

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

In the Matter of)	
)	
C G)	
)	OAH No. 11-0121-PFD
<u>2010 Permanent Fund Dividend</u>)	Agency No. 2010-024-5047

DECISION

I. Introduction

C G timely applied for a 2010 permanent fund dividend (PFD). The Permanent Fund Dividend Division denied her application initially and at the informal appeal level because it believed that Ms. G was no longer eligible for a 2010 PFD. Specifically, the division determined Ms. G was not allowably absent and she received Nevada in-state tuition. A formal hearing was held on May 4, 2011. Ms. G and PFD Specialist Bethany Chase participated by telephone. The record remained open to provide Ms. G with an opportunity to submit additional documents. A supplemental hearing date was agreed upon for the purpose of taking oral closing arguments from the parties. Ms. G did not participate in the supplemental hearing and the record closed without further submission or participation from Ms. G. Because Ms. G was not allowably absent from Alaska and because she received tuition reserved for Nevada state residents she is ineligible as a matter of law from receiving the 2010 PFD. For these reasons, the division's decision is affirmed.

II. Facts

Ms. G, now age 25, was born in Alaska and except for brief trips outside for vacation or to attend school, she has remained in Alaska. Ms. G has always considered Alaska home. She has received every PFD since she was born until the division denied her 2010 application for failure to be allowably absent and for claiming a benefit of another state (Nevada) reserved for residents of that state.

Therefore, to resolve Ms. G's appeal it will be necessary to determine the number of days she was out of state attending school full-time, part-time, or physically present in Alaska. It is also necessary to determine whether Ms. G did receive benefit from Nevada reserved for Nevada state residents.

The record establishes the following timeline:

Date	Full-Time	Part-Time/Other	In AK
Jan. 5, 2009 – Mar. 22, 2009	80 Days		
Mar. 22, 2009 – Aug. 4, 2009		135 Days	
Aug. 4, 2009 – Aug. 24, 2009			20 Days
Aug. 24, 2009 – Dec. 24, 2009	122 Days		
Dec. 24, 2009 – Dec. 31, 2009			7 Days
Total	202 Days	135 Days	27 Days

Regarding in-state tuition, Ms. G agrees that she now understands she was paying the tuition rate reserved for Nevada state residents. She contends, however, that she did not affirmatively claim she was a resident or realize she was receiving in-state tuition. On the question of residency, her uncorroborated testimony focused on the school's application. Specifically, she claimed that the application asked her how many years she had lived in Nevada and that the registrar must have automatically designated her as a Nevada resident eligible for in-state tuition. Ms. G denies that she ever intended to become a Nevada resident, that it has always been her plan to return to Alaska, and she has since returned to reside indefinitely in Alaska.

III. Discussion

The division contends Ms. G failed to meet two of the eligibility requirements for the 2010 PFD. The first is that Ms. G engaged in a disqualifying act when she received in-state tuition in Nevada;¹ and, that Ms. G is ineligible for a 2010 PFD as a matter of law because she was not allowably absent.²

A. *By receiving in-state tuition in Nevada in 2009, Ms. G is ineligible for a 2010 PFD, but she did not sever her Alaska residency.*

The qualifying year for the 2010 PFD is 2009.³ The law governing this case is stated in regulation 15 AAC 23.143(d), which reads in relevant part:

An individual is not eligible for a dividend if, any time from January 1 of the qualifying year through the date of application, the individual has

* * * * *

(11) accepted admission under resident tuition provisions . . . in another state or country, unless

(A) there was no difference between resident and nonresident tuition; or

¹ 15 AAC 23.143(11).

² AS 43.23.0059a)(6).

³ AS 43.23.095(6).

(B) nonresident tuition was waived as part of an interstate exchange agreement... or;

(c) the individual was granted admission under resident tuition provisions for any other reason that did not require the individual to be a resident of the state or country in which the college or university is located;

The regulation disqualifying an applicant who has received in-state tuition in another state is absolute. It does provide three “exceptions” to this bright line rule that Ms. G has not argued are applicable in her case. This regulation does not permit the division to consider a person’s intent to determine whether a person is an Alaska resident and should therefore qualify for a dividend in spite of having received a benefit reserved for residents of another state. It simply requires the division to ask whether the applicant received in-state tuition during the specified time period. If the applicant has done so, the division must deny the application without further inquiry into the applicant’s status as a resident or his or her intent. This bright-line rule affords the division no choice but it does not, however, as a matter of law establish that Ms. G severed her Alaska residency.

The definition of state resident as it applies to the Alaska Permanent Fund dividend program is found at AS 43.23.095(7). For purposes of the PFD program, a person is a state resident if he or she is “physically present in the state with the intent to remain indefinitely” or, if not physically present, the person “intends to return to the state to remain indefinitely under the requirements of AS 01.10.055.” Alaska Statute 01.10.055 provides that once a person has established residency, that person remains a resident during an absence unless the person “establishes or claims residency in another state” or performs other acts or is absent under circumstances that are inconsistent with the intent to return to Alaska to remain indefinitely and to make a home.”⁴

Intent, while subjective, is demonstrated through objective acts. Therefore, it is not enough that Ms. G has, throughout her appeal, maintained that she has always been an Alaska resident but her objective acts should be considered as well. Ms. G has returned to Alaska to live, while in school she returned to Alaska for holidays, her family is in Alaska, and she has maintained her Alaska driver’s license (renewing her license during the qualifying year). All are objective acts that weigh in favor of Ms. G remaining an Alaska resident. The primary factor

⁴ AS 01.10.055(a), (c).

weighing against Ms. G is her receipt of a benefit, in-state tuition, which is reserved for residents of Nevada.

Ms. G testified by phone. She testified convincingly that she did not recall ever applying for in-state tuition. She also testified convincingly that when asked if she lived in Nevada she was not claiming she was a Nevada state resident and was giving up her Alaska residency. Rather, she, like so many young Alaskans she was living in another state while attending school.

It is Ms. G's burden to establish that it is more likely than not that at all times relevant she met the statutory definition of a resident as required by the PFD program. It is a close call. However, Ms. G testified credibly when she testified that she had been living in Nevada for several years and now understands she was receiving in-state tuition but she did not fully appreciate the legal implications of doing so and did not intend to declare herself a resident of Nevada, thereby severing her Alaska residency. Therefore, her receiving in-state tuition is a disqualifying act for the 2010 PFD under 15 AAC 23.143(d)(11) but it did not sever her residency for purposes of the Alaska PFD program.

B. *Ms. G is not eligible for a 2010 PFD because she was not allowably absent from Alaska during the qualifying year.*

There is a second reason Ms. G is not eligible for a 2010 PFD because her absence was not allowable. In order to qualify for a permanent fund dividend, the applicant must have either been physically present in Alaska all through the qualifying year, or have only been absent for reasons listed in AS 43.23.008.⁵ The absences are referred to as allowable absences.

There are seventeen reasons listed that a person may be allowably absent from Alaska and still qualify for a dividend the next year. Reason number (1) is an absence for someone who is "receiving secondary or post secondary education on a full-time basis."⁶ Reason number 17(A) is for *any reason* consistent with maintaining Alaska residency provided the absence does not exceed 180 days.⁷ Reason number 17(B) is an absence not to exceed "120 days *in addition* to any absence or cumulative absences claimed under (1)...."⁸

Ms. G was absent 237 days in the qualifying year so she may not claim an allowable absence for any reason. Ms. G was absent in excess of 120 days in addition to her absences for

⁵ AS 43.23.005(a)(6).

⁶ AS 43.23.008(a)(1).

⁷ AS 43.23.008(a)(17(A) (emphasis added).

⁸ AS 43.23.008(a)(17)(B) (emphasis added).

allowable educational purposes. Those days in excess of 120 days were not allowable and Ms. G, therefore, is not eligible to receive the 2010 PFD.

IV. Conclusion

There are several reasons why C G is not eligible for a 2010 PFD. She received out of state tuition that did not fit within one of the narrow exceptions to this rule. She was also absent from Alaska in excess of the allowable 120 days. Therefore, Ms. G is not eligible for the 2010 PFD. Nothing in this decision precludes her from eligibility for future PFDs.

V. Decision

The decision of the Permanent Fund Dividend Division to deny the application of C G for a 2010 permanent fund dividend is **AFFIRMED** for the reasons set forth above, not because she took actions that severed her Alaska residency for purposes of the PFD program.

DATED this 21st day of July, 2011.

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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 1st day of September, 2011.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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