

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

IN THE MATTER OF)	
H T)	OAH No. 13-0077-PFD
)	
<u>2012 Permanent Fund Dividend</u>)	Agency No. 2012-040-8687

DECISION & ORDER

I. Introduction

This case is Ms. H T's appeal of the Permanent Fund Dividend Division's (Division's) denial of her 2012 permanent fund dividend (PFD) application because she was on disqualifying absences from Alaska in 2011. Ms. T timely applied for a 2012 permanent fund dividend. The Division determined that Ms. T was not eligible, and it denied the application initially and at the informal appeal level. Ms. T requested a formal hearing by correspondence. Administrative Law Judge Mark T. Handley reviewed and decided the appeal. Pete Scott represented the Division and filed the agency record as well as a position paper.

Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that Ms. T is disqualified from receiving a 2012 PFD. Ms. T was absent attending college, but she was in less than full-time student status for too long in 2011 to qualify for a 2012 PFD.

II. Facts

In a letter attached to her request for an informal appeal, Ms. T explained that she started as full-time student during both the spring and fall semesters of 2011, but had to drop classes that she was struggling with in order to maintain her high grade point average.¹ The evidence in the record shows that it is more likely than not that Ms. T was absent, living in Arizona as a full-time college student for more than 180 days in 2011, and that Ms. T was absent, living in Arizona as a part-time college student for more than 120 days in 2011.² Ms. T dropped down to part-time status during spring semester on March 24, 2011. Ms. T did not return to Alaska or enroll as a full-time student during the summer of 2011. Ms. T dropped down to part-time status during fall semester on December 8, 2011.³ After she requested a formal hearing, Ms. T filed copy of her airline records showing her return to Alaska over the Christmas break in 2011, but this return had already been

¹ Exhibit 4, pages 3 & 4.
² Exhibits 1&5.
³ Exhibit 5.

taken into account in the determination that her absence when she was not a full-time student exceeded 120 days in 2011.⁴

III. Discussion

Several requirements must be met to be eligible for a PFD. Some of these requirements 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.”⁵

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. T’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).

It is unfortunate if Ms. T was not able to maintain a full-time course load in 2011, and she probably made the best choice for her academic career in dropping classes in order to maintain her grade point average. Under the law, however, she does not qualify for a 2012 PFD.

⁴ Exhibits 1 & 8.

⁵ AS 43.23.005(a)(6).

IV. Conclusion

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

DATED this 6th day of March, 2013.

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 3rd day of April, 2013.

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

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