

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

In the Matter of)	
)	
D J. N)	
R L. N)	OAH No. 12-0190-PFD
)	Agency Nos. 2011-048-7140
<u>2011 Permanent Fund Dividend</u>)	2011-048-7141

DECISION

I. Introduction

R and D N of No Name are longtime Alaskans who have received the Permanent Fund Dividend (PFD) most years since the program began. In 2011, however, their dividends were denied because the PFD Division calculated that they had been absent from Alaska too many days in 2010 to be eligible for 2011 dividend. After unsuccessfully pursuing an informal appeal, Mr. and Mrs. N requested a formal hearing.

A telephonic hearing took place on August 14, 2012. Mrs. N participated. Based on the evidence taken at the hearing and the written record, the Division appears to be correct that the Ns spent too many days outside Alaska in 2010 to retain their eligibility, and the denial will be affirmed.

II. Facts

The only issue in this appeal is the length of the Ns' absences from Alaska during 2010. There were two absences in total, the longer one a vacation to visit family, and the shorter one a trip to settle the estate of Mrs. N's mother.¹ The Ns traveled together for both absences.

The Ns began 2010 out of state on vacation.² On April 15, 2010, they returned by air to Alaska, crossing into Alaska airspace before midnight.³ Just after midnight on October 15, they left the state on the trip to settle the estate.⁴ They remained out of state until after the turn of the year.⁵

¹ Testimony of D N.

² Exhibit 1, pp. 2, 6.

³ Exhibit 5, pp. 8, 12 (boarding passes).

⁴ Exhibit 5, pp. 10, 14 (boarding passes).

⁵ Exhibit 1, pp. 2, 6.

III. Discussion

The qualifying year for the 2011 dividend was 2010.⁶ A PFD applicant must meet several eligibility requirements.⁷ One of the eligibility requirements is that a person must have been physically present in Alaska throughout the qualifying year, or only absent as allowed by Alaska Statute 43.23.008.⁸

Most of the allowable absences in AS 43.23.008 relate to specialized reasons to be out of state, such as serving in the military or serving in Congress. The primary absence potentially applicable to the Ns is the catchall category in AS 43.23.008(a)(17)(A): a person may be allowably absent “for any reason consistent with the individual’s intent to remain a state resident” up to a maximum of 180 days.⁹

A Department of Revenue regulation, 15 AAC 23.163(j), requires the department to “count whole days when determining the number of days an individual was absent from Alaska.” The regulation also provides that the department must “count the day an individual arrives or returns to Alaska as a day absent unless the individual previously left Alaska that same day.” The day the individual leaves Alaska does not count as a day absent.

The department has no discretion in its application of 15 AAC 23.163(j). While this rigidity in application is sometimes frustrating, it does promote the consistent administration of a program with 600,000 beneficiaries.

The calculation of the Ns’ 2010 absences under this regulation is as follows:

Departure Date	Return Date	Calculation	Days absent
Before 1/1/10	4/15/10	31 + 28 + 31 + 15	105
10/15/10	After 1/1/11	16 + 30 + 31	77
Total			182 days

Because the total of 182 days exceeds the number allowable under this category of absences, the Ns are ineligible unless another category is available to them.

There is a second category that can apply: an individual may be allowably absent up to 220 days while “settling the estate of the individual’s deceased parent, spouse, sibling, child, or stepchild,”¹⁰ or while accompanying a spouse who is doing the same.¹¹ Mr. and Mrs. N had a

⁶ AS 43.23.095(6).

⁷ AS 43.23.005(a).

⁸ AS 43.23.005(a)(6).

⁹ When claimed in combination with other allowable absences, the 180 days is often reduced. AS 43.23.008(a)(17)(B), (C).

¹⁰ AS 43.23.008(a)(8).

77-day absence that can be put in this category. However, a person who uses this category is only allowed 45 days of absence for other reasons such as vacation.¹² The Ns' 105-day vacation absence greatly exceeds that limit.

At the hearing, Mrs. N argued that she had contacted the PFD office in Fairbanks this spring and had been told a person is eligible if he or she has spent more than 180 days in the state in the qualifying year (that is, focusing on days present rather than days absent). If this is what Mrs. N was told, it is incorrect. However, the Ns did not rely on this advice in planning their 2010 absences (the advice came two years later), and there is no legal basis to replace the law set by the Legislature with the informal, oral opinion of a government employee.

IV. Conclusion

Due to an overlength absence during the qualifying year, Mr. and Mrs. N are not eligible for a 2011 PFD. They apparently remained Alaska residents, and nothing in this decision precludes them from eligibility for future PFDs.

The decision of the Permanent Fund Dividend Division to deny the applications of D and R N for 2011 Permanent Fund Dividends is AFFIRMED.

DATED this 14th day of August, 2012.

By: Signed
Christopher Kennedy
Administrative Law Judge

¹¹ AS 43.23.008(a)(13).

¹² AS 43.23.008(a)(17)(C).

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

DATED this 10th day of September, 2012.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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