

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

IN THE MATTER OF )	
C V A )	Case No. OAH 10-0289-PFD
)	Agency No. 2009-055-5711
<u>2009 Permanent Fund Dividend</u> )	

**DECISION & ORDER**

**I. Introduction**

C V A applied for a 2009 permanent fund dividend (PFD). The Permanent Fund Dividend Division (Division) determined that Mr. A was not eligible, and it denied his application initially and at the informal appeal level. Mr. A requested a formal hearing by correspondence.

Administrative Law Judge Mark T. Handley was appointed to review and decide Mr. A’s appeal. Mr. A did not file any additional documents before the deadline. Bethany Chase represented the Division and filed a position paper.

The administrative law judge concludes that Mr. A is not eligible for a 2009 PFD because he was on a disqualifying absence from Alaska in 2008.

**II. Facts**

Mr. A was absent more than 180 days accompanying and providing care for his adult daughter, C, who has seizures and who is attending college full-time in Germany. C’s physician recommended that she have care in a family setting. Mr. A provides this care by looking out for her safety and her psychological wellbeing while she attends the University of No Name.<sup>1</sup>

**III. Discussion**

The Division determined that Mr. A was not eligible for a 2009 PFD because he was absent from Alaska for a disqualifying reason.<sup>2</sup> The Division argues this determination was correct. Mr. A argues that he is eligible because he has maintained his Alaska residency and was on an allowable absence.<sup>3</sup> Mr. A, as the person challenging the Division’s action, has the burden of proving that the Division is in error.<sup>4</sup>

*PFD Eligibility*

There are two very closely related, but distinct, concepts that come into play in this case: “residency” and “eligibility.” A person can be a resident but not eligible for a dividend. This is the case when a resident travels for disqualifying reasons for more than 180 days in the qualifying year,

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<sup>1</sup> Exhibit 6B, p. 1.

<sup>2</sup> Division’s Formal Hearing Position Statement.

<sup>3</sup> Exhibit 6, p. 3-4.

but has the intent to return to Alaska and establishes no ties to any other state. The person remains an Alaska resident, but is not eligible for a dividend. On the other hand, nobody can be eligible without being a resident.

In addition to establishing Alaska residency and maintaining the intent to return to Alaska and remain indefinitely, an individual must not be on a statutorily disqualifying absence.

*Disqualifying Absence*

The PFD eligibility rules that govern disqualifying absences are very specific and somewhat strict. These rules were set out in statute by the Alaska legislature. Mr. A argues that his absence should not be disqualifying, but like many other Alaskans who are absent for laudable reasons such as volunteer work and family reasons his absence makes him ineligible.

In order to qualify for a permanent fund dividend, the applicant must have been physically present in Alaska all through the qualifying year, or must only have been absent for one of the reasons listed in AS 43.23.008. Under that list, an Alaskan may be absent for up to 180 days for any reason consistent with Alaska residency.<sup>5</sup> Under that list, an Alaskan also may be absent for any length of time during the qualifying year while accompanying a full-time college student, but only if the Alaskan is the “spouse, minor dependent or disabled dependent of the student.”<sup>6</sup> There is also a provision that allows a parent to maintain eligibility while absent to provide care for a child whose treatment requires travel outside Alaska to a medical specialty complex.<sup>7</sup> There is no provision that allows a parent to maintain PFD eligibility for an absence exceeding 180 days in order to accompany an adult child attending college, even if that child needs the parent’s care and support.<sup>8</sup> Because the Mr. A was absent from Alaska for more than 180 days in 2008, the 180-day allowable absence for general reasons available to all residents does not apply to this case.

Mr. A absence of more than 180 days in 2008 to accompany his daughter made him ineligible for a 2009 PFD. The law is clear that there is no exception to the rule requiring physical presence in Alaska that would make him eligible for a 2009 PFD.

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<sup>4</sup> 15 AAC 05.030(h).

<sup>5</sup> AS 43.23.008(a)(16)(A).

<sup>6</sup> AS 43.23.008(a)(13).

<sup>7</sup> AS 43.23.005(a)(6).

<sup>8</sup> AS 43.23.008(a).

**IV. Conclusion**

The Division decision to deny the application of C V A for a 2009 permanent fund dividend is AFFIRMED.

DATED this 26<sup>th</sup> day of July, 2010.

By: Signed  
Mark T. Handley  
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 25<sup>th</sup> day of August, 2010.

By: Signed  
Signature  
Mark T. Handley  
Name  
Administrative Law Judge  
Title

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