

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

In the Matter of:)
)
R Z)
)
2011 Permanent Fund Dividend) OAH No. 11-0380-PFD
) Agency No. 2011-030-3440

DECISION

I. Introduction

R Z filed a timely application for a 2011 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division (division) denied the application. Mr. Z appealed, and requested a hearing by correspondence. The division submitted its Formal Hearing Position Statement. Although he was provided an opportunity to do so, Mr. Z did not submit any additional documents or argument beyond what he had already stated with his formal appeal.

Because Mr. Z's part-time enrollment in graduate school is not an allowable absence, he was absent from Alaska during 2010 for more than 120 days in addition to his allowable absence for full-time graduate school attendance. Accordingly, he is not eligible to receive a 2011 PFD.

II. Facts

Most of the relevant facts are not in dispute. Mr. Z has been a resident of Alaska for 29 years.¹ During 2010, he attended graduate school at the University of Nevada, Reno.² He was absent from Alaska for six days prior to the start of the spring semester, and then attended school full-time for 114 days.³ Mr. Z was again absent from Alaska for five days at the end of the spring semester before returning to Alaska.⁴ Finally, he was absent attending graduate school for 123 days during the fall of 2010.⁵ Mr. Z contends these 123 days should be considered allowably absent as they were beneficial to his graduate program. The division disagrees because the division's Education Verification Form completed by the University of Nevada's registrar indicates that Mr. Z was enrolled part-time from August 23, 2010 through December

¹ Exhibit 7, page 3.

² Exhibit 1, page 3.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

15, 2010.⁶ This is 115 days. If Mr. Z’s absence from August 2010 through December 2010 is not allowable then his absence from Alaska for 7 days prior to the semester and one day after the semester would not count towards an absence while attending school.⁷ Therefore, Mr. Z’s unallowable absences would total 123 days beginning on August 16, 2010 and ending on December 16, 2010.

III. Discussion

To be eligible to receive a PFD, an Alaska resident must be in Alaska for the entire qualifying year⁸ or, if absent, absent only for an allowable reason.⁹ A person is allowably absent while receiving a “postsecondary education on a full-time basis[. ¹⁰]” In addition, a person claiming an educational absence may be allowably absent from Alaska for an additional 120 days during the year.¹¹

The Department of Revenue has adopted a regulation that defines receiving a postsecondary education on a full-time basis. It means

enrollment and attendance in good standing as a full-time student where participation requires absence from this state

* * *

(B) for the purpose of pursuing a . . . graduate degree, as a full-time student at a college, university¹²

Mr. Z meets all of the requirements for this absence except for being a full-time student during the fall of 2010.

Mr. Z argues that he was actively engaged in furthering his education. He states:

I believe I should be considered eligible for the 2011 PFD because my part-time student enrollment at the University of Nevada, Reno during the 2010 fall semester was not my decision. At the time, I was considered a graduate special student where I could take graduate level courses towards my master’s degree, but I was not actually enrolled in the biology masters program. The total number of credits that a graduate special student can transfer towards their degree, once they’ve been accepted into the program is twelve. I already had eleven graduate level credits at the end of the 2010 spring semester and therefore could not take more than one credit during the fall semester. Any more credits would have been

⁶ Formal Hearing Position Statement, page 3.

⁷ *Id.*

⁸ The qualifying year is the calendar year immediately prior to the year in which the PFD is issued. 15 AAC 23.993(a)(7) & (11).

⁹ AS 43.23.005(a)(6). This is not the only eligibility requirement, but is the one applicable in this matter.

¹⁰ AS 43.23.008(a)(1).

¹¹ AS 43.23.008(a)(17)(B).

¹² 15 AAC 23.163(c)(1).

considered non-transferrable towards my degree and would have been a waste of time and money.^[13]

Mr. Z goes on to describe what he did to be accepted into the graduate program.

To get accepted in the masters program, I had to study for and take the GRE test, collect letters of recommendations, submit applications to the graduate school and biology department and find an advisor willing to mentor me throughout my career. Even though I was only able to enroll in a one-credit course, I still worked very hard to further my education by getting accepted into the program.^[14]

While any additional courses taken by Mr. Z during that semester would likely have provided him with useful knowledge to prepare him for his career as a biologist, those course would not have counted towards his graduate degree. Thus, Mr. Z cannot be faulted for choosing not to enroll full-time.

The fact remains, however, that Mr. Z was not enrolled full-time. Other than the one course, Mr. Z's efforts were aimed at obtaining admission into the graduate program rather than completion of that program. Mr. Z was not "receiving . . . postsecondary education on a full-time basis."¹⁵ Accordingly, he was absent for more than 120 days in addition to his allowable educational absence during the spring of 2010.

IV. Conclusion

Mr. Z was not a full-time student during the fall of 2010, and his absence during that time period is not an allowable absence for PFD purposes. Accordingly, he is not eligible to receive a 2011 PFD.¹⁶

Dated this 17th day of January, 2012.

Signed _____
Rebecca L. Pauli
Administrative Law Judge

¹³ Exhibit 7, page 3.

¹⁴ *Id.*

¹⁵ As 43.23.008(a)(1).

¹⁶ There is nothing in the record indicating that he has severed his Alaska residency for purposes of 2012 PFD eligibility.

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 14th day of February, 2012.

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

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