

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

In the Matter of)	
)	
L. J.)	
)	OAH No. 10-0552-PFD
<u>2010 Permanent Fund Dividend</u>)	Agency No. 2010-045-9268

DECISION

I. Introduction

L. J. timely applied for a 2010 permanent fund dividend. The Permanent Fund Dividend Division determined that he was not eligible, and it denied the application initially and at the informal appeal level. A formal hearing on appeal was held December 1, 2010. Mr. J. participated in person. Bethany Chase represented the division and appeared telephonically. The unchallenged evidence establishes that Mr. J. was absent for more than 180 days and that his absence was due to circumstances beyond his control. Regardless of whether he was prevented from returning or chose to remain outside Alaska, because Mr. J. was absent in excess of 180 days he was not allowably absent. Therefore the division was correctly applying the law when it made the decision to deny his application.

II. Facts

Mr. J. timely applied for a 2010 PFD. The division has raised no issue regarding his eligibility apart from him not being allowably absent during the preceding year.

Mr. J. left Alaska in November 2008 to be with his ailing mother in Mexico. Before he could return his passport and wallet were stolen. He returned to Alaska sometime after July 1, 2009 when he was hired by O. B. S. Mr. J. attempted to return sooner but lacked the financial resources to do so.

III. Discussion

The division has denied Mr. J.'s application for a 2010 PFD because it has concluded he was not allowably absent during the qualifying year, 2009.

A PFD applicant must meet several eligibility requirements.¹ One of the eligibility requirements is that a person must have been physically present in Alaska throughout the

¹ AS 43.23.005.

qualifying year, or only absent as allowed by AS 43.23.008.² The qualifying year for the 2010 PFD was 2009.³

There are seventeen reasons listed that a person may be absent from Alaska and still qualify for a dividend. There are two allowable absences potentially available to Mr. J. Reason number (a)(6) is for someone “providing care for a parent. . . .” 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.

Even though Mr. J.’s absence was prompted by his mother’s need for surgery, he cannot claim an allowable absence under (a)(6) because as of January 1, 2010, he was no longer providing care for his parent. Therefore, the only potential allowable absences that Mr. J. could claim would be under (a)(17).

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.

² AS 43.23.005(a)(6).

³ AS 43.23.095(7).

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 Mr. J. is not in the military, this option allows him to claim up to 180 days during the year for any reason, but not in combination with other allowable absences. Since it is undisputed that Mr. J. was absent in excess of 180 days during the qualifying year, claiming an absence under this option will not make him eligible for a 2010 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 Mr. J. 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 Mr. J. was absent unassociated with the time period he was absent to care for his mother is in excess of 45 days, Mr. J. may not claim he was allowably absent under this provision either. However one looks at the case, Mr. J.'s absence in 2009 is not allowable.

Mr. J. testified credibly that the length of his absence was due to circumstances over which he had no control. If his wallet and passport had not been stolen it is more likely than not that Mr. J. would have returned to Alaska within the 180 allowable days. However, the statute does not give the administrative law judge or the department the discretion to disregard the 180 day requirement. Therefore, because Mr. J. was not allowably absent in 2009 he is precluded by law from receiving a 2010 PFD.

IV. Conclusion

L. J. was absent from Alaska for more than 180 days during the qualifying year. Therefore, he is not eligible for a 2010 PFD. The decision of the Permanent Fund Dividend Division to deny the application of L. J. is affirmed. This decision does not affect his status as a resident or his eligibility for 2011 and future dividends.

DATED this 7th day of December, 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 3rd day of January, 2011.

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

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