

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

In the Matter of)	
)	
N. J. F)	OAH No. 10-0422-PFD
)	Agency No. 2010-004-7202
<u>2010 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

N. J. F. applied for a 2010 permanent fund dividend. The Permanent Fund Dividend division determined that he is not eligible, and it denied the application initially and at the informal appeal level. Mr. F. requested a formal hearing which was held on October 25, 2010. He appeared by telephone, as did PFD Specialist Peter F. Scott, who represented the division. A preponderance of the evidence shows that Mr. F. is not eligible for a 2010 dividend, and that the division was correctly applying the law when it made the decision to deny his application.

II. Facts

Mr. F. was born and raised in Alaska. In the fall of 2008 he enrolled in Chemeketa Community College in Salem, Oregon with the eventual goal of completing his education at Biola University in Los Angeles. After spending the 2008 Christmas holidays at home in Alaska, he returned to Salem to begin the spring semester of 2009 and enrolled on February 5th. Soon thereafter, Mr. F. began to feel ill. He thought he was catching a cold but by February 10th he had to be admitted to the emergency room and after testing, was informed he had mononucleosis.¹ His health was further complicated by Type I Diabetes, which made Mr. F. extremely ill. His mother took him to the Mayo Clinic in Arizona for treatment, but he had a long and difficult convalescence. He made two trips to Oregon from Arizona to take care of his affairs there and withdrew from classes at Chemeketa on February 16th. He returned to Alaska on May 10th.²

After spending the summer recovering from his illness, Mr. F. went to Los Angeles in mid-August to attend Biola University. He enrolled on August 26th as a full-time student carrying 12 credits.³ However, he had not yet fully recovered from his mononucleosis and on September 10th, he dropped one of his courses and was then carrying only 9 credits, a part-time

¹ Exh. 10 at pg. 3.
² Hearing testimony of Mr. F.
³ Exh. 12 at pg. 18.

course of study.⁴ He dropped a second course on October 6th.⁵ Mr. F. was treated at Cedars-Sinai Medical Center in Los Angeles from November 2nd through December 18th, after which he returned to Alaska. He apparently completed one of his fall courses at Biola University and earned 3 credits.⁶ As of spring semester 2010, Mr. F. reported he is fully recovered and once again attending school full-time.

In 2009, Mr. F. was absent from Alaska and attending school full-time for a total of 28 days, in Oregon from February 5 – 16 and in California from August 26 – September 10. He received continuous medical treatment either in Arizona or California for a total of 60 days, from March 16 – 24, April 14 – 24 and November 2 – December 18. Although he was given additional time at a November 18, 2010, status conference, he was not able to provide any physician’s statements verifying periods of continuous medical treatment other than the dates confirmed by his medical bills. Mr. F. contacted the OAH on December 10, 2010 to state that he would not be able to provide any additional documentation of his medical treatment.

III. Discussion

The qualifying year for the 2010 dividend was 2009.⁷ In order to qualify for a permanent fund dividend, the applicant either must have been present in Alaska all through the qualifying year, or only have been absent for one of the 17 allowable reasons listed in a statutory section entitled “Allowable Absences,” AS 43.23.008.⁸ Three of the allowable absences potentially apply to Mr. F.

One of the specifically allowable absences is an absence for any reason consistent with Alaska residency. Vacations and the like fit under this absence. However, an absence for this open-ended reason cannot exceed 180 days under any circumstances.⁹ Since Mr. F. was absent for about 249 days, this allowable absence cannot, by itself, save his eligibility for the dividend. He must qualify for another type of allowable absence as well.¹⁰

⁴ *Id.*

⁵ *Id.*

⁶ Exh. 12 at pg. 4.

⁷ AS 43.23.095(6).

⁸ AS 43.23.005(a)(6).

⁹ AS 43.23.008(a)(17)(A).

¹⁰ The maximum length of the catchall absence is reduced somewhat if the applicant is claiming certain other kinds of absences in the same year. *See* AS 43.23.008(17).

The second applicable provision is an absence while “receiving secondary or postsecondary education on a full-time basis.”¹¹ The Division claims Mr. F. was absent receiving postsecondary education on a full-time basis at Chemeketa Community College only from February 5th through February 16th and at Biola University only from August 26th through September 10th because he was ill and had to withdraw from one or more of his classes and thus become a part-time student status during both semesters of 2009.¹² Mr. F. concedes he had to drop classes early in each semester and become a part-time student. He was a full-time student for 28 days in 2009.

The third relevant provision 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."¹³ Mr. F. has been able to document that he was receiving continuous medical treatment for 60 days in 2009.¹⁴

The difficult part of this case comes in understanding the interplay between the many categories of absences for purposes of PFD eligibility and how that interplay impacts that portion of Mr. F.’s absence from the state while he was not either attending school full-time or receiving continuous medical treatment. That absence period, because it is not specifically allowed under any of the other 16 allowable absences in the statute, necessarily falls under the open-ended provision that allows a maximum absence of 180 days under any circumstances.¹⁵ However, the total absence allowed under the open-ended provision is reduced when combined with a specific allowable absence. For example, if a person is claiming an educational absence, as Mr. F. is doing, the total open-ended absence allowed is only 120 days.¹⁶ Mr. F. was absent 28 days for educational purposes and his other absences cannot exceed 120 days, all of which would then total 148 days. He was absent a total of 249 days, so Mr. F. has exceeded the 148 day maximum by 101 days and is thus not eligible for a 2010 dividend if he claims the educational allowance.

The other allowable absence that applies to Mr. F. is the one for continuous medical treatment. This is the most restrictive for Mr. F., as it provides for an open-ended allowance of

¹¹ AS 43.23.008(a)(1).

¹² See Division Position Statement at pg. 4.

¹³ AS 43.23.008(a)(5).

¹⁴ Exh. 8 at pgs. 16-18 & 20-22. See also Exh. 6 at pg. 5 and Exh. 8 at pgs. 9, 12.

¹⁵ See AS 43.23.008(a)(17)(A).

¹⁶ AS 43.23.008(a)(17)(B).

only 45 days in addition to the medical absence.¹⁷ Mr. F. was not able to document any more than a 60-day absence for continuous medical treatment, so this category would allow him a total absence of only 105 days. He has far exceeded this amount and would not qualify for a 2010 dividend using the allowable absence for medical treatment.

Even if Mr. F. claimed absences for both postsecondary education and continuous medical treatment, he would not be eligible for a dividend. The statute that deals with allowable absences limits the open-ended absence time to 45 days when “cumulative absences” are claimed and one of them is for continuous medical treatment.¹⁸ Applying this approach to Mr. F.’s case yields total allowable absences of 28 days for postsecondary education, 60 days for medical treatment and 45 days for the catch-all category, all of which total 133 days. But Mr. F. was absent from Alaska for 249 days and thus exceeds the maximum that could be claimed for allowable absences by 116 days.

Mr. F. was kept away from Alaska by unfortunate, unforeseen, and understandable circumstances. However, there is no provision in the law that allows the division or the administrative law judge to consider extenuating circumstances such as these on a case-by-case basis, or to grant him a waiver because his full-time educational pursuits were interrupted by his illness and the complications of diabetes.

IV. Conclusion

Mr. F. was absent from Alaska in excess of the time allowed by AS 43.23.008(a) and thus does not qualify for a 2010 dividend. The decision of the Permanent Fund Dividend Division to deny the application of N. J. F. is **AFFIRMED**. This decision does not impact his status as a resident or his eligibility for future PFDs.

DATED this 14th day of December, 2010.

By: Signed
Kay L. Howard
Administrative Law Judge

¹⁷ AS 43.23.008(a)(17)(C).

¹⁸ *Id.*

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 11th day of January, 2011.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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