

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

In the Matter of)	
)	
R. N. L.)	OAH No. 09-0558-PFD
)	Agency No. 2008-057-7823
<u>2008 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

R. N. L. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“division”) determined that he was not eligible, and it denied the application initially and at the informal appeal level. Mr. L. requested a formal hearing by correspondence. By notice dated October 22, 2009, Mr. L. was given until November 22, 2009, to send any additional documents or correspondence for consideration in this formal appeal. The division was given the same deadline. Both parties then had until December 2, 2009, to respond to any documents received from the other. The division filed a position statement and hearing exhibits. Mr. L. did not respond to the division’s position statement or add to the record on appeal.

The division’s denial of Mr. L.’s application is affirmed because he was absent for more than 45 days in addition to an absence for continuous medical treatment in 2007, the qualifying year for the 2008 PFD.

II. Facts

Mr. L. has been an Alaska resident for many years. He applied for and received permanent fund dividends continuously from 1982 through 2001, and 2004 through 2006.¹ He did not apply in 2003. His applications were denied in 2002 and 2007 because he was absent more than 180 days during the applicable qualifying years; he did not appeal the denials.

Mr. L. has suffered from Seasonal Affective Disorder (SAD) and depression for many years, and it has worsened as he has aged.² For many years, Mr. L. has been spending the winter months in Arizona because, as his doctor wrote, it is “medically necessary for [Mr. L.] to relocate to a temperate location”³ However, during the winter of 2006-2007, Mr. L. developed heart problems in February 2007 that prevented him from returning to Alaska when he planned to in the spring. Rather, Mr. L. went to the St. Paul Heart Clinic in Minnesota for

¹ Division’s formal hearing position statement at pg. 1.
² Exh. 3 at pg. 4; Exh. 7 at pg. 3.
³ Exh. 10 at pg. 1.

treatment beginning on May 31, 2007.⁴ He had heart surgery on June 18, 2007,⁵ and his last appointment was on September 27, 2007, when he was released from the doctor's care and was once again able to travel.⁶ By that time, however, it was too late in the season for Mr. L. to come to Alaska, so he returned to Arizona for the 2007-2008 winter. He was still in Arizona when he submitted his 2008 PFD application on March 17, 2008.⁷

In 2007, Mr. L. was absent from Alaska a total of 365 days, of which 119 days were for continuous medical treatment in Minnesota.

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 43.23.008.⁸ The qualifying year for the 2008 PFD is 2007.⁹

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 based on a need for climatic change."¹⁰ Pursuant to 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 119 days of Mr. L.'s total 365-day absence in 2007 is allowable under AS 43.23.008(5), as he was receiving continuous medical treatment for his heart problems in St. Paul, Minnesota. Moreover, after receiving a Medical Treatment Verification for Calendar Year 2007 from Mr. L.'s heart doctor, the division now acknowledges that his 119-day absence for heart treatment was allowable.

The difficult part of this case is the remainder of Mr. L.'s absence from Alaska in 2007, a total of 246 days he spent in Arizona both before and after his treatment in St. Paul. The law regarding absences specifically requires that to be allowable, an absence for continuous medical

⁴ Exh. 15.

⁵ Exh. 1 at pg. 2.

⁶ Exh. 15.

⁷ Exh. 1 at pg. 2.

⁸ AS 43.23.005(a)(6).

⁹ AS 43.23.095(6).

¹⁰ AS 43.23.008(a)(5).

treatment cannot be “*based on a need for climatic change.*”¹¹ Mr. L. argues that his entire absence period should be allowed because he suffers from SAD and depression and all of his health care providers, except for his heart doctors in Minnesota, have specifically prescribed that he spend the winters in Arizona because of the available sunlight.

Mr. L.’s travels to Arizona are clearly based on a need for climatic change; that is why he goes there. He does not go south for medical treatment that is not available in Anchorage, but rather because Arizona’s location has the weather and climate that he needs in order to reduce the affect of SAD and depression. This is a need for a climatic change, and under Alaska law, an absence from the state for this reason is not allowable. Thus, only the medical treatment Mr. L. received in Minnesota is allowable.

Based on the record as a whole, Mr. L. did not meet his burden of proving by a preponderance of the evidence that his absence from Alaska for the 246 days he was in Arizona constitutes receiving continuous medical treatment. Mr. L.’s situation is indeed unfortunate, but he was absent from Alaska more than 45 days in addition to his absence for continuous medical treatment in Minnesota. He is therefore not eligible for a 2008 PFD.

IV. Conclusion

R. N. L. was absent from Alaska for more than 45 days in addition to the time he spent receiving continuous medical treatment. He is therefore not eligible for a 2008 PFD, and the decision of the Permanent Fund Dividend Division to deny his application is AFFIRMED.

DATED this 2nd day of February, 2010.

By: Signed
Kay L. Howard
Administrative Law Judge

¹¹ *Id* (emphasis added).

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 1st day of March, 2010.

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

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