

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

IN THE MATTER OF )  
 )  
 C. V. )  
 ) Case No. OAH 09-0485-PFD  
 )  
2008 Permanent Fund Dividend )

**DECISION**

**I. Introduction**

C. V. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Mr. V. was not eligible, and it denied the application initially and at the informal appeal level. Mr. V. requested a formal hearing by written correspondence only.

The record shows that Mr. V. was unallowably absent during the qualifying year, and that he is therefore ineligible for a 2008 dividend.

**II. Facts**

Mr. V. is an Alaska resident. His daughter, B., was born in Alaska in 1988 and was raised in the state. B. graduated from No Name High School in May of 2006, and upon her graduation was accepted into a medical biology program at the U.M. in Germany.

B.’s attendance at an overseas university was complicated by the fact that she began to experience epileptic seizures in April of 2004. Despite medication, these seizures are still not controlled. While they cannot be predicted, B. experiences a seizure about once per month, usually in the early morning. While the seizures themselves are not life-threatening, a seizure could be extremely dangerous if, for example, it resulted in a fall or occurred in an area of traffic. For this reason, B. must be accompanied at all times. For her safety as well as for her psychological wellbeing, her physician has recommended that she have care provided in a family setting.<sup>1</sup>

In order that she may attend school in Germany, Mr. V. has accompanied her. While he did not keep track of the precise number of days he was absent from Alaska in 2007, Mr. V. has indicated that it was more than 180 days. During all of 2007, B. was an adult.

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<sup>1</sup> Exhibit 5, page 4.

### III. Discussion

In order to qualify for a permanent fund dividend, the applicant must have been physically present in Alaska all through the qualifying year, or only have been absent for a reason listed in AS 43.23.008.<sup>2</sup> That statute lists seventeen reasons that a person may have been absent from Alaska during the qualifying year and still receive a dividend. Mr. V. cites three of these provisions as relevant to this case:

(1) receiving secondary or postsecondary education on a full-time basis;

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(6) providing care for a parent, spouse, sibling, child, or stepchild with a critical life-threatening illness whose treatment plan, as recommended by the attending physician, requires travel outside the state for treatment at a medical specialty complex;

\* \* \* \* \*

(13) accompanying another eligible resident who is absent for a reason permitted under (1), (2), (5) - (12), (16), or (17) of this subsection as the spouse, minor dependent, or disabled dependent of the eligible resident;

Mr. V. argues that “an illness that has the substantial risk of causing life threatening injuries is life threatening” and that B.’s condition is a “critical life-threatening illness whose treatment plan requires travel outside the state for treatment at a medical specialty complex.” Mr. V. further argues,

The Alaska Statutes as written in regards to eligibility for the Alaska Permanent Fund Dividend should not be interpreted in the narrow, exclusionary way of the department’s Informal Appeal decision, as the lawmakers could not possibly have anticipated every detail of every resident’s life but rather as an indicator of the intent to provide options for maintaining eligibility in a wide variety of necessary and temporary absences from the state ranging from education to military duty to merchant marine employment and Olympic training.

On the face of the statute, AS 43.23.008 does not provide an allowable absence for someone in Mr. V.’s situation. Subsection (1) allows an absence for full-time education; this provision may apply to B., but Mr. V. was not receiving education during his absence. Subsection (13) allows an absence for accompanying another allowably absent person as that person’s spouse, minor dependent, or disabled dependent. Mr. V. is not B.’s spouse or dependent.

Subsection (6) allows a parent to accompany a child with a critical life-threatening illness if the child’s treatment plan requires travel outside of the state. This provision does not apply to Mr. V. Even if B.’s condition could be considered a “critical life-threatening illness,” there is no evidence that B.’s treatment requires her to travel out of state. In fact, B. has not traveled out of

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<sup>2</sup> AS 43.23.005(a)(6).  
OAH 09-0485-PFD

state for the purpose of treatment at all. She is out of the state to pursue higher education. None of these provisions apply to Mr. V.

Mr. V. argues that the statutes are not intended to be read literally, but rather that they serve as a set of guidelines to indicate the kinds of absences that the legislature intended to be allowable. This is a novel approach to statutory construction that would not likely be upheld by the courts. While the Supreme Court does not necessarily require strict adherence to the plain meaning of the statute, the court has “placed a heavy burden on parties who urge us to adopt an interpretation that appears contrary to a statute’s plain language.”<sup>3</sup> Further, the court has stated that,

Where a statute expressly enumerates the things or persons to which it applies, we often invoke the principle of statutory construction *expressio unius est exclusio alterius*. This principle “establishes the inference that, where certain things are designated in a statute, ‘all omissions should be understood as exclusions.’” We have indicated that “the case for application of *expressio unius est exclusio alterius* is particularly compelling, where the scheme is purely statutory and without a basis in the common law.”<sup>[4]</sup>

The PFD program is a very good example of a legal framework that is purely statutory and has no basis in the common law. Thus, the proper reading of AS 43.23.008(a) is that by specifically listing all of the reasons that a person may be absent from Alaska and still qualify for a dividend, the legislature specifically intended to exclude any other reason a person might be absent.

This reading is consistent with the purpose and structure of the statute. The enumerated absence reasons are specific exceptions to the general rule that a person must have been in the state all through the qualifying year to be eligible. If education, military service, merchant marine employment, and the other enumerated absences were merely examples of the kinds of absences that the legislature intended to be allowable, every absence not listed would be a subject of debate as to whether it should be considered allowable. Mr. V. is correct that “the lawmakers could not possibly have anticipated every detail of every resident’s life.” It may be that for this reason the lawmakers did provide for absences up to 180 days during the qualifying year for any reason at all, so long as the absence is consistent with continuing Alaska residency. But the statute appears to reflect a decision that anyone absent for more than 180 days for reasons not specifically listed will be ineligible, regardless of how laudable or necessary the absence might be.

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<sup>3</sup> *Ranney v. Whitewater Engineering*, 122 P.3d 214, 217 (Alaska 2005).

<sup>4</sup> *Id.* at 218 (footnotes omitted).

**IV. Conclusion**

Because Mr. V. was absent during the qualifying year for reasons that are not specifically allowed by AS 43.23.008, he is not eligible for a 2008 dividend. The division’s decision to deny Mr. V.’s application for a 2008 permanent fund dividend is AFFIRMED.

DATED this 29th day of December, 2009.

By: Signed  
DALE WHITNEY  
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 10<sup>th</sup> day of February, 2010.

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

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