

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

In the Matter of)	
)	
T T)	OAH No. 13-1691-PFD
)	Agency No. 2013-045-3743
<u>2013 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

T T’s application for a 2013 Permanent Fund Dividend (PFD) was denied on the basis that she spent the majority of the qualifying year outside Alaska while not on one of the types of absences the Legislature has deemed allowable. At the informal appeal level, the agency maintained the denial. Ms. T requested a formal hearing, which took place before this office on December 16, 2013. Ms. T attended in person and represented herself ably.

The denial is upheld because Ms. T’s extended absence does not qualify as an allowable absence under the statute listing allowable absences. The Department of Revenue is bound by the rules the Legislature has laid down for administration of the dividend program.

II. Facts

T T, who is now a young adult, has been an Alaskan since just before her second birthday.¹ Her status as a legal resident of Alaska throughout the entire period relevant to this case has not been contested in this proceeding.

The single issue in this case turns on Ms. T out-of-state activities in 2012, the qualifying year for this dividend. During that year, she was absent from Alaska 211 days.²

The entirety of Ms. T’s 2012 absence resulted from her participation in an internship in Florida through the Disney College Program.³ The program involved full-time, paid work at Walt Disney World. The work was highly educational for Ms. T, and gave her experience that would be difficult to obtain in Alaska.⁴ In addition to her paid work, Ms. T took corporate analysis and

¹ Exhibit 1, pp. 1, 6.
² Exhibit 1, pp. 3, 4.
³ *Id.*; testimony of Ms. T; Exhibit 7.
⁴ Testimony of Ms. T.

marketing classes from the Disney organization.⁵ These were part-time classes, never exceeding three hours a week.⁶

Ms. T took a leave of absence from her studies at the University of Alaska to participate in the internship. She did not receive any college credit for the internship or the part-time coursework.⁷

III. Discussion

The qualifying year for the 2013 dividend was 2012.⁸ In order to qualify for a Permanent Fund Dividend in 2013, the applicant had to have been physically present in Alaska all through the qualifying year, or only have been absent for one of the 17 allowable reasons listed in a statutory section entitled “Allowable Absences,” AS 43.23.008.⁹ There are two allowable absences that potentially apply to Ms. T.

One of the specifically allowable absences is an absence for any reason consistent with Alaska residency. Vacations and the like fit under this absence. However, an absence for this open-ended reason cannot have exceeded 180 days under any circumstances.¹⁰ Since Ms. T was absent for 211 days, this allowable absence cannot, by itself, save her eligibility for the dividend. She would need to qualify for a second type of allowable absence as well. Moreover, the maximum length of the catchall absence is reduced somewhat if the applicant is claiming certain other kinds of absences in the same year.¹¹ The maximum length drops to 120 days if an applicant is claiming an absence under the provision for professional education, discussed later in this section.

The second potentially applicable provision, and the one on which Ms. T has rested her appeal, is an absence “receiving vocational, professional, or other specific education on a full-time basis for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state.”¹² The corporate analysis and marketing courses Ms. T took do not qualify for this provision because they did not amount to a full-time educational course (there may be other reasons that disqualify them as well, but it is not

⁵ Exhibit 14, p. 1.

⁶ Testimony of Ms. T. Although the fact that the courses were part-time is sufficient to resolve this case, it can be further noted that the courses have not been shown to be eligible for financial aid from the Alaska Commission on Postsecondary Education. Exhibit 14.

⁷ Testimony of Ms. T.

⁸ AS 43.23.095(6).

⁹ AS 43.23.005(a)(6).

¹⁰ AS 43.23.008(a)(17)(A).

¹¹ AS 43.23.008(17).

¹² AS 43.23.008(a)(2).

necessary to reach them). Her paid work at Disney World likewise does not qualify; the fact that a job provides excellent experience and teaches a person a great deal does not turn it into “education.” Ms. T’s situation is similar to that of many other Alaskans who have left the state for temporary job experiences, such as AmeriCorps, that help them grow as professionals or future professionals; in general, these individuals retain their Alaska residency but are not able to retain PFD eligibility while they are away.¹³ As the Commissioner of Revenue has held in the past, “no provision in the law . . . allows the division or the administrative law judge to consider extenuating circumstances on a case-by-case basis.”¹⁴ Ms. T must fit in one of the actual categories the Legislature has provided.

Because she spent 211 days outside Alaska in the qualifying year for the 2013 dividend, and has not shown that her absence was allowable, there is not a legal way to grant Ms. T a 2013 dividend.

IV. Conclusion

Ms. T’s extended absence to work in Florida made her ineligible for the 2013 PFD. She remained an Alaska resident during her absence, and nothing in this decision precludes her from eligibility for future PFDs. The decision of the Permanent Fund Dividend Division to deny the application of T T for a 2013 Permanent Fund Dividend is AFFIRMED.

DATED this 10th day of February, 2014.

By: Signed
Christopher Kennedy
Administrative Law Judge

¹³ See, e.g., *In re N.D.S.*, OAH No. 09-0276-PFD (Alaska Commissioner of Revenue 2009) (published at <http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD090276.pdf>).

¹⁴ *In re S.H.*, OAH No. 08-0113-PFD (Commissioner of Revenue 2008), at 4.

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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 6th day of March, 2014.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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