

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

In the Matter of:)	
V. W., L. W.)	
and W. and X. W.)	OAH No. 10-0107-PFD
(minor children))	Agency Nos. 2009-034-7699
)	2009-034-7709
)	2009-034-7701
<u>2009 Permanent Fund Dividends</u>)	2009-034-7702

DECISION

I. INTRODUCTION

Chief Warrant Officer V. W. and his wife, L. W., applied for 2009 Permanent Fund Dividends (PFD).¹ He was also the sponsor for their two children, W. and X.² The Permanent Fund Dividend Division (Division) denied the W.s' applications pursuant to AS 43.23.008(c). The Division denied the applications of the minor children because they did not have an eligible sponsor.³ The W.s requested an informal appeal of these decisions. The Division upheld its original decisions and the W.s requested a formal appeal. CWO W.s appeared by phone at the formal hearing. The Division was represented by Wendy Hughes who also appeared by phone.

The W.s are not eligible for the 2009 PFD because they were absent from Alaska for more than 180 days during each of the preceding 10 years, and were absent for more than 180 days during the qualifying year for the 2009 PFD.

II. FACTS

V. and L. W. moved to Alaska in 1990, and resided in Alaska continuously until 1994 when CWO W. was transferred to his next duty station. They have two sons, X. and W. To date the W.s have yet to return to Alaska for more than 180 days in any given year, however, they returned often enough to remain eligible for the prior ten PFDs.

The W.s maintain significant contacts with Alaska including voting in Alaska and owning real estate in the state.⁴ Despite having been stationed in different states since he left

¹ Exhibit 1.
² Exhibit 1, pages 11 – 18.
³ Exhibit 5, pages 8 – 11.
⁴ Testimony of CWO W.

Alaska, the W.s have never taken any steps to become residents of any other state. They have not voted, owned property, registered vehicles, or obtained driver licenses in these other states.⁵

CWO and Ms. W. have been eligible for and have received PFDs since 1991, including each of the past ten PFDs.⁶ X. has been legible for every PFD since 1995 and W. has been eligible for every PFD since 1997. For each of the qualifying years related to those last ten PFDs, the W.s' have been absent from the state for more than 180 days. They were also absent for more than 180 days during 2008, which is the qualifying year for the 2009 PFD.⁷

None of these facts are in dispute in this case. The only question to resolve on appeal is whether the W.s are legally eligible to receive 2009 Permanent Fund Dividends.

III. DISCUSSION

CWO W. has been and continues to be a resident of Alaska.⁸ He was a very credible witness and it is more likely than not that he does intend to return to and remain indefinitely in Alaska with his family when he retires. In addition to being a resident, to be eligible to receive a PFD an applicant must be physically present in Alaska during the entire qualifying year or, if not present, be absent for one of several allowable reasons listed in statute.⁹

CWO W. and his family have qualified for previous PFDs because they were eligible under AS 43.23.008(a)(3) which permits extended absences by active duty military members and their families. An allowable absence for military service is not unlimited, however. The specific limitation relevant to this case is AS 43.23.008(c) which provides:

An otherwise eligible individual who has been eligible for the immediately preceding 10 dividends despite being absent from the state for more than 180 days in each of the related 10 qualifying years is only eligible for the current year dividend if the individual was absent 180 days or less during the qualifying year. This subsection does not apply to an absence under (a)(9) or (10) of this section or to an absence under (a)(13) of this section if the absence is to accompany an individual who is absent under (a)(9) or (10) of this section.

⁵ *Id.*

⁶ For reasons not apparent in the record CWO W. and Ms. W. were not eligible for the 1997 PFD. Exhibit 1 page 5.

⁷ Exhibit 1.

⁸ *See* Alaska Statute AS 01.10.055(c).

⁹ AS 43.23.005(a)(6).

This subsection will most commonly apply to military personnel and their families, though it can also apply to individuals claiming other allowable absences under AS 43.23.008(a).¹⁰

The W.s were absent for more than 180 days in 1998 and had periods of absence totaling more than 180 days for each of the subsequent qualifying years. Thus, they are not eligible to receive 2009 PFDs.

CWO W. raises several other arguments related to whether AS 43.23.008(c) is good public policy as applied to members of the United States military. The legislature considered a variety of competing factors before enacting this law, and the statute as written does not allow the Division or this Administrative Law Judge any discretion to decide who it should or should not apply to. This administrative hearing is not the place to resolve public policy questions.

The Division correctly applied AS 43.23.008(c) to the facts of this case and correctly determined that CWO W. is not eligible to receive a 2009 PFD. This decision is not intended in any way to disparage the value and the honor of those who serve the nation and the sacrifices made by their families. It is merely an implementation of the law as written.

Because CWO W. is not eligible to receive a 2009 PFD, his wife and minor children are also not eligible. Normally, children and spouses accompanying an active duty member of the armed forces would be eligible to receive a PFD.¹¹ However, the active duty service member they are accompanying must also be eligible.¹² Because CWO W. is not eligible, his family members are not accompanying an individual who is eligible, and therefore they are ineligible to receive a 2009 PFD.¹³

IV. CONCLUSION

CWO W. was absent from Alaska for more than 180 days for each of the preceding ten qualifying years, and he is therefore ineligible for a 2009 dividend. L., W., and X. W. are ineligible because they were absent for more than 180 days during the qualifying year and were

¹⁰ This subsection was made applicable only for absences beginning January 1, 1998 or thereafter. Accordingly, the 2009 application period was the first time applicants could fall within the exclusion set out by this subsection.

¹¹ AS 43.23.008(a)(3).

¹² AS 43.23.008(a)(3)(B).

¹³ *See also*, 15 AAC 23.113(b)(1) (child's sponsor must be eligible).

not accompanying another eligible individual. The Division's determination that CWO and Ms. W. and their two children are not eligible for 2009 Permanent Fund Dividends is upheld.¹⁴

DATED this 9th day of April, 2010.

By: Signed
Rebecca L. Pauli
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 14th day of May, 2010.

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

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

¹⁴ Left undecided by this decision is whether the W.s will be eligible for a 2010 PFD. A literal reading of AS 43.23.008(c) suggests they might be eligible precisely because they are not eligible for a 2009 PFD. On the other hand, legislative history, precedent, or closer analysis of the statutory language may result in a different interpretation.