

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

IN THE MATTER OF)	
E J)	OAH 13-0729-PFD
)	
<u>2011 Permanent Fund Dividend</u>)	Agency No. 2011-067-3161

DECISION & ORDER

I. Introduction

This case is E J’s appeal of the Division’s denial of his 2011 PFD application because he was absent from Alaska for more than 180 days in 2010. Mr. J timely applied for a 2011 permanent fund dividend. The Permanent Fund Dividend Division (Division) determined that Mr. J was not eligible, and it denied the application initially and at the informal appeal level. Mr. J requested a formal hearing. Administrative Law Judge Mark T. Handley heard the appeal. Mr. J represented himself. PFD specialist Bethany Thorsteinson represented the Division.

Having reviewed the record in this case and after due deliberation, I conclude that Mr. J is not eligible to receive a 2011 PFD because his absence in 2010 was disqualifying.

II. Facts

On his 2011 PFD application Mr. J admitted that he was absent from Alaska for more than 180 days in 2010 and wrote “ILLEGALLY HELD CAPTIVE IN LOWER 48” as the reason for his absence.¹

In his request for a formal hearing, on the form provided to appeal the denial of his 2011 PFD application, Mr. J also asked to appeal the denial of his 2007 PFD application even though his appeal of his 2007 PFD application was dismissed after an in-person hearing in 2011, due to Mr. J’s failure to timely file his appeal.² In that 2011 in-person hearing, Mr. J’s admitted that he had falsely claimed that he was in Alaska when he had filed his 2007 PFD application. In that hearing, Mr. J testified that his 2006 absence from Alaska, which continued into 2010, was for business.³

Mr. J filed his request for a formal hearing to appeal the denial of his 2011 PFD application on May 20, 2013. This appeal was also filed late -- three days after the deadline.⁴

¹ Exhibit 1, page 1& 2.
² Exhibit 4, page 4& 5 and Exhibit 9.
³ Exhibit 4, page 4& 5.
⁴ Exhibit 9.

On that late filed appeal form, Mr. J, provided his current mailing address as General Delivery, Juneau Alaska 99801. Mr. J did not indicate on that form that he had any problems receiving mail at this address. Mr. J requested an in-person hearing in Juneau on his appeal form.⁵

Notice of Mr. J's July 23, 2013 in-person hearing before the Alaska Office of Administrative Hearings was sent to him at the address he provided on May 28, 2013. Mr. J did not contact Alaska Office of Administrative Hearings in the two months between when he filed his appeal and the date of his hearing. Mr. J did not appear at the time set for the hearing.

When he was called at his phone number of record at the time set for his in-person hearing, Mr. J testified that he had not received the notice. Mr. J asserted that he had had trouble getting his mail at the address he provided on his appeal form and that had filed a complaint to the U.S. Postal Service in Washington DC about his problems getting general delivery mail in Juneau.⁶

Mr. J testified that he was a few blocks from the hearing room, but he refused to appear. Mr. J testified that he was late for a doctor appointment. Mr. J asked that the hearing be rescheduled. His request was denied. Mr. J admitted that he knew there could be problems getting mail at the address he had provided, yet he failed to indicate this on the appeal he filed and he failed to check on the status of his appeal in the two months after he filed it.⁷

At the hearing, Mr. J attempted to evade taking an oath or affirmation prior to testifying by phone. After taking the oath, Mr. J was ordered several times to answer the preliminary question: were you absent from Alaska for more than 180 days in 2010. After failing to provide a responsive answer to this question after being cautioned that if he did not, the hearing would end and his appeal would be decided on the existing record, the record in this appeal was closed.⁸

Based on the evidence in the record, I find that it is more likely than not that during 2010, the qualifying year for a 2011 dividend, Mr. J was absent from Alaska for 199 days living outside the state.⁹ Based on the evidence in the record, I find that it is more likely than not that Mr. J was not receiving continuous medical treatment during his absence.¹⁰

⁵ Exhibit 9.

⁶ Recording of Hearing.

⁷ Recording of Hearing.

⁸ Recording of Hearing.

⁹ Recording of Hearing & Exhibits 1 & 10.

¹⁰ Exhibits 1, 4, 9 & 12.

III. Discussion

Eligibility for permanent fund dividends requires meeting several requirements. They are listed in Alaska Statute 43.23.005(a). 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.”¹¹ 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 in school, 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 even Alaska residents from PFD eligibility. Alaska Statute 43.23.008(a)(17)(A) disqualifies individuals absent more than 45 days in addition to absences for reasons listed under Alaska Statute 43.23.008(a)(1)-(16), if absent more than 180 days cumulatively during the PFD qualifying year. Therefore, an individual absent more than 180 total days, when not absent for any reason listed Alaska Statute 43.23.008(a)(1)-(16) during the qualifying year is not eligible for a PFD.

One of the reasons listed under Alaska Statute 43.23.008(a)(1)-(16) is found in AS 43.23.008(a)(5), which covers absences for “continuous medical treatment.” This statute provides an exception to the eligibility rules that disqualify Alaskans for absences during the qualifying year if the Alaskan was absent:

“receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician that treated the illness if the treatment or convalescence is not based on a need for climatic change.”

Although he indicated to the Division that he was absent for medical treatment, Mr. J’s failed to provide persuasive evidence that showed he met the requirements of this statute. Mr. J did not provide documentation showing that he was receiving continuous medical treatment recommended by a licensed physician during his absence in 2010. Mr. J did assert that he was institutionalized for all but 45 days of his 2010 absence. Mr. J's did not specifically assert that he was institutionalized at all in 2010 or provide any documentation of medical treatment.

Mr. J did not comply with the Division’s request that he provide documentation of the duration and reasons for his absence in 2010. In his request for a formal hearing, Mr. J did not explain the reason for his absence from Alaska which began in 2006 except to allude to six years of homelessness and “illegal captivity” and to assert that the state of Pennsylvania illegally institutionalized him three times. In his appeal, Mr. J goes on to argue that the Division “makes itself a co-conspirator in the continuing and accumulating damages in keeping me away from my home and AK business.”¹²

No law gives the Division 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)(A). Mr. J was not living in Alaska for several years before he returned in 2010. However, it is not necessary to determine whether he was an Alaska resident during his extended absence, because his absence in 2010 was disqualifying. Under the law, Mr. J simply does not qualify for a dividend for 2011.

IV. Conclusion

Mr. J’s 2010 absence from Alaska do not fall within the category of absences that are allowable for the purpose of PFD eligibility. Mr. J therefore does not qualify for a 2011 PFD. The decision of Division to deny the application of E J for a 2011 permanent fund dividend is AFFIRMED.

DATED this 1st day of August, 2013.

By: Signed
Mark T. Handley
Administrative Law Judge

¹¹ AS 43.23.005(a)(6).
¹² Exhibit 9, page 2.

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 4th day of September, 2013.

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

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