

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

IN THE MATTER OF	)	
T H	)	OAH 11-0248-PFD
	)	Agency No. 2010-064-4430
<u>2010 Permanent Fund Dividend</u>	)	

**DECISION & ORDER**

**I. Introduction**

This case is Ms. H’s appeal of the Division’s denial of her 2010 PFD application because she was absent from Alaska for more than 180 days in 2009. Having reviewed the record in this case and after due deliberation, I conclude that Ms. H is not eligible to receive a 2010 PFD because her absence in 2009 was disqualifying.

T H timely applied for a 2010 permanent fund dividend. The Permanent Fund Dividend Division determined that Ms. H was not eligible, and it denied the application initially and at the informal appeal level. Ms. H requested a formal hearing. Administrative Law Judge Mark T. Handley heard the appeal on July 28, 2011. Ms. H participated. PFD specialist Bethany Chase represented the PFD Division, filed a position paper and appeared for the Division.

**II. Facts**

Ms. H was a longtime Alaskan. She was living in Alaska prior to 2009. Based on the evidence in the record I find that during 2009, the qualifying year for a 2010 dividend, Ms. H was absent from Alaska for more than 180 days, and that the portion of her 2009 absence when she was not in Tennessee caring for her sister in-law exceeded 45 days.

In her request for a hearing, Ms. H explained she left Alaska in February 2009 in part because she thought she might get better results in a court case she was involved in Alaska if she moved to Florida and petitioned for a change of venue to that state. Ms. H informed the Alaska court of her intention before she left. Ms. H first moved to Florida and stayed for about three weeks. Ms. H admitted in a letter she dated “9/16/9” that during these three weeks she considered establishing Florida residency, but decided against staying in Florida because it was too expensive to live there on her disability income. Ms. H then traveled to Tennessee to visit her sister-in-law, and decided to stay in Tennessee to help her sister -in-law while she went through cancer treatment. Ms. H signed a six-month lease on a place to live close to her sister-in-law. Ms. H admitted on her 2010 PFD application and at the hearing that she claimed Tennessee residency to obtain public assistance benefits while she lived in Tennessee in 2009. Ms. H also obtained a Tennessee driver’s

license and registered her car in Tennessee in 2009. Ms. H did not maintain a home in Alaska during her absence in 2009. Ms. H explained at the hearing that she left Tennessee on September 17, 2009, but did not return to Alaska until November 6, 2009 due to problems paying for her travel. <sup>1</sup>

In the position paper the Division filed in response to Ms. H's request for a hearing, the Division indicated that it had decided that Ms. H had maintained her primary residence outside Alaska in 2009, had taken other steps that were inconsistent with her claim of Alaska residency, and that her absence in 2009 was disqualifying because it exceeded 180 days and exceeded 45 days in addition to her absence to care for her sister-in-law.

### **III. Discussion**

Eligibility for permanent fund dividends requires meeting several requirements. They are listed in Alaska Statute 43.23.005(a). One of the requirements is that the applicant "was, at all times during the qualifying year, physically present in the state or, if absent, was absent only as allowed in Alaska Statute 43.23.008."<sup>2</sup> Alaska Statute 43.23.008(a) lists a number of reasons a person can be absent from Alaska and still qualify for a dividend. The list includes reasons such as military service, education, serving in Congress, caring for a terminally ill family member, receiving continuous medical treatment, and a few other reasons. Reason number (17) allows absences for any reason consistent with Alaska residency, so long as the cumulative absences total fewer than 180 days, or fewer than 120 days in addition to time in school, or fewer than 45 days in addition to absences for other listed reasons.

Absences from Alaska that do not meet the requirements of Alaska Statute 43.23.008 disqualify an individual from PFD eligibility. Alaska Statute 43.23.008(a)(17)(C) disqualifies individuals absent more than 45 days in addition to absences for reasons listed under Alaska Statute 43.23.008(a)(4)-(16), if absent more than 180 days cumulatively during the PFD qualifying year. Caring for a terminally ill family member is listed under Alaska Statute 43.23.008(a)(7). Therefore, an individual absent more than 180 total days and more than 45 days when not absent for any reason listed Alaska Statute 43.23.008(a)(4)-(16) during the qualifying year is not eligible for a PFD.

Ms. H's 2009 absences fall into this category. Ms. H was absent more than 180 days in 2009 and she was absent at least 45 days in 2009 when she was not caring for a terminally ill family

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<sup>1</sup> Recording of Hearing and Exhibit 1-4.

<sup>2</sup> AS 43.23.005(a)(6).

member. No law gives the PFD Division, or the administrative law judge, the legal authority to grant PFDs to people who were absent for reasons, no matter how good, that are disqualifying under the provisions of Alaska Statute 43.23.008(a)(17)(C). These provisions are fairly technical, somewhat difficult to understand, and can catch people by surprise.

Ms. H apparently misunderstood how the 45-day rule applied to her situation and how the PFD eligibility rules work in other respects. The evidence in the file shows that she also took several steps in 2009 that disqualify her from 2010 PFD eligibility.<sup>3</sup> Ms. H acted as she believed best in difficult circumstances, but under the law she does not qualify for a dividend for 2010.

#### **IV. Conclusion**

Ms. H's 2009 absences from Alaska do not fall within the category of absences that are allowable for the purpose of PFD eligibility. Ms. H therefore does not qualify for a 2010 PFD.

#### **V. Order**

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of T H for a 2010 permanent fund dividend be AFFIRMED.

DATED this 2<sup>nd</sup> day of August, 2011.

By: Signed  
Mark T. Handley  
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 14<sup>th</sup> day of September, 2011.

By: Signed  
Signature  
Mark T. Handley  
Name  
Administrative Law Judge  
Title

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

<sup>3</sup> See Alaska Regulations 15 AAC 143(d)(1),(8),(10) &(17).  
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