

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

IN THE MATTER OF)
)
R. E., F. E.,)
H. E., Y. G., and)
B. G.)
)
) Case No. OAH 10-0083-PFD
2009 Permanent Fund Dividend)

DECISION

I. Introduction

R. E. and F. E. timely applied for 2009 permanent fund dividends for themselves and on behalf of their minor children H. E., Y. G. and B. G. The Permanent Fund Dividend Division (“the division”) determined that the applicants were not eligible, and it denied the applications initially and at the informal conference level. At the applicants’ request, a formal hearing was held on March 25, 2010. Mr. E. and Ms. E. appeared by telephone. PFD Specialist Bethany Chase represented the division by telephone.

Although the applicants left Alaska for the purpose of receiving postsecondary education on a full-time basis, a substantial amount of time passed between the time they left Alaska and the time anyone in the family became enrolled for full-time postsecondary education. Because some of this time was not allowable under AS 43.23.008, the applicants are ineligible for 2009 permanent fund dividends.

II. Facts

At the beginning of 2008 all of the members of the E. family were Alaska residents living in Alaska. On February 12, 2008, the family left Alaska and went to the Seattle area so that Ms. E. could fulfill her goal of graduating from the University of Washington. Before she could begin at the University, however, Ms. E. needed to complete part of her education at a community college. The family was apparently not familiar with the Seattle area, and upon arriving they lived in a hotel for three months while looking for just the right neighborhood to live in and getting the children enrolled in school. Ms. E. had originally planned to attend South Seattle Community College, but after finding a place to live more to the north of Seattle she decided to enroll in Shoreline Community College. Transferring her application to a different school delayed Ms. E.’s start time to some degree.

Ms. E. began attending Shoreline on September 24, 2008. Thus, the period from the time the family left Alaska to the time Ms. E. began attending school was 225 days. Ms. E. enrolled for 12 credits for the fall quarter, but when she did not pass a pre calculus class her professor apparently arranged for the credit not to appear on Ms. E.'s transcript for that quarter. During the PFD application process, the division pointed out that Ms. E. was only enrolled as a part-time student. Ms. E. had the school update her transcript to correctly reflect full-time enrollment but with the non-passing grade in one class. Ms. E. then retook the class the following quarter and passed. Ms. E. has continued to be enrolled as a full-time student ever since, paying nonresident tuition. She has maintained her Alaska driver's license, and testified that she intends to return to Alaska after obtaining her degree.

Besides Ms. E.'s pursuit of her business degree, one of the family's reasons for going to Washington was for H.'s education. When the family left Alaska, H. was 13 years old. H. had skipped several grades and was home schooling through a University of Alaska program. When she arrived in Washington in February of 2008, H. continued working on her high school diploma through online study. In September of 2008 H. also began attending Shoreline full-time through a Running Start program that allowed her to simultaneously obtain a high school diploma and an associate's degree.

III. Discussion

In order to qualify for a permanent fund dividend, a person must be physically present in Alaska all through the entire qualifying year, except for certain types of absences allowed by AS 43.23.008.¹ These exceptions include an absence of up to 180 days for any reason consistent with continuing Alaska residency; this absence, however, may not be combined with any other kind of absence.² In the alternative, applicants may be absent for any number of days they are receiving postsecondary education on a full-time basis, in addition to 120 days of absence for any other reason consistent with Alaska residency.³ There are also a number of other kinds of allowable absences that do not apply to this case, such as for military or congressional service. Absences for spouses and children accompanying full-time students are also allowable, along with the 120 days that the student is not actually in school.⁴

¹ AS 43.23.005(a)(6).

² AS 43.23.008(a)(17).

³ AS 43.23.008(a)(1), (17)(B).

⁴ AS 43.23.008(a)(13).

All of the applicants in this case are ineligible for 2009 dividends because they were all absent from Alaska for more than 120 days in addition to the time they were either attending school or accompanying a spouse or parent who was attending school. The applicants point out that the reason underlying their absence was entirely for the purpose of attending school, even if it reasonably took them more than 120 days to actually get settled and begin attending school. The applicants also point out that the reason the division initially denied the applications is because Ms. E. had incorrectly been identified as a part-time student, and it was only after her transcript was corrected that the division relied on the fact that she had been absent for more than 120 days in addition to the time she was enrolled at Shoreline.

The law allows absences for the time a person is actually in school, and it allows an additional 120 days during each qualifying year. For people who are absent for more than 120 days in addition to the time they are actually in school, the law does not provide for any consideration of the reasons the person was absent. The applicants may have reasonably needed 225 days to find a place to live and get their children enrolled in school, but that does not make them eligible for dividends. Nor does the fact that the division may have based its original denial on incorrect information from Shoreline Community College change the outcome of the case. Even if the division had denied the applications for entirely incorrect reasons, the fact remains that the applicants were absent for more than 120 days in 2008 in addition to the time that Ms. E. was enrolled in school. Although H. was receiving secondary education from February until September of 2008, her absence during that period was not related to the education she was then receiving online from the University of Alaska.

Ms. E. points out that she is paying double the normal tuition because she claims Alaska residency, and she argues that it is unfair to deny her application when she is paying more to retain her Alaska residency. The law does not allow the division to consider all of the surrounding circumstances on a case-by-case basis. The legislature has made clear that there are only certain limited exceptions to the general rule that a person must have been physically present in Alaska all through the qualifying year in order to be eligible for a dividend the next year. The applicants were not in Alaska for a large part of the qualifying year, and the time they were absent but not enrolled in school exceeds what the law allows. If the applicants believe the law is unfair they may contact their state representatives to see about having the law changed. In the meantime, the law must be applied as it is written to all applicants uniformly.

IV. Conclusion

All of the applicants were absent from Alaska for more than 180 days during the qualifying year. They were absent for more than 120 days in addition to the time they were actually receiving postsecondary education or accompanying a spouse or parent who was receiving postsecondary education. Their absences were not allowable under any other provision of AS 43.23.008.

The decision of the Permanent Fund Dividend Division to deny the applications of R. E., F. E., H. E., Y. G. and B. G. for 2009 permanent fund dividends is affirmed.

DATED this 7th day of May, 2010.

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 10th day of June, 2010.

By: Signed
Signature
Terry L. Thurbon
Name
Chief Admin. Law Judge
Title

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