

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

In the Matter of :	)	
	)	
S. B.,	)	
	)	OAH No. 10-0067-PFD
<u>2009 Alaska Permanent Fund dividend</u>	)	DOR No. 2009-026-4450

**DECISION**

**I. Introduction**

S. B. filed a timely application for a 2009 Alaska Permanent Fund dividend. Following an informal conference, the Permanent Fund Dividend Division denied the application on the ground that she had been absent from Alaska during the qualifying year for more than the allowable time. Ms. B. filed a timely appeal and the case was referred to the Office of Administrative Hearings.

The assigned administrative law judge conducted a telephonic hearing on April 19, 2010. Ms. B. participated and testified. Pete Scott represented the division.

Ms. B. established by a preponderance of the evidence that she was not absent during the qualifying year for a longer period of time than allowed by law for purposes of eligibility for the Permanent Fund dividend. Therefore, her application is granted.

**II. Facts**

S. B. is a long-time Alaska resident who has regularly received an Alaska Permanent Fund dividend since 1985. On December 31, 2007, Ms. B. was in Alaska when her 76-year-old mother, G. "L." S., who lived in Oregon, fractured her hip. Ms. S. was hospitalized and released to a skilled nursing care facility where, within a week of the initial injury, she incurred a substantial infection. Her husband, D., Ms. B.'s father, suffered from ailments that made it difficult for him to care for his wife while she was incapacitated. Accordingly, on January 8, 2008, Ms. B. flew to Oregon to care for her mother as well as to provide assistance to her father at her parents' home.

By the time Ms. B. arrived in Oregon, her mother's condition was life-threatening, as a result of toxic shock from her infection. For the next three months, Ms. S. was shunted among several medical facilities as her medical providers attempted to alleviate her condition. Despite her doctors' efforts, Ms. S. passed away on April 12, 2008.

A week before she died, Ms. B.'s mother executed a durable power of attorney, authorizing Ms. B. to manage her affairs. After her mother died, Ms. B.'s efforts to deal with her

mother's affairs using the power of attorney were complicated by her mother's will, written in 1983, which identified her father as her personal representative. Nonetheless, after Ms. B.'s mother passed away, Ms. B. remained in Oregon and assisted her father in making funeral arrangements, sorting through her mother's belongings, and otherwise settling her affairs. Ms. B. made arrangements for her father to temporarily move up to Alaska. On June 2, Ms. B. returned to Alaska with her father and settled him into her home with his son as a care provider. From April 12-June 1, Ms. B. was in Oregon assisting her father in settling her deceased mother's affairs.

Ms. B.'s father returned to Oregon in August, and in mid-September an Oregon court issued an order establishing his status as his deceased wife's personal representative for purposes of the estate. Ms. B. remained in Alaska from June 2 through October 6, when she flew to New Mexico to be with her daughter during the last stages of a difficult pregnancy. Ms. B. remained in New Mexico caring for her daughter for a week, until October 14, when she travelled to Texas for a well deserved vacation after an enormously stressful year. Ms. B. remained on vacation in Texas through November 15, when she returned to Oregon. Although by then Mr. S. had been recognized as the estate's personal representative by a court order, the estate had not been closed and Ms. B. assisted her father in carrying out his responsibilities as his deceased wife's personal representative and otherwise taking care of unfinished matters pertaining to her affairs. Ms. B. remained in Oregon for that reason through November 24, when she returned to Alaska. She was then in Alaska for the remainder of 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) requires that the individual was absent from the state during the qualifying year for no more than the period allowed by AS 43.23.008(a). The division does not dispute that Ms. B. is an Alaska resident. However, the division argues that she was absent from Alaska during 2008 for more than the time allowed by AS 43.23.008(a).

Ms. B. and the division agree, and the evidence reflects, that she was absent from Alaska for 195 days in 2008.<sup>1</sup> AS 43.23.008(a)(17)(C) provides that Ms. B. may claim an allowance for an absence of up to 45 days in addition to the cumulative time allowed when she was absent

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<sup>1</sup> See Exhibit 7.  
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while (1) providing care for a terminally ill family member,<sup>2</sup> or (2) settling the estate of her deceased mother.<sup>3</sup>

(1) Terminally Ill Family Member

Ms. B. was in Oregon from January 8-April 12 while her mother was hospitalized. Based on the evidence available to it at the time of the informal conference decision, the division determined that during this time Ms. B.'s mother was recovering from a fractured hip and was not suffering from a life-threatening illness, even though she did pass away on April 12. However, Ms. B.'s undisputed testimony at the hearing was that within a week of her hospitalization, her mother was subjected to toxic shock as a result of a severe infection, and that her condition from that point forward was life-threatening. Despite the fact that the initial reason for her hospitalization was a non-life-threatening condition, by the time Ms. B. arrived in Oregon on January 8, her mother was already suffering from a life-threatening complication that was eventually fatal. That her condition was terminal need not be established by expert medical opinion, because the outcome of her illness is known. Ms. B. was absent for 92 days (January 12-April 12) while caring for her terminally ill mother.

(2) Settling Parent's Estate

Because Ms. B. was not the legal executor of her mother's estate, the division did not consider her absence allowed for purposes of Permanent Fund dividend eligibility. However, an individual need not be the legal executor of an estate for the absence to be allowed. Settling a parent's estate can include preparing for a funeral, sorting through personal belongings acquired over the course of a lifetime, extended correspondence with financial institutions, businesses, creditors and other interested parties, and many other tasks, for any of which the personal representative might need assistance from a willing and able family member.<sup>4</sup>

In this particular case, Ms. B. had a power of attorney executed by her mother only a week before her death. Although Mr. S. was the personal representative of her estate under a 25-year-old will, his legal authority to act in the capacity was not established until September, and the estate was not closed until even later. The preponderance of the evidence is that during her time in Oregon in 2008 after her mother's death, Ms. B. assisted her father in multiple ways with respect to her mother's affairs and, after his legal capacity was established in September, in carrying out his responsibilities in his capacity as the personal representative, and that his

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<sup>2</sup> AS 43.23.008(a)(7).

<sup>3</sup> AS 43.23.008(a)(8).

<sup>4</sup> See, e.g., R.A.B., at 5, OAH No. 09-0428-PFD (Department of Revenue 2010); L.M., et al., at 4, OAH No. 04-0152-PFD (Department of Revenue 2005).

condition would have made it difficult or impossible for him to settle his wife's estate without Ms. B.'s help. The applicable regulation allows an absence of up to 220 days in a year to settle an estate, and Ms. B.'s absence of 60 days is not unusually extended in light of her parents' circumstances. Ms. B.'s absence for 60 days (April 12-June 1; November 16-24) was allowed for purposes of Permanent Fund dividend eligibility, pursuant to AS 43.34.008(a)(8).

#### **IV. Conclusion**

Ms. B. was absent from Alaska during the qualifying year for 195 days. Of that period, 92 days are allowed under AS 43.23.008(a)(7), and 60 days are allowed under AS 43.23.008(a)(8). Because her remaining absence of 43 days is less than 45 days, she is eligible for the 2009 dividend pursuant to AS 43.23.008(a)(17)(C). Her application is therefore GRANTED.

DATED June 4, 2010.

Signed  
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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 6<sup>th</sup> day of July, 2010.

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

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