

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

In the Matter of)	
)	
K. M. G.)	OAH No. 09-0466-PFD
)	Agency No. 2008-062-5301
<u>2008 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

K. M. G. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“division”) determined that she was not eligible, and it denied the application initially and at the informal appeal level. Ms. G. requested a formal hearing which was held on October 8, 2009. She appeared by telephone; PFD Specialist Peter F. Scott represented the division by telephone. A preponderance of the evidence shows that Ms. G. was not eligible for a 2008 dividend, and that the division was correctly applying the law when it made the decision to deny her application.

II. Facts

Ms. G. has been an Alaska resident for many years; she first filed for the permanent fund dividend in 1999.¹

In 2007, Ms. G. was diagnosed with Grave’s disease of the thyroid. She had to have her thyroid removed, so she was absent from Alaska from April 5, 2007 through April 30, 2007, a period of 25 days, for thyroid surgery in Seattle.² Upon her return to No Name City, Ms. G. had kidney stones and had to be medivaced to Seattle for treatment. She was gone from May 3, 2007 through May 13, 2007, a period of 10 days.³

Ms. G.’s Grave’s disease also caused her teeth to decay and break, some under the gum line. She was in great pain and had to have all of her teeth removed, but she could not locate a dentist in No Name City to perform the surgery and accept Medicaid payments. Her sister located a dentist in the Seattle area who was taking new Medicaid patients, so Ms. G. traveled to Washington on July 5, 2007, to begin her treatment.⁴ After getting her Medicaid eligibility transferred to Washington, Ms. G. was treated by ABC D. in Des Moines, Washington, between

¹ Division’s formal hearing position statement at pg. 1.
² Exh. 3 at pg. 2.
³ Exh. 3 at pg. 2.
⁴ Exh. 1 at pg. 2; Exh. 8 at pg. 2.

the dates of July 17, 2007, through October 19, 2007. She had several procedures performed within this timeframe in addition to follow-up visits.⁵

After having her teeth pulled, Ms. G. had to obtain dentures. She was seen for this by the S. D. C., LLC, in Renton, Washington. On September 6, 2007 she was examined and evaluated for upper and lower dentures.⁶ The dentist received approval from Medicaid for the dentures on October 15, 2007, and on October 24, 2007, the dentist took the preliminary impression for Ms. G.'s dentures.⁷ There is no record that this clinic performed any further services for Ms. G.; their report indicates that she did not return to the clinic after the appointment at which the initial impressions were taken.⁸ Ms. G. maintains that after the impressions of her mouth were taken for the dentures, she waited in Washington for the clinic to inform her that they had been completed. She testified she called the clinic on at least two occasions inquiring as to the delay in getting the dentures, but that she never received a return telephone call from that office. Ms. G. explained that eventually she gave up and returned home to Alaska on January 13, 2008. The total number of days that Ms. G. was absent from Alaska for her dental procedures was 111 days, from July 5, 2007, to October 24, 2007.

Ms. G. was absent from Alaska a total of 146 days for medical treatment, through October 24, 2007. After that date, she was absent for another 67 days, through December 31, 2007. She was absent a total of 213 days in 2007.

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 only been absent for reasons listed in AS 43.23.008.⁹ The qualifying year for the 2008 PFD is 2007.¹⁰ The legislature has identified and set forth in AS 43.23.008(a) sixteen reasons that a person may be absent from Alaska and still qualify for a dividend the next year. Reason number (5) is an absence for someone who is "receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician who treated the illness if the treatment or convalescence is not

⁵ Exh. 7 at pg. 2.

⁶ Exh. 13 at pg. 2.

⁷ Exh. 13 at pg. 2.

⁸ Exh. 13 at pg. 2.

⁹ AS 43.23.005(a)(6).

¹⁰ AS 43.23.095(6).

based on a need for climatic change."¹¹ However, under AS 43.23.008(a)(16)(C), an individual may not be absent more than 45 days in addition to medical absences claimed under (5).

It is clear that 146 days of Ms. G.'s total 213-day absence in 2007 would be allowable under AS 43.23.008(5), as she was either arranging for or receiving continuous medical treatment during each trip. The division considered only 126 days of her absences to be for medical treatment,¹² but that is a minor issue in Ms. G.'s appeal.

The difficult part of this case is Ms. G.'s 67-day absence after her last recorded dental appointment on October 24, 2007. Ms. G. testified that after the impressions for her dentures were taken, she waited in Washington for the denture clinic to call her when the dentures were completed. She said she called the clinic on at least two occasions to inquire why there was a delay, but that the person she talked to did not speak English as a first language, so their communication was especially difficult. Ms. G. said she never received a return telephone call from the denture clinic; she eventually gave up and came home to Alaska. For its part, the clinic merely reported that Ms. G. did not return to the clinic after the initial impressions were taken.

Based on the record as a whole, Ms. G. did not meet her burden of proving by a preponderance of the evidence that her absence from Alaska from October 24, 2007, was required for receiving continuous medical treatment. Although Ms. G.'s testimony was sincere, it is not entirely believable that she simply waited for the Siony denture clinic to call her, then only called them twice when they didn't respond and then ultimately, she let the matter go and returned home on January 13, 2008. It is more reasonable to think that an individual who has had all her teeth removed and has been approved and fitted for complete dentures would take more assertive actions upon believing she has not been adequately treated or responded to. The only other evidence on this issue other than Ms. G.'s testimony is the clinic's statement that Ms. G. did not return after the initial impressions were taken.

As the division stated at the hearing, Ms. G.'s situation is indeed tragic. However, Ms. G. was absent from Alaska more than 45 days in addition to her absences for medical treatment. She is therefore not eligible for a 2008 PFD.

¹¹ AS 43.23.008(a)(5).

¹² See Division's formal hearing position statement at pg. 3.

IV. Conclusion

K. M. G. was absent from Alaska for more than 45 days in addition to the time she spent receiving continuous medical treatment. She is therefore not eligible for a 2008 PFD, and the decision of the Permanent Fund Dividend Division to deny her application is AFFIRMED. This decision does not impact her status as a resident or her eligibility for future PFDs.

DATED this 31st day of December, 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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 29th day of January 2010.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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