

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

IN THE MATTER OF)	
E & M U)	OAH 13-0808-PFD
)	Agency No. 2012-057-5542
<u>2012 Permanent Fund Dividend</u>)	& 2012-057-5543

DECISION & ORDER

I. Introduction

This case is E U’s appeal of the Division’s denial of his and his wife M’s 2012 PFD applications because they were absent from Alaska for more than 180 days in 2011. Mr. and Ms. U timely applied for 2012 permanent fund dividends. The Permanent Fund Dividend Division (Division) determined that Mr. and Ms. U were not eligible, and it denied the application initially and at the informal appeal level. Mr. U requested a formal hearing. Administrative Law Judge Mark T. Handley heard the appeal. Mr. U represented his wife and himself. PFD specialist Pete Scott represented the Division. The record closed on September 6, 2013.

Having reviewed the record in this case and after due deliberation, I conclude that Mr. and Ms. U are not eligible to receive a 2012 PFD because their absences in 2011 were disqualifying.

II. Facts

At the hearing Mr. U did not dispute the Division’s determination that Ms. U had been absent for more than 180 days and more than 45 days that were not listed as an allowable absent reason under the PFD eligibility rules. Mr. U asserted that he had remembered returning by himself to Alaska on a friend’s airplane in 2011 for enough days to bring his absence to less than 180 days.

On his 2012 PFD application Mr. U asserted in one place that he was not absent from Alaska for more than 180 days in 2011, but on then indicated in another place that he was absent for all of 2011 receiving medical care from the Veterans Administration in Utah. ¹ The Division worked extensively with Mr. U and his care providers to establish when he was in Alaska and when he was receiving continuous medical treatment outside the state. ²

At the hearing, Mr. U did not dispute that, based on his previously reported absences and returns, the Division had correctly determined that he had been absent for more than 180 days and more than 45 days in addition to his absence for medical treatment. However, at the hearing, for the first time Mr. U reported a previously unreported return to Alaska. Mr. U asserted that he had

¹ Exhibit 1, page 1 & 2.

returned to Alaska in 2011 on an undocumented trip on a private plane. Mr. U provided testimony from a merchant who thought he remembered buying plants from Mr. U in Alaska during this time frame.³

Based on the evidence in the record, I find that it is more likely than not that during 2011, the qualifying year for a 2012 dividend, Mr. U was absent from Alaska for more than 180 days and more than 45 days in addition to his absences for medical treatment.⁴ Mr. U evidence of his return by private plane in 2011 simply was not persuasive. It was not clear whether Mr. U or his witness were remembering which year the events they were describing took place. The lack of any records of the return trip makes it less likely that it occurred in 2011, given the amount of time Mr. U was out of the state that year and the importance of documenting absences for PFD eligibility.

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.”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 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.

² Exhibit 1, page 6, 7 & 8 & Recording of Hearing.

³ Recording of Hearing.

⁴ Recording of Hearing.

⁵ AS 43.23.005(a)(6).

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 asserted for the first time at the hearing that he returned to Alaska in 2011 on an undocumented trip on a private plane, Mr. U failed to provide persuasive evidence that he made the trip that year. Mr. U did not provide documentation showing that he made this return during this absence in 2011. Mr. U is a long time Alaskan who knows the importance of documenting absences and returns for PFD eligibility.⁶

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. U does not qualify for a dividend for 2012.

IV. Conclusion

Mr. and Ms. U’s 2011 absences from Alaska do not fall within the category of absences that are allowable for the purpose of PFD eligibility. Mr. and Ms. U therefore do not qualify for 2012 PFDs. The decision of Division to deny the applications of E and M U for 2012 permanent fund dividends is AFFIRMED.

DATED this 14th day of October, 2013.

By: Signed
Mark T. Handley
Administrative Law Judge

⁶ Recording of Hearing.

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 November, 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.]