

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

In the Matter of :)	
)	
D. P. C. and A. J. C.)	
)	OAH No. 10-0182-PFD
<u>2009 Alaska Permanent Fund dividend</u>)	DOR No. 2009-062-5565

DECISION

I. Introduction

D. and A. C. filed timely applications for the 2009 Alaska Permanent Fund dividend. The Permanent Fund Dividend Division denied their applications. The C.s filed a timely joint appeal and requested a hearing. The case was referred to the Office of Administrative Hearings and the assigned administrative law judge conducted a telephonic hearing on May 20, 2010. The C.s participated, and Pete Scott represented the division.

Because D. C.'s absence from Alaska was for participation in a program that is not eligible for loans from the Alaska Commission on Postsecondary Education he is ineligible for the 2009 dividend under the applicable regulation in effect in 2009. Because he did not prove that any Alaskan educational institution offers a comparable program, he is ineligible under the applicable regulation currently in effect. Because Mr. C. is ineligible, his spouse's absence to accompany him is not allowed for purposes of eligibility for the dividend. The division's decision is therefore sustained.

II. Facts

D. and A. C., a married couple, are life-long Alaska residents whose families live in Haines, Alaska, and who have regularly received Alaska Permanent Fund dividends. At age 18, after graduating from high school, Mr. C. joined the United States Army in 2002.¹ Mr. C. attained the rank of sergeant as a combat engineer and served two tours in Iraq.² He was in Alaska January 1-16, 2008,³ and was absent from Alaska under military orders from January 17,

¹ Ex. 8, p. 2.

² Ex. 8, p. 2; Ex. 3, p. 5.

³ It appears that the couple was in Alaska January 1-16, 2008. *See* Ex. 1, p. 3 (Question 4); Ex. 1, p. 6 (Question 9); Ex. 1, p. 7 (Question 4).

2008, through the date of his discharge, March 8, 2008.⁴ A. C. accompanied her spouse during that time.⁵

After his discharge from the Army, Mr. C. embarked upon a career as an electrician.⁶ He enrolled in a vocational education program in Washington State that includes classroom instruction and an apprenticeship.⁷ The program, operated by Independent Electrical Contractors (IEC) of Washington, is recognized by the Veterans' Administration and is college accredited,⁸ but it is not eligible for loans from the Alaska Commission on Postsecondary Education (ACPE).⁹ The program is a four-year apprenticeship program that is offered nationally. The total cost of the program for the 2008-2009 school year was \$1,000, inclusive of all tuition, books, lab fees, field trips and registration.¹⁰

As part of his IEC vocational education program, Mr. C. worked full time as an apprentice electrician in Washington beginning on April 21, 2008. Beginning on September 1, 2008, and continuing through December 18, 2008,¹¹ Mr. C. remained in Washington and continued to work full time as an apprentice electrician,¹² but at the same time attended classes at IEC's Tacoma facility as part of his vocational education program. He returned to Alaska December 19-31.¹³ A. C. accompanied her husband throughout this time.¹⁴ The couple plans to return to Alaska, where they were born and raised and where their parents live, as soon as Mr. C. completes his apprenticeship and training.

During 2008, the qualifying year for the 2009 dividend, D. C. was in Alaska 29 days (January 1-16; December 19-31). Mr. C. was absent under military orders 52 days (January 17-March 8). Mr. C. was absent 44 days after his discharge prior to starting his apprenticeship training program (March 9-April 20). He was absent 242 days while participating in a vocational

⁴ See Ex. 3, p. 5.

⁵ *Id.*

⁶ Ex. 8, p. 2.

⁷ See Ex. 10, pp. 3-9.

⁸ Ex. 8, p. 2.

⁹ Ex. 13, p. 1.

¹⁰ Ex. 3, pp. 7-8.

¹¹ See Ex. 12, p. 14.

¹² See Ex. 12, pp. 4-9, 13.

¹³ D.I flew from Seattle to Juneau on December 19, where he and A. boarded an Alaska Marine Highway ferry on December 21. See Ex. 3, p. 13. Ex. 3, p. 10. The couple had apparently mistakenly indicated that they arrived in Alaska on December 17. Ex. 3, pp. 1, 3 (Question 2).

¹⁴ *Id.*

education program as an apprentice electrician (133 days, April 21-December 18) and attending classes (109 days, September 1-December 18). A. accompanied her spouse throughout this time.

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 may not have been absent from the state during the qualifying year for more than the period allowed by AS 43.23.008(a). The division does not dispute that D. and A. C. are Alaska residents. However, the division asserts that they were absent from Alaska during 2008 (the qualifying year for the 2009 dividend) for more than the time allowed by AS 43.23.008(a)(2) and (17)(B), which together provide that an individual may be absent for no more than 120 days in addition to time absent “receiving vocational...education on a full time basis for which...a comparable program is not reasonably available in the state.”

15 AAC 23.163(c)(2) provides a specific rule for determining whether an absence while receiving vocational education can be allowed for purposes of dividend eligibility. Prior to January 1, 2010, 15 AAC 23.163(c)(2) provided that in AS 43.23.008(a)(2):

receiving vocational...education on a full-time basis means
(A) enrollment and attendance in good standing as a full-time student receiving vocational-technical training as part of a career education program if
(i) the Alaska Commission on Postsecondary Education recognizes the program by granting loans to individuals to attend and
(ii) the commission states to the department that there is no comparable vocational-technical career education program reasonably available in Alaska

Effective January 1, 2010, this regulation was amended. It now provides that in AS 43.23.008(a)(2):

Receiving vocational...education on a full-time basis means attending a program for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state at an educational institution eligible to participate in financial aid programs administered by the Alaska Commission on Postsecondary Education.^{15]}

The key difference in these two versions of the regulation is that in its current form, the regulation no longer requires that the student attend a program that is eligible for loans from ACPE: it now requires only that there be no reasonably available comparable program at an ACPE-eligible educational institution in Alaska.

¹⁵ Amended January 1, 2010, Register 192.

In Mr. C.'s situation, the division applied the former version of 15 AAC 23.163(c)(2): it asked commission staff whether the IEC program was eligible for ACPE student loans, and also whether there was a comparable program in Alaska that was eligible for ACPE student loans.¹⁶ ACPE staff responded that the IEC program is not eligible for loans from the commission because it is not recognized by the United States Department of Education as a program eligible for federal student loan funding.¹⁷ ACPE staff also stated that, in general, Alaska apprenticeship programs are not considered eligible for student loan funding from ACPE because the participants receive a wage and the cost of instruction is typically minimal.¹⁸

As this exchange indicates, the division has not ascertained whether any educational institution in Alaska that is eligible to participate in ACPE-administered student loan programs offers a vocational education program comparable to the IEC program. What the division stated is that ACPE does not provide student loans for any apprenticeship-type programs, even if it is offered for college credit by an Alaska educational institution, because those programs (like the IEC program) typically offer a wage and the cost of instruction is minimal. However, that ACPE will not provide a student loan to a student who attends an apprenticeship program does not mean that no ACPE-eligible educational institution in Alaska offers an apprenticeship-type program for its enrolled students.

Nonetheless, it is clear that Mr. C. is ineligible under the version of 15 AAC 23.163(c) in effect in 2009. Under the regulation then in effect, to be eligible while participating in a vocational education program, that program must have been eligible for participation in ACPE student loan programs. ACPE staff clearly stated that the IEC program is not eligible for student loan participation. Thus, Mr. C. is ineligible under the 2009 version of 15 AAC 23.163(c).

Under the current version of 15 AAC 23.163(c), Mr. C. would be eligible for a dividend if no ACPE-eligible educational institution in Alaska offers an apprenticeship program that is comparable to the IEC program. In this appeal, the burden of proving that such no program is offered at an ACPE-eligible educational institution was on Mr. C.¹⁹ Mr. C. did not prove that no ACPE-eligible educational institution in Alaska offers an apprenticeship program comparable to

¹⁶ Ex. 13, p. 1 (Email, B. Chase to J. Hayden, 4/13/2010 @ 3:21 p.m.).

¹⁷ Ex. 13, p. 1 (Email, J. Hayden to B. Chase, 4/15/2010 @ 12:49 p.m.).

¹⁸ Ex. 13, p. 1 (Email, J. Hayden to B. Chase, 4/15/2010 @ 12:49 p.m.).

¹⁹ See 2 AAC 64 290(e); 15 AAC 05.030(h).

the IEC program. Thus, he failed to show that he is eligible for a dividend under the current version of 15 AAC 23.163(d).

Because Mr. C. did not show that he is eligible under either version of 15 AAC 23.163(d), it is not necessary to decide whether the current or prior version of the regulation applies. For the same reason, it is not necessary to determine whether “receiving vocational...education on a full-time basis” requires full-time participation in classroom studies, or includes full-time apprenticeship with only limited classroom studies (as occurred from at the earliest September 1, until December 31),²⁰ or full-time apprenticeship with no concurrent classroom component (as occurred from April 1 to at least August 31).

IV. Conclusion

D. P. C. has not proved he is eligible for the 2009 dividend under the law in effect in 2009 or 2010. He is therefore ineligible for the 2009 dividend. Because A. C.’s eligibility rests on her husband’s, she is also ineligible. The division’s decision is **SUSTAINED**.

DATED August 19, 2010.

Signed _____
Andrew M. Hemenway
Administrative Law Judge

²⁰ In some circumstances, individuals have been considered to have full-time student status for purposes of the dividend program when carrying less than the number of credit hours required by a particular educational institution for full time student status. *See, e.g., In Re J.K.*, Department of Revenue Caseload No. 010381 (January, 2002) (graduate student full time even though taking only two credit hours); *In Re M.F., et al.*, OAH No. 06-0722-PFD (Department of Revenue, April 20, 2007) (disabled applicant took less than full load “due to the functional limitations placed on him by his physical disability.”).

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 15th day of September, 2010.

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

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