

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

In the Matter of:	)	
	)	
D U	)	
	)	OAH No. 13-0812-PFD
<u>2012 Permanent Fund Dividend</u>	)	Agency No. 2012-060-5317

**DECISION AND ORDER**

**I. Introduction**

D U challenges the Permanent Fund Dividend Division’s denial of her application for a 2012 PFD. The division denied her application initially and at the informal appeal level after concluding that she had not been physically present for the qualifying year, 2012. It also found that her absence from Alaska was not allowable. The division’s denial is affirmed because the law does not permit the payment of a 2012 dividend to Ms. U.

**II. Facts**

The facts of this case are not in dispute. The facts set out below are based on the record developed through the admitted exhibits and Ms. U’s testimony at the hearing.

D U was born in Alaska in 1993, where she lived until she was four. Fourteen years later, after graduating high school and turning 18, Ms. U returned to Alaska on August 1, 2011.<sup>1</sup> It has always been Ms. U’s intent to live in Alaska after turning 18. Over the years she made regular trips to Alaska to visit relatives. She attended 8<sup>th</sup> grade in Anchorage during the 2006/2007 school year.

Her reasons for not filing for a PFD during the fourteen years she was absent is best explained by Ms. U’s response to the division’s initial denial. In support of her appeal at the informal level, Ms. U wrote:

My mother is my custodial parent who I resided with while outside of Alaska. I did not correctly understand the allowable absences [and] how to properly complete the application. I should have stated I was absent during the earlier part of 2011 as a student receiving secondary education as a full time student [in Florida]. . . .<sup>2</sup>

Ms. U also explained that she was her step-father’s military dependent, but she has “always been an Alaskan resident.”<sup>3</sup> One month after turning 18 and graduating from high school, she

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<sup>1</sup> Exhibit 4, p. 2; Exhibit 6.  
<sup>2</sup> Exhibit 9, p. 2.  
<sup>3</sup> *Id.*

voluntarily returned to Alaska. Upon arriving in Alaska, Ms. U registered a vehicle, registered to vote, found employment, and obtained an Alaska identification card.

Ms. U was physically present in Alaska for the remainder of 2011, except for a 9 day vacation from October 20, 2011 to October 29, 2011. Her absence from January 1, 2011 through August 1, 2011 totals 212 days. Her vacation adds an additional 9 days to this total.

### **III. Discussion**

The requirements for PFD eligibility are, in some situations, quite exacting. When they exclude an individual from eligibility, the Department of Revenue has no discretion to pay the dividend, regardless of the worthiness of the individual, the seeming technicality of the exclusion, or the individual's Alaska connections outside the context of the exclusion. The department is bound not only by the PFD statutes but also by its own regulations.<sup>4</sup>

Prior to August 2011, Ms. U last resided in Alaska in 2007. The qualifying year for a 2012 PFD is 2011. It is possible to retain PFD eligibility while living in another state or country during the qualifying year, but eligibility is only retained if one is absent for certain reasons listed in Alaska Statute 43.23.008.<sup>5</sup> An applicant may claim the allowable absences apply if the primary reason the person left Alaska was to engage in the activity that makes the absence allowable.<sup>6</sup> Ms. U has the burden of proving she is eligible for the 2012 PFD.<sup>7</sup> There are three allowable absences that appear applicable to Ms. U.

One of the permissible reasons is AS 43.23.008(a)(3), while serving in, or accompanying as spouse or dependent to someone serving in, the armed forces of the United States. Because Ms. U was her step-father's dependent, to take advantage of this allowable absence Ms. U's step-father would need to be eligible for a 2012 PFD.<sup>8</sup> The record does not support such a finding.

Another allowable absence is AS 43.23.008(a)(1), receiving a secondary education on a full time basis. Receiving a secondary education must be the primary reason for the absence. When an applicant attends school out-of-state and is living with an ineligible parent or guardian, department regulations provide that it must be presumed that attending school was not the primary reason for the absence. There is nothing in the record to suggest that Ms. U's mother was eligible for a 2012

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<sup>4</sup> *E.g., Stoshs I/M v. Fairbanks N. Star Borough*, 12 P.3d 1180, 1185 (Alaska 2000).

<sup>5</sup> AS 43.23.005(a)(3), (6).

<sup>6</sup> *In re K.M. and H.L.*, OAH 05-0601-PFD (April 2006) at 4, 5.

<sup>7</sup> 15 AAC 05.030(h).

<sup>8</sup> AS 43.23.008(a)(3)(B).

PFD. The presumption is rebuttable; however, the record does not contain evidence sufficient to rebut this presumption.

The final allowable absence possibly applicable to Ms. U is AS 43.23.008(17)(c), commonly referred to as the 180 day rule. The 180 day rule provides that a resident may be absent for up to 180 days for any reason, provided the reason for the absence is consistent with the individual's intent to remain a state resident. Unfortunately, Ms. U's absences in 2011 exceed 180 days, so she may not be allowably absent under this provision.

**IV. Conclusion**

D U was not allowably absent for most of the qualifying year for the 2012 dividend. She is not eligible for that dividend.

**V. Order**

IT IS HEREBY ORDERED that the Permanent Fund Dividend Division's decision to deny the application of D U for a 2012 permanent fund dividend is AFFIRMED.

DATED this 21<sup>st</sup> day of October, 2013.

*Signed* \_\_\_\_\_  
Rebecca L. Pauli  
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 18<sup>th</sup> day of November, 2013.

By: *Signed* \_\_\_\_\_  
Signature  
Rebecca L. Pauli \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

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