

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

IN THE MATTER OF)	
L J)	OAH No. 12-0235-PFD
)	
<u>2012 Permanent Fund Dividend</u>)	Agency No. 2012-007-3391

DECISION & ORDER

I. Introduction

L J timely applied for a 2012 permanent fund dividend. The Permanent Fund Dividend Division determined that Ms. J was not eligible, and it denied the application initially and at the informal appeal level. Ms. J requested a formal hearing by correspondence. Administrative Law Judge Mark T. Handley reviewed and decided the appeal. Ms. J filed additional arguments for her appeal in a letter dated September 8, 2012. Pete Scott represented the PFD Division. The Division timely filed the agency record and a position paper.

This case is Ms. J's appeal of the Division's denial of her 2012 PFD application because she was on disqualifying absences from Alaska in 2011. Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that Ms. J is disqualified from receiving a 2012 PFD.

II. Facts

During 2011, the qualifying year for a 2012 dividend, Ms. J was absent from Alaska for over 180 days for vacation, and as a part-time and a full-time student at the No Name Community College in Montana and that she was not a full-time student for more than 120 days of her absences in 2011.¹

In her letter dated September 8, 2012, Ms. J explained she thought that she should be eligible for a 2012 PFD because she thought she was a full-time student when she was taking less than 12, but more than 7 credits and because she otherwise maintained her Alaska residency during her absences from Alaska in 2011. Ms. J returned to Alaska both for Christmas breaks and between her summer classes. Ms. J explained she started with 11 credits in the spring 2011, but then dropped a class that was overwhelming her. Ms. J did not dispute that she was absent more than 180 days and more than 120 days when she was not a full-time student in 2011. Ms. J argues that she should not be disqualified because she would not have reduced her course load to less full-time

¹ Exhibits 1, 2,4, 5& 8.

status if she had known it would disqualify him from receiving a PFD. Ms. J also argued that she should be eligible because she was a part-time student for less than 120 days.

III. Discussion

Eligibility for permanent fund dividends requires meeting several requirements. They are listed in Alaska Statute 43.23.005. 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.”²

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 as a full-time student, 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)(B) disqualifies individuals absent more than 120 days in addition to absences for the full-time educational reasons listed under Alaska Statute 43.23.008(a)(1)-(2), if absent more than 180 days cumulatively during the PFD qualifying year. Therefore, a college student absent more than 180 total days and more than 120 days with less than full-time student status during the qualifying year is not eligible for a PFD.

Ms. J’s 2011 absences fall into this category. 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). Even if Ms. J was only a part-time student for less than 120 days, her absences exceeded 180 days, and she was not a full-time student for more than 120 days of those absences.

It is unfortunate that Ms. J did not understand that taking less than a full-time course load in 2011 would make her ineligible for a 2012 PFD. Under the law, however, she does not qualify for a 2011 PFD.

² AS 43.23.005(a)(6).
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IV. Conclusion

Ms. J’s 2011 absences from Alaska fell within a category of absences that are disqualifying for the purpose of PFD eligibility. Ms. J therefore does not qualify for a 2012 dividend.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of L J for a 2012 permanent fund dividend be AFFIRMED.

DATED this 29th day of November, 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 Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 27th day of December, 2012.

By: Signed _____
Signature
Terry L. Thurbon _____
Name
Chief Administrative Law Judge _____
Title

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