

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

In the Matter of:)	
)	
W W)	OAH No. 13-0718-PFD
)	Agency No. 2012-067-
<u>2009, 2010 and 2011 Permanent Fund Dividends</u>)	9248, 9249 & 9250

DECISION AND ORDER

I. Introduction

This case is the appeal of W W. Mr. W appealed the denial of his prior-year applications for 2009, 2010 and 2011 Alaska Permanent Fund Dividends (PFDs). Mr. W's prior-year applications were denied by the Permanent Fund Dividend Division (Division) because the Division determined that he had lived outside of Alaska since 1994, which is more than ten years before 2008, 2009 and 2010 the 2009 2010 and 2011 PFD qualifying years. Mr. W requested an informal appeal and was again denied. Mr. W then requested a formal hearing by correspondence.

Administrative Law Judge Mark T. Handley was appointed to decide the appeal. PFD specialist Peter F. Scott represented the Division and filed a position paper. The record in this appeal closed on July 17, 2013.

Having reviewed the record, and after due deliberation, the Administrative Law Judge concludes that Mr. W does not qualify for a 2009, 2010 and 2011 dividends because he did not meet his burden of proof to show returned to Alaska permanently in time to be eligible for the 2009, 2010 or 2011 PFDs.

II. Facts

Mr. W was born in Alaska in 1994, but moved out of state with his family three months later. Mr. W's father was transferred, and lived outside Alaska as active duty military.¹ Mr. W continued to live outside Alaska as a child, and later as an adult. Mr. W has been absent from Alaska for more than 180 days every year from 1995 through 2010.² Mr. W had not yet moved back to Alaska when he turned 18-years-old and filed his prior-year PFD applications.³ The record indicates that he is still living outside Alaska and is currently living in Hawaii.⁴ Mr. W's

¹ Exhibit 9.
² Exhibit 1, page 6.
³ Exhibit 1.
⁴ Exhibit 8, page 1.

parents applied for the 2009 PFDs for themselves and their family and were determined not to be eligible after a formal hearing.⁵ In his request for an informal appeal Mr. W explained that he believes he should be eligible because he was accompanying his father and was attending school full-time.⁶

Based on the evidence in the record, I find that Mr. W failed to show that he had not been absent from Alaska more than 180 days for each of the ten years prior to the qualifying years for the 2009, 2010 and 2011 PFDs.⁷

III. Discussion

To qualify for the 2009, 2010 and 2011 PFDs, an applicant must meet the eligibility requirements during all of the qualifying years for each of those dividends. As the Division points out in its position statement, Mr. W did not meet the eligibility requirements during these periods for several reasons. Most of these reasons relate to Alaska Statute 43.23.008(c), which disqualifies PFD applicants who have been absent for otherwise allowable reasons for ten or more years prior to the PFD qualifying year, but have been absent for more than 180 days for each year. As applied to Mr. W's prior-year applications, that means he and his parents must have been absent from Alaska for less than 180 days in 2008, 2009 and 2010.⁸

In a formal hearing in an appeal of a PFD denial, the person who filed the appeal, in this case, Mr. W, has the burden of proving by a preponderance of the evidence that the denial is incorrect.⁹ Mr. W does not dispute the Division's determination that he was absent more than 180 days every year since 1994.¹⁰

Mr. W's appeal is based on his view that the allowable absence provisions supersede the ten-year disqualification in Alaska Statute 43.23.008(c).¹¹ The opposite is actually true. The provisions of Alaska Statute 43.23.008(c) disqualify those who meet the allowable absence requirements found in AS.23.008(a) for more than ten years in a row.

IV. Conclusion

Mr. W failed to show by a preponderance of the evidence that he was absent from Alaska for more than 180 days in each of the ten years before the beginning of the 2009, 2010 and 2011

⁵ Exhibit 7.

⁶ Exhibit 4.

⁷ Exhibits 1-8.

⁸ Alaska Statute AS 43.23.008(c).

⁹ Alaska Regulation 15 AAC 05.030(h).

¹⁰ Exhibits 8.

¹¹ Exhibits 8, page 3..

PFD qualifying years. The Division's decision is upheld. Mr. W is not eligible to receive the 2009, 2010 and 2011 PFDs.

DATED this 25th day of July, 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 29th day of August, 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.]