

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

In the Matter of :	)	
	)	
J. H. and	)	
B. H. (minor)	)	OAH No. 10-0589-PFD
<u>2010 Alaska Permanent Fund dividend</u>	)	DOR Nos. 2010-058-5696/5697

**CORRECTED DECISION**

**I. Introduction**

J. H. filed timely applications for 2010 Alaska Permanent Fund dividends for herself and her daughter B. Following an informal conference, the Permanent Fund Dividend Division denied the applications on the ground that both had been absent from Alaska during the qualifying year for more than the allowable time.<sup>1</sup> Ms. H. filed a timely appeal and the case was referred to the Office of Administrative Hearings. A telephonic hearing was conducted.<sup>2</sup>

Because Ms. H. and her daughter were absent during the qualifying year for a longer period of time than allowed by law for purposes of eligibility for the Permanent Fund dividend, the division's decision to deny their applications is sustained.

**II. Facts**

J. H. and her daughter B. are life-long residents of Alaska. Ms. H. enrolled as a full-time student at the University of Alaska (Fairbanks) in 2006. Ms. H. was outside of Alaska for ten days in March, 2009, on vacation.<sup>3</sup> On May 15, 2009, Ms. H. and her daughter left Alaska and travelled to Oregon to visit her brother and her sister-in-law.<sup>4</sup> Ms. H.'s sister-in-law has a serious asthmatic condition, and after the summer was over Ms. H. stayed with her in order to help her out by providing care to her and her children.<sup>5</sup> When the fall semester resumed, Ms. H. re-enrolled as a full-time student at the University of Alaska, taking distance learning courses.<sup>6</sup> Ms. H. remained at her sister-in-law's house through the end of 2009. She was absent from Alaska for 240 days in 2009. B. returned to Alaska to be with her father from September 2-

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<sup>1</sup> Ex. 3, pp. 3, 10.

<sup>2</sup> The proposed decision erroneously stated that the matter was heard by correspondence. This corrected decision notes that the hearing was conducted telephonically. No other change has been made to the proposed decision.

<sup>3</sup> Ex. 1, p. 4.

<sup>4</sup> Ex. 1, pp. 4, 8; Ex. 4, p. 2.

<sup>5</sup> Ex. 3, p. 2.

<sup>6</sup> Ex. 3, p. 2.

October 5, and again on December 30 through the end of 2009.<sup>7</sup> B. was absent from Alaska for 196 days in 2009.

### **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 43.23.005(a)(6) provides that to maintain eligibility for the dividend, an individual may be 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 Ms. H. and her daughter are Alaska residents. However, the division argues that they were absent from Alaska during 2009 for more than the time allowed by AS 43.23.008(a).

Ms. H. does not dispute, and the evidence reflects, that she was absent from Alaska for 240 days in 2009, and that her daughter was absent for 196 days. Under AS 43.23.008(a)(17), an Alaska resident who is absent from Alaska for more than 180 days is ineligible for the dividend unless absent for a reason specified in AS 43.23.008(a)(1)-(16). Ms. H. argues that her absence is allowable for purposes of retaining eligibility for the Alaska Permanent Fund dividend because (1) she was providing care to a family member, and (2) she was enrolled as a full-time student; and that (3) her daughter's absence is allowable because Ms. H.'s absence is allowable.<sup>8</sup>

#### **(1) Caring For A Family Member**

Two subsections of AS 43.23.008(a)(1)-(16) address absences while providing care to a person with medical problems.

Under AS 43.23.008(a)(6), an Alaska resident may retain eligibility for a dividend while absent "providing care for a parent, spouse, sibling, child or stepchild with a critical life-threatening illness." Because Ms. H. was not providing care to her parent, spouse, sibling, child or stepchild, and because her sister-in-law's illness was not life threatening, her absence is not within the scope of AS 43.23.008(a)(6).

Under AS 43.23.008(a)(7), an Alaska resident may retain eligibility for a dividend while absent "providing care for the individual's terminally ill family member." A family member includes a person who is "legally related to the individual through marriage."<sup>9</sup> However,

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<sup>7</sup> Ex. 3, p. 9.

<sup>8</sup> See Ex. 3, p. 2; Ex. 5, p.3.

<sup>9</sup> AS 43.23.008(d).

because Ms. H.'s sister-in-law was not terminally ill, Ms. H.'s absence is not within the scope of AS 43.23.008(a)(7).

(2) Student Status

Under AS 43.23.008(a)(1), an Alaska resident may remain eligible for the dividend if absent while "receiving secondary or postsecondary education on a full-time basis." This statute is implemented by a regulation, 15 AAC 23.163(c)(1), which provides that an absence while receiving education means enrollment and attendance "where participation [in the academic program] requires absence from this state."<sup>10</sup> Under the regulation, Ms. H.'s absence is not within the scope of AS 43.23.008(a)(1), because absence from Alaska is not required for participation in the University of Alaska's distance learning program.

(3) B.'s Absence

Under AS 43.23.008(a)(13), a minor child may be absent from the state while accompanying a parent who is allowably absent for a reason listed in AS 43.23.008(a)(1), (2), (5)-(12), (16) or (17). In this case, Ms. H.'s absences were not allowable under any of those provisions, and thus her daughter's absence is also not allowed. Because B. was not absent while accompanying a parent who was allowably absent, she is ineligible. Substituting her father as her sponsor would not change this, because it is B.'s eligibility, not her sponsor's, that is at issue.

**IV. Conclusion**

Ms. H. and her daughter B. were absent from Alaska during the qualifying year for more than 180 days, and no portion of their absence was allowed under AS 43.23.008(a)(1)-(16). Accordingly, they are ineligible for the 2010 Alaska Permanent Fund dividend pursuant to AS 43.23.008(a)(17). The applications are therefore denied.

DATED May 11, 2011.

*Signed*  
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Andrew M. Hemenway  
Administrative Law Judge

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<sup>10</sup> 15 AAC 23.163(c)(1).

## 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 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 11<sup>th</sup> day of May, 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.]