable under AS 43.23.008(a)(8): six days from May 29-June 10, 13 days from August 20-September 1, and 4 days in December. During those periods of time, Mr. B. testified that he was engaged in tasks relating to the settlement of his late brother's estate, and he described the nature of his activities with some specificity, as set forth in the facts above. Mr. B.'s testimony in this regard was highly credible, and the administrative law judge finds it very persuasive. The statute allows up to 220 days' absence for settling an estate, and Mr. B.'s absence for that purpose during 2007 was far less than the maximum allowed. An allowable absence for settling an estate is not limited to time spent dealing with the legal aspects of an estate; it can include the full reasonable range of activities associated with settling the affairs of the deceased, disposing of property, attending to funeral and family arrangements, and other matters.<sup>5</sup> In this case, Mr. B.'s testimony is sufficient to establish his claim for an additional allowable absence under AS 43.23.008(a)(8) of 23 days.

Pursuant to AS 43.23.008(a)(17)(C), an individual claiming allowable absences under AS 43.23.008(a)(7) and (8) is entitled to an additional absence of no more than 45 days. Mr. B. was absent, in addition to the time allowed under AS 43.23.008(a)(7) and (8) for only 37 days.<sup>6</sup> He is therefore eligible for the 2008 dividend.

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<sup>4</sup> Ex. 11, p. 2.

<sup>5</sup> See *In Re. L.M., et al.*, OAH No. 04-0152-PFD at 4 (Department of Revenue 2005) ("The term 'settling the estate' can be read broadly, depending on circumstances, to include a number of activities that must be tended to upon the death of a family member.").

<sup>6</sup> See Position Statement at 3.

#### IV. Conclusion

R. B.'s absences from Alaska during 2007 did not exceed the time allowed by law to maintain eligibility for the Alaska Permanent Fund dividend. His application is therefore granted.

DATED December 10, 2009.

*Signed* \_\_\_\_\_  
Andrew M. Hemenway  
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 10th 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.]