

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

IN THE MATTER OF	)	
D X	)	OAH 12-0131-PFD
	)	
<u>2011 Permanent Fund Dividend</u>	)	Agency No. 2011-039-7989

**DECISION & ORDER**

**I. Introduction**

This case is D X’s appeal of the Division’s denial of his 2011 PFD application because he was absent from Alaska for more than 180 days in 2010 for professional motocross training and competitions. K X timely applied for a 2011 permanent fund dividend for her son, D. D X was a child at the time of the application, but he is now an adult. The Permanent Fund Dividend Division determined that Mr. X was not eligible, and it denied the application initially and at the informal appeal level. Mr. X requested a formal hearing. Administrative Law Judge Mark T. Handley heard the appeal. K X represented her son. PFD specialist Pete Scott represented the PFD.

Having reviewed the record in this case and after due deliberation, I conclude that Mr. X is not eligible to receive a 2011 PFD because his absence in 2010 was disqualifying.

**II. Facts**

Mr. X is a longtime Alaskan. It is undisputed that, during 2010, the qualifying year for a 2011 dividend, Mr. X was absent from Alaska for 307 days because he was enrolled in the Racer Development Program training to become a professional motocross athlete.<sup>1</sup> Based on the evidence in the record, I find that it is more likely than not that Mr. X was not attending an educational institution during his absence.<sup>2</sup>

**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>3</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

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<sup>1</sup> Recording of Hearing-Testimony of Ms. X.

<sup>2</sup> Exhibit 10, page 3 & Exhibit 4, page 6.

<sup>3</sup> AS 43.23.005(a)(6).

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)(A) disqualifies individuals absent more than 45 days in addition to absences for reasons listed under Alaska Statute 43.23.008(a)(1)-(16), if absent more than 180 days cumulatively during the PFD qualifying year. Therefore, an individual absent more than 180 total days, when not absent for any reason listed Alaska Statute 43.23.008(a)(1)-(16) during the qualifying year is not eligible for a PFD.

Under AS 43.23.008(a)(1), an absence may be allowed while “receiving secondary or postsecondary education on a full-time basis.” This statute is implemented in part by regulation, 15 AAC 23.163(c)(2), which, effective January 1, 2010 provides that in AS 43.23.008(a)(2):

Receiving vocational, professional, or other specific education on a full-time basis means attending a program for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state at an educational institution eligible to participate in financial aid programs administered by the Alaska Commission on Postsecondary Education

Mr. X’s does not meet the requirements of this regulation. The vocational education must be at an educational institution in order to qualify under this regulation.<sup>4</sup> The Racer Development Program is not an educational institution. Mr. X was home schooling for his high school education and engaged in focused training at the Racer Development Program, riding five days a week, during his absence.<sup>5</sup>

No law gives the Division 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)(A). Regrettably, these provisions are fairly technical, strict. Alaskans, like Mr. X, may be disqualified for absence that are for reasons that do the Alaskan a great deal of credit, but are not included in the list of reasons for extended absences that do not prevent PFD eligibility. Under the law, Mr. X does not qualify for a dividend for 2011.

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<sup>4</sup> In Re R.K. at 8, OAH No. 10-0541-PFD (Commissioner of Revenue 2011).

<sup>5</sup> Exhibit 10, page 3.

#### **IV. Conclusion**

Mr. X's 2010 absences from Alaska do not fall within the category of absences that are allowable for the purpose of PFD eligibility. Mr. X therefore does not qualify for a 2011 PFD. The decision of Division to deny the application of D X for a 2011 permanent fund dividend be AFFIRMED.

DATED this 10<sup>th</sup> day of October, 2012.

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 AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 13<sup>th</sup> day of December, 2012

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

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