

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

In the Matter of :)	
)	
H T)	OAH No. 13-0136-PFD
_____)	DOR No. 2012-060-8900

DECISION

I. Introduction

H T filed a timely application for a 2012 Alaska Permanent Fund dividend. The Permanent Fund Dividend Division denied the application on the ground that Mr. T was absent for more than the time allowed by law to remain eligible for a dividend.¹ Mr. T filed a timely appeal and requested a hearing. The case was referred to the Office of Administrative Hearings and the assigned administrative law judge conducted a telephonic hearing on March 5, 2013. Mr. T participated, and Pete Scott represented the division.

Mr. T contends that he was absent from Alaska during the qualifying year as a full time graduate student at Texas Tech University. During the spring semester of the 2010-2011 academic year he was not enrolled for full time credit and the dean of the graduate school did not grant him full time student status during that semester. Thus, the division's decision is sustained.

II. Facts

H T moved to Alaska in 1999 and regularly received an Alaska Permanent Fund dividend each year beginning in 2001, except in 2002 and 2009.² In 2001, Mr. T was absent for about six and a half months, including three and a half months when he was an intern at a NASA facility in Virginia, and his 2002 dividend was denied on the ground that the internship was not an allowable absence.³ From 2002-2007, Mr. T was enrolled as a full time graduate student at Texas Tech University.⁴ In 2008, Mr. T was enrolled as a part time graduate student while working on his doctorate degree at Texas Tech University; he spent part of his absence there and

¹ The division also concluded that Mr. T had maintained his principal home in another state. *See* Ex. 5, p.2. However, maintenance of a principal home in another state is allowed while absent as a full time student. Accordingly, there is no need to address this issue separately.

² Ex. 1, pp. 1, 5.

³ *See In Re T*, No. 030627 (Department of Revenue 2004). Ex. 11.

⁴ *See* Ex. 14, p. 1.

another part in Tennessee, working with a professor there.⁵ His 2009 dividend was denied on the ground that he was not enrolled as a full time student.

Mr. T was absent from Alaska for all of 2011, the qualifying year for the 2012 dividend.⁶ During that time, as in 2008, Mr. T was working on his doctorate degree at Texas Tech University.⁷ Working on his degree, at this stage, meant performing additional research and writing his dissertation.⁸ Throughout the entire calendar year, Mr. T was in regular contact with his advisor, working closely with him in completing his dissertation, even when he was enrolled for less than full time status and when he was not enrolled at all.⁹

Mr. T was enrolled at Texas Tech during the fall semester of the 2010-2011 academic year, taking one credit hour.¹⁰ After the inter-session period, including from January 1-11, 2011 (11 days), Mr. T was enrolled for six credit hours in the spring semester from January 12-May 10, 2011 (119 days).¹¹ Mr. T was not enrolled at the university during the summer break between the 2010-2011 and 2011-2012 academic years, from May 11-August 24, 2011 (106 days). Mr. T was enrolled for six credit hours in the fall semester of the 2011-2012 academic year, from August 25-December 14, 2011 (112 days).¹² After the intersession, including from December 15-31, 2011 (17 days), he was enrolled for six credit hours during the spring semester.

At Texas Tech, a graduate student is considered full time if enrolled for at least nine credit hours, although the dean of the graduate school has discretion to declare a student full time even if enrolled for fewer credit hours.¹³ The dean declared Mr. T a full-time student for the fall semester of the 2011-2012 academic year.¹⁴

III. Discussion

AS 43.23.005(a) establishes certain statutory requirements for eligibility for a permanent fund dividend. In addition to Alaska residency, AS 43.23.005(a)(6) requires that the individual was absent from the state during the qualifying year for no more than the period allowed by AS

⁵ See *In Re T*, OAH No. 10-0018-PFD (Commissioner of Revenue 2010). See Ex. 12, Ex. 14, p. 1.

⁶ See Ex. 1, p. 4.

⁷ See Ex. 1, p. 4.

⁸ See Ex. 3, p. 3.

⁹ Testimony of H. T.

¹⁰ Ex. 16, p. 2.

¹¹ Ex. 16, p. 2.

¹² Ex. 4.

¹³ Ex. 4, p. 2.

¹⁴ Ex. 7; Ex. 16, p. 2.

43.23.008(a). The division does not dispute that Mr. T is an Alaska resident. However, the division asserts that Mr. T was absent from Alaska during 2011 (the qualifying year for the 2012 dividend) for more than the time allowed by AS 43.23.008(a)(1) and (16)(B), which together provide that an individual may be absent for no more than 120 days in addition to time absent “receiving secondary or post-secondary education on a full-time basis.”

15 AAC 23.163(c)(1) states that “receiving secondary education on a full-time basis means...(B) enrollment and attendance in good standing, for the purpose of obtaining an associate, baccalaureate, or graduate degree, as a full time student at a[n accredited] college, university, or junior or community college...”.

As may be seen from the foregoing recitation of facts, Mr. T was continuously enrolled as a student during the entire 2010-2011 academic year and the entire 2011-2012 academic year, but he was not enrolled during the summer between those two academic years. 15 AAC 23.163(c)(1) expressly requires that, in order to be considered a full time student, the student must be enrolled. The intersession period, for a full time student, is not considered a break in enrollment.¹⁵ However, unless enrolled for credit, the summer break between two academic years is a break in enrollment, even if the person was enrolled as a full time student in both the preceding and subsequent academic years.¹⁶ Therefore, because he was not enrolled as a student during the summer of 2011 (106 days), Mr. T’s absence during that time is not an allowable absence.

During the fall semester of the 2011-2012 academic year, Mr. T was enrolled at the university and was considered a full time student under the university’s own rules, because the dean granted him that status even though he was taking less than the normal number of credit hours required for full time student status. Because the division accepts a school’s characterization of a student as full time as sufficient to establish full time student status for purposes of eligibility for a dividend, his absence during that time (112 days) is allowed.

Having disposed of the summer break and the fall semester, what remains at issue in this case are three periods of time: intersession of the 2010-2011 academic year (11 days), the spring semester of that academic year (119 days), and the intersession of the 2011-2012 academic year (17 days). Excluding the spring semester as an allowable absence, added to his absence during

¹⁵ See, e.g., In Re B.G., OAH No. 11-0381-PFD (Commissioner of Revenue 2012) (available on the Office of Administrative Hearings’ webpage).

¹⁶ *Id.*, at p. 2.

the summer break, would mean that Mr. T was absent for more than 120 days in addition to his absence while enrolled as a full time student, regardless of how his absence during the intersessions is characterized.

With respect to his status during the spring semester of 2011, Mr. T's argument is that although he was enrolled for less than the number of hours generally required for full time status, he should be considered to have been a full time student for two reasons: first, because the dean granted him full time student status in the fall semester and his circumstances that spring were identical, and second, because he was working full time on his dissertation even though he was not enrolled in sufficient credit hours to qualify for full time student status.

Neither of these arguments has merit. With respect to the dean's decision, it need only be observed that it is the dean's action that determines Mr. T's status under the university rules, and the dean did not, in fact, grant Mr. T full time student status during the spring semester.¹⁷ With respect to his work on his dissertation, Mr. T's argument is no different than the argument that was rejected with respect to his eligibility for the 2009 dividend. That Mr. T worked full time on his dissertation does not mean that he was enrolled as a full time student.¹⁸

IV. Conclusion

H T was not enrolled as a full time student in the spring, 2011, term or in the summer of 2011. He was, therefore, absent for more than 120 days in addition to the time absent while enrolled as a full time student. The division's decision is therefore sustained.

DATED May 14, 2013.

Signed

Andrew M. Hemenway
Administrative Law Judge

¹⁷ Compare, In Re J.K., Department of Revenue Caseload No. 010381 (January, 2002) (graduate student registered for two credit hours considered a full time student under the university's rules while undertaking independent research on Fulbright scholarship).

¹⁸ See In Re T, OAH No. 10-0018-PFD, at 3 (Commissioner of Revenue 2010).

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 12th day of June, 2013.

By: Signed
Signature
Angela M. Rodell
Name
Deputy Commissioner
Title

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