

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

In the Matter of :	)	
	)	
R. P.,	)	
	)	OAH No. 10-0483-PFD
<u>2010 Alaska Permanent Fund dividend</u>	)	DOR No. 2010-006-8226

**CORRECTED DECISION<sup>1</sup>**

**I. Introduction**

R. P. filed a timely application for a 2010 Alaska Permanent Fund dividend. Following an informal conference, the Permanent Fund Division denied the application. Mr. P. filed a timely appeal.

Mr. P. is an Alaska resident, but he was absent from Alaska for more than the time allowed by law to retain eligibility for a Permanent Fund dividend. Therefore, the division's decision is affirmed.

**II. Facts**

R. P. has lived in Ketchikan since 1988. He bought a house there in 1993 and has no intention of moving from Alaska.

During 2009, Mr. P. was employed by J. E., a worldwide construction management company. As a site manager for that firm, Mr. P.'s job requires him to be absent from Alaska for lengthy periods of time. In 2009, Mr. P. was out of Alaska working as the site manager for a No Name project at the W. S. M. R. in New Mexico from the start of the year until June. In June, Mr. P. returned to the Ketchikan area for about a month, working at a mine cleanup project. He was then sent to California, where he worked on another No Name project until September. Mr. P. then returned to Alaska, working at another project in the Fairbanks area, where he remained until the end of the year.

Mr. P. was absent from Alaska for more than 180 days while working as a site manager for his employer at out-of-state projects.

**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

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<sup>1</sup> This decision corrects typographical and manifest errors as identified by the division in its filing dated January 28, 2011. See 2 AAC 64.350(a).

43.23.005(a)(6) requires that the individual was absent from the state during the qualifying year for no more than the period allowed by AS 43.23.008(a). The division does not dispute that Mr. P. is an Alaska resident. However, the division argues that he was absent from Alaska during 2009 for more than the time allowed by AS 43.23.008(a).

AS 43.23.008(a)(1)-(16) lists a number of specific reasons for which a person may be absent from Alaska, while retaining eligibility for the Permanent Fund dividend, such as attendance at a secondary or postsecondary educational institution,<sup>2</sup> serving on active duty in the armed forces,<sup>3</sup> receiving medical treatment,<sup>4</sup> or settling an estate.<sup>5</sup> None of the specific reasons listed in AS 43.23.008(a)(1)-(16) applies to Mr. P.'s stated reason for his absence from Alaska in 2009: private employment. Unless one of the specific reasons applies, AS 43.23.008(a)(17) provides that the maximum time an Alaska resident may be absent from the state while retaining eligibility for the Alaska Permanent Fund dividend is 180 days.

Mr. P. does not deny that he was absent from Alaska for more than 180 days in 2009. He argues that because he remains an Alaska resident, it is unfair to deny him a dividend due to the circumstances of his employment, which mandates he be absence from the state for lengthy periods of time.

Whether it was fair or unfair for the legislature to limit eligibility for the dividend to Alaska residents who are absent for 180 days or less, unless they fall within one of the specific categories listed in AS 43.23.008(a)(1)-(16), that is what the law provides, and the division must follow the law. The division is not authorized to pay a dividend to Alaska residents who are absent from the state for more than the period of time allowed by AS 43.23.008(a).

#### **IV. Conclusion**

Because Mr. P. was absent from Alaska during 2009 for a period of time greater than that allowed under AS 43.23.008(a), he is ineligible for the 2010 dividend.

The division's decision is therefore **AFFIRMED**.

DATED February 24, 2011.

*Signed*  
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Andrew M. Hemenway  
Administrative Law Judge

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<sup>2</sup> AS 43.23.008(a)(1).

<sup>3</sup> AS 43.23.008(a)(3).

<sup>4</sup> AS 43.23.008(a)(5).

<sup>5</sup> AS 43.23.008(a)(8).

## 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 Corrected Decision 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 24 day of February, 2011.

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

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