

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

IN THE MATTER OF)
)
 J. R.)
) Case No. OAH 10-0102-PFD
)
2009 Permanent Fund Dividend)

DECISION

I. Introduction

J. R. timely applied for a 2009 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Ms. R. was not eligible, and it denied the application initially and at the informal appeal level. At Ms. R.’s request, a formal hearing was held on April 5, 2010. PFD Specialist Bethany Chase represented the division by telephone. Ms. R. did not appear at the hearing or show cause for her failure to appear; this decision is therefore based on the record in accordance with 15 AAC 05.030(j).

Because she was unallowably absent during the qualifying year, Ms. R. is not eligible for a 2009 dividend.

II. Facts

The facts in this case are best summarized in a letter written by Ms. R.’s daughter:

My mother J. M. R. lived with my husband and I in Alaska from 2001 through 2008. We left Alaska in June of 2008....

My mother was a military dependant of my husband’s since 1998 – meaning that the military deemed her to be more than 50% dependent on my husband and I. During the entire length of her military dependency, which she received a military ID card along with military privileges, we only claimed her on our federal income taxes twice. This was because she had her own job working at W.in Anchorage, which didn’t make her any less dependant on us. She still resided with us and depended on us. She fully intends to return to Alaska when we do.

The military had deemed her as a dependent because of her heart condition which eventually led to her disability status, which was decided in Alaska for SSI. The only reason we left Alaska was for a military PCS. We left as a family. She and we have always received our PFD.

Ms. R. left Alaska on June 15, 2008, and was absent for 199 days during that year.

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 absent for reasons specifically allowed by

AS 43.23.008.¹ Ms. R. claims an absence under AS 43.23.008(a)(3), which allows an absence for a person who is “accompanying, as that individual’s...disabled dependent, an individual who is (A) serving on active duty as a member of the armed forces of the United States; and (B) eligible for a current year dividend.” The division does not dispute that Ms. R.’s son-in-law is an eligible resident who was absent serving on active duty as a member of the military who is eligible for a 2009 dividend.

For purposes of determining permanent fund dividend eligibility, whether a person is a “disabled dependent” is governed by 15 AAC 23.993(c), which states that

For the purposes of AS 43.23.008(a), “disabled dependent” means an individual who is claimed as a dependent for Internal Revenue Service purposes by an eligible resident, and whose physical or mental impairment prevents the individual from living independently, if a written statement to that effect is submitted to the department by a licensed physician or medical practitioner.

Although Ms. R. was determined to be a “disabled dependent” for purposes of military benefits, she is not a dependent for purposes of determining PFD eligibility because she was not claimed as a dependent on anyone else’s federal tax return during the qualifying year. There is no evidence that Ms. R.’s absence was allowable under any other provision of AS 43.23.008, including the provision that allows an absence for any reason consistent with Alaska residency for up to 180 days. While she may still be an Alaska resident, Ms. R. is not eligible for a 2009 dividend because she was unallowably absent during the qualifying year.

IV. Conclusion

Ms. R. was absent during 2008 for reasons that are not allowable under AS 43.23.008, and she is therefore not eligible for a 2009 dividend. The decision of the Permanent Fund Dividend to deny the application of J. R. for a 2009 permanent fund dividend is affirmed.

DATED this 7th day of May, 2010.

By: Signed _____
DALE WHITNEY
Administrative Law Judge

¹ AS 43.23.005(a)(6).
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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 17th day of June, 2010.

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

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