

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

In the Matter of:)
)
A W)
)
2011 Permanent Fund Dividend) OAH No. 11-0395-PFD
) Agency No. 2011-039-7716

DECISION

I. Introduction

A W timely applied for a 2011 permanent fund dividend (PFD). The Permanent Fund Division denied Ms. W’s application because she was not physically present in Alaska for at least 72 consecutive hours during 2009 or 2010 as required by AS 43.23.005(a)(4).¹ At Ms. W’s request, a formal hearing by telephone was held on November 14, 2011. Ms. W was called at the telephone number provided on her request for formal hearing form and at another number on file with the division. Neither number was answered. The record remained open for ten days to provide Ms. W with an opportunity to show reasonable cause for her failure to participate in the hearing.² The division’s denial is affirmed because Ms. W was not physically present for 72 hours as required by statute.

II. Facts

The facts of this case are not in dispute, the sole issue being their legal significance.³ Ms. W moved to Alaska from Washington State in October, 2001. She applied for and received PFDs from 2003 through 2009. She did not apply for a 2010 PFD. On her 2011 PFD application, Ms. W indicated that she had been absent from Alaska from September 15, 2008 through January 25, 2011.⁴ Ms. W’s application was filed on February 24, 2011. She confirmed that she was not in Alaska for at least 72 consecutive hours in 2009 or 2010.

Ms. W explained to the division that she did not return to Alaska during that time because her daughter required continuous medical treatment in Washington. As an additional fact to be

¹ An Alaska resident is eligible to receive a PFD if the person “has been physically present in the state for at least 72 consecutive hours at some time during the prior two years before the current dividend year.” AS 43.23.005(a)(4).

² 15 AAC 05.030(j).

³ The facts are taken from the agency record, exhibits 1 – 6.

⁴ Exh. 1 at 3.

considered, Ms. W wrote that her daughter “was in Alaska in 2009 and 2010 well over the 72 hours”⁵

III. Discussion

An otherwise eligible individual not physically present in Alaska remains eligible for a PFD if that person was accompanying a minor who was absent receiving continuous medical treatment.⁶ This type of absence is referred to as an “allowable absence.” The unchallenged evidence establishes that Ms. W was allowably absent accompanying her daughter. However, most allowable absences are not without limits. One such limit is the requirement that a person who is allowably absent must return “for at least 72 consecutive hours at some time during the prior two years before the current dividend year.”⁷

It is undisputed that Ms. W was not physically present for the required 72 hours. She asks that her daughter be found eligible because the daughter did return in excess of 72 hours during the period in question. Her daughter’s application at the time of the hearing had been denied but had not been appealed.

The language of the statute is clear and leaves no room for discretion. Ms. W did not meet the 72 hour requirement and is thus not eligible for a 2011 PFD. The law does not recognize an exception to the 72 hour rule except in the most limited of circumstances not present here.⁸

The PFD division correctly applied the law when it denied her application for a 2011 permanent fund dividend. This decision does not affect her status as an Alaska resident or her eligibility for 2012 and future dividends.

If the minor child meets all eligibility requirements but was denied for lack of an eligible sponsor, she may be able to substitute a sponsor or she may be able to apply on her own behalf when she turns 18 provided so long as she does so before she reaches the age of 20.⁹ Because this opportunity will be lost after the child reaches 20 years of age, Ms. W should remind her daughter to apply immediately after her eighteenth birthday.

⁵ Exh. 6 at 2.

⁶ AS 43.23.008(a)(12).

⁷ AS 42.23.005(a)(4).

⁸ AS 43.23.005(f) provides that the Commissioner of Revenue may waive the 72 hour requirement in the time of a national military emergency or if the individual is in the custody of the Department of Health and Social Services under a court order.

⁹ 15 AAC 23.133(b)-(c).

IV. Conclusion

To be eligible for a 2011 PFD Ms. W must have returned to Alaska for at least 72 consecutive hours during 2009 or 2010. She did not. The division correctly denied A W’s application for a 2011 PFD.

DATED this 24th day of January, 2012.

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 21st 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.]