

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

In the Matter of :)	
)	
L T)	
)	OAH No. 13-1695-PFD
<u>1998 Alaska Permanent Fund dividend</u>)	DOR No. 1998-054-6479

DECISION

I. Introduction

L T is a long time Alaska resident who has received an Alaska Permanent Fund dividend every year since 1993 except for 1998 and 2011. This appeal concerns his eligibility for the 1998 dividend. At that time, L was six years old and his application was filed by his sponsor, his father, K R. T. The Permanent Fund Dividend division denied the application and Mr. T has appealed.

Because Mr. T's appeal is untimely, and L was ineligible to receive a 1998 dividend, the division's decision is sustained.¹

II. Facts

During the calendar year 1997, L T was absent from Alaska from January 5-June 14, and from September 22-December 31. During his absence, L lived with his grandfather (who was not eligible for an Alaska Permanent Fund Dividend) in no name state. The absence at the beginning of the year started as a vacation, but was extended due to L's mother's medical condition.

K T filled out L's 1998 application form. That form asks applicants to provide a reason for the applicant's absence, including noting whether the absence was while "[e]nrolled as a full-time student." Mr. T noted that as reason for the absence from September through December.

III. Discussion

The statutes and regulations in effect in 1997-1998, and today, provide that an Alaska resident who is absent from the state for an extended period of time may be ineligible for an Alaska Permanent Fund dividend. The period of time for which a resident may be absent and remain eligible varies, depending on the reason for the absence.

¹ The division has moved to dismiss the appeal as untimely. Because the undisputed facts establish that L was ineligible for the 1998 dividend, the appeal has been decided on its merits. That the appeal is untimely is an alternative ground to sustain the division's decision.

This case involves the eligibility of a minor who was absent for more than 120 days in addition to time spent obtaining primary education. The relevant statutes in effect at the time allowed for absences while receiving secondary or post-secondary education. In 1997, 15 AAC 23.163(c)(4) and (c)(16)(B) allowed a resident to maintain eligibility if absent for no more than 120 days in addition to an absence while “receiving full-time education in any of the seventh through twelfth grades.” In 1998, the provisions governing allowable absences were placed into statute, with AS 43.23.008(a)(1) and (13)(A) allowing a resident to maintain eligibility if absent for no more than 120 days in addition to an absence while “receiving secondary or postsecondary education on a full-time basis[.]” The relevant statutes and regulations did not then, and they do not now, permit a minor resident to maintain eligibility while absent receiving primary education, unless the minor is living with a person who is eligible to receive an Alaska Permanent Fund dividend or is otherwise allowably absent. Because L was living with his grandfather, who was ineligible, and no other allowable absence applied, L was ineligible.

Mr. T’s position, as expressed at the hearing, is that because the 1998 application form did not differentiate between an absence while receiving primary education and an absence while receiving secondary or post-secondary education, L should be considered eligible. But the application form neither states nor implies that absence while receiving education (of whatever sort, whether primary, secondary, or postsecondary) is sufficient to maintain eligibility. It simply asks the reason for an absence. Eligibility is determined by applying the governing statutes and regulations in light of the information provided in response to the questions asked. The laws, not the application form, controls eligibility. The division did not err in denying L’s application.

IV. Conclusion

Because L T was absent from Alaska during 1997 for a period of time greater than that allowed under 15 AAC 23.163(c), he was ineligible for the 1998 dividend. The appeal is untimely, and the division’s decision is AFFIRMED.

DATED April 3, 2014.

Signed _____
Andrew M. Hemenway
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 2nd day of May, 2014.

By: Signed
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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