

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

In the Matter of)	
)	
F. M.)	
)	
<u>2009 Permanent Fund Dividend</u>)	OAH No. 10-0229-PFD Agency No. 2009-065-4555

DECISION

I. Introduction

F. M. timely applied for a 2009 permanent fund dividend. The Permanent Fund Dividend Division determined that she was not eligible, and it denied the application initially and at the informal appeal level. Ms. M. requested a formal hearing by correspondence.

By notice dated May 4, 2010, the parties were given until June 4, 2010, to send any additional documents or correspondence for consideration in this formal appeal. They then had until June 14, 2010, to respond to any documents received from the other. The division timely filed a position statement and hearing exhibits. Ms. M. did not respond to the division's position statement or add to the record on appeal. A preponderance of the evidence shows that Ms. M. is not eligible for a 2009 dividend and that the division was correctly applying the law when it made the decision to deny her application.

II. Facts

Ms. M. moved to Alaska in April 1998 to be near her daughter and son-in-law who were stationed at Fort Richardson, Alaska. Ms. M. considers them to be her primary care givers.¹

Ms. M. left Alaska on September 23, 2007 to accompany her daughter and son-in-law to their new duty station in Georgia. Ms. M. wrote that her furniture, photo album, file cabinet and heavy coats are stored at the home of her former landlord in Anchorage and that she plans to return to Alaska.²

She received her first PFD in 2000 and has received one every year since until her application for the 2009 PFD was denied. The division initially denied her 2009 PFD application because it concluded she had been absent from Alaska for 366 days during the qualifying year (2008) for the 2009 PFD, maintained her principal home outside of Alaska, and had severed her Alaska residency. On February 25, 2010 the division received a completed 2008 Medical Treatment Verification Form, which stated that since June 6, 2008, Ms. M. had been receiving

¹ Exh. 3 at 6 – 8.

continuous medical treatment.³ Also in support of her appeal she provided a “To Whom It May Concern” letter dated March 19, 2008 stating had been treated for pain and vomiting. She also provided prescription profiles, a computer printout showing that in 2008 she was hospitalized for a total of 8 days and an undated prescription stating that Ms. M. was unable to travel to Alaska due to recent hospitalization.⁴

III. Discussion

The division has denied Ms. M.’s application for a 2009 PFD because it has concluded she was not allowably absent during the qualifying year and because she did not maintain a principal residence in Alaska.

In order to qualify for a permanent fund dividend, the applicant must have either been present in Alaska all through the qualifying year, or have only been absent for reasons listed in AS 43.23.008.⁵ There are seventeen reasons listed that a person may be absent from Alaska and still qualify for a dividend. There are four allowable absences potentially available to Ms. M. Reason number (a)(3) is for someone accompanying an active duty member of the armed forces “as that individual’s spouse, minor dependent, or disabled dependent” Reason number (a)(5) is an absence for someone who is “receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician who treated the illness if the treatment or convalescence is not based on a need for climatic change.”⁶ Reason number (a)(13) is an absence for someone who is “accompanying another eligible resident who is absent for a reason permitted under (1), (2), (5) – (12), or (16) of this subsection as the spouse, minor dependent, or disabled dependent of the eligible resident.” Reason number (a)(17) is for any reason consistent with the intent to remain an Alaska resident provided the absences do not exceed a legislatively determined number of days.

Ms. M.’s cannot claim an allowable absence under (a)(3) or (13) as someone who is accompanying another eligible resident (either her daughter or son-in-law) because she is not the spouse, minor dependent, or disabled dependent of the eligible resident. The definition of disabled dependent is specific. Under 15 AAC 23.993(c) to claim “disabled dependent” status, the individual must be “claimed as a dependent for Internal Revenue Service purposes by an

² *Id.*

³ Exhibit 4 at 2.

⁴ It is reasonable to conclude that because the prescription indicates Ms. M. has been seen by the provider since June 6, 2008, the prescription was completed on or after that date.

⁵ AS 43.23.005(a)(6).

eligible resident, and whose physical or mental impairment prevents the individual from living independently, if a written statement...is submitted by a licensed physician or medical practitioner.”⁷ Ms. M. has submitted some evidence regarding her need for assisted living, but she has not submitted evidence that would support a finding that it is more likely than not that an eligible resident claims her as a dependent for tax purposes nor has she submitted the required written licensed provider’s statement. Therefore, Ms. M. cannot claim an allowable absence under AS 43.23.008(a)(3) or (13).

The division does not dispute that the portion of absences after June 6, 2008, would be allowable under AS 43.23.008(5).⁸ The difficult part of this case and what has been described in prior decisions as “counterintuitive”⁹ comes in addressing the first portion of Ms. M.’s absence of 157 days before her health care provider certified she was under continuous treatment. An absence for any reason such as vacation and visiting family members is not necessarily an allowable absence, but it can fall within three kinds of absence allowed for any reason at all, so long as the absence is consistent with continuing Alaska residency. These three absence types are listed together in the statute as reason number (17):

- (17) for any reason consistent with the individual's intent to remain a state resident, provided the absence or cumulative absences do not exceed
 - (A) 180 days in addition to any absence or cumulative absences claimed under (3) of this subsection if the individual is not claiming an absence under (1), (2), or (4) - (15) of this subsection;
 - (B) 120 days in addition to any absence or cumulative absences claimed under (1) – (3) of this subsection if the individual is not claiming an absence under (4) - (15) of this subsection but is claiming an absence under (1) or (2) of this subsection; or
 - (C) 45 days in addition to any absence or cumulative absences claimed under (1) - (15) of this subsection if the individual is claiming an absence under (4) - (15) of this subsection.

It should be noted that these three choices are conjoined with the word "or" at the end of subparagraph (B). This means that an applicant may choose an absence under any one of these choices, but the three kinds of absences may not be combined. Applicants must decide under which one of these three categories they will claim an absence.

⁶ AS 43.23.008(a)(5).

⁷ 15 AAC 23.993(c).

⁸ See page 4 of Division Position Statement.

⁹ *IMO S.H.*, OAH No. 08-0113-PFD at 3 (2008); *IMO C.S.*, OAH No. 05-219-PFD at 3 (2005).

Subparagraph (A) allows a person up to 180 days for any reason in addition to any days the person may have claimed for a military absence, so long as no other kind of absence is claimed. Since Ms. M. is not in the military, this option allows her to claim up to 180 days during the year for any reason, but not in combination with a medical absence under (5). Since Ms. M. was absent for a total of 366 days during the qualifying year, claiming an absence under this option will not make her eligible for a 2009 dividend.

Subparagraph (B) allows the applicant up to 120 days for any reason in addition to any time the person was absent for educational reasons under (1) or (2), so long as the person is not claiming any other kind of absence. Since Ms. M. not absent for educational reasons, this choice allows only 120 days, and is less favorable than choice (A).

Subparagraph (C) allows absences of up to 45 days in addition to any other claimed absences, including medical absences claimed under (5). Because the time Ms. M. was absent unassociated with the time period she was receiving continuous medical treatment was 157 days in addition to the medical absence time, her nonmedical absence is not allowable under this provision either. However one looks at the case, some portion of Ms. M.'s absence in 2008 is not allowable.

Under the statute, a person could be absent from the state on vacation for 180 days, and the entire absence would be allowable. A person could be absent from the state for 365 days for medical reasons, and the absence would be allowable. But a person who takes a 46-day trip early in the year for a vacation or other non-allowable reasons, and then suffers an unforeseen accident or illness requiring an absence of more than 135 days later in the same year would not be eligible. The total absence in that case would be 181 days, and 46 days in addition to the medical absence.

Because Ms. M. was not allowably absent in 2008 she is precluded by law from receiving a 2009 PFD. Therefore, it is not necessary to address whether Ms. M. is ineligible for a 2009 PFD because she failed to maintain a principle home in Alaska.

IV. Conclusion

F. M. was absent from Alaska for more than 45 days in addition to the time she was receiving continuous medical treatment. The division is correct that some part of their cumulative absences in 2008 is not allowable, and therefore, F. M. is not eligible for a 2009 PFD.

The decision of the Permanent Fund Dividend Division to deny the application of F. M. is affirmed.

DATED this 21st day of July, 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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 18th day of August 2010.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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