

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

In the Matter of)	
)	
B T)	OAH No. 13-1722-PFD
)	Agency No. 2013-050-4855
<u>2013 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

After B T timely applied for a 2013 Permanent Fund Dividend (PFD), the Permanent Fund Dividend Division found him ineligible, and it denied the application initially and at the informal appeal level. Mr. T requested a formal hearing.

The denial is upheld because Mr. T, although he apparently remained an Alaska resident, spent too much time out of the state in 2012 to qualify for a 2013 dividend.

II. Facts

There are no material facts in dispute in this case. Mr. T is a lifelong Alaskan. In early January of 2012, he traveled to California and enrolled part-time in the January “winter quarter” at Los Angeles City College.¹ It was not possible to enroll full-time during that month.² Beginning in mid-February and continuing until early June, he was enrolled in both Los Angeles City College and another community college, with part-time loads that combined to equal a full-time load.³ All of this education was aimed at an eventual four-year degree.

Mr. T worked in California for the first part of the summer, but then got a job in Alaska and returned to this state for approximately 36 days, from mid-July to late August. He then left Alaska again and worked for his brother in California for the rest of the year. He had been admitted to a four-year college, and was earning money while waiting for his enrollment to start.⁴

1 Testimony of Mr. T; Ex. 3, p. 4.
2 Testimony of Mr. T.
3 Testimony of Mr. T; Ex. 3.
4 Testimony of Mr. T.

Mr. T had two periods in California when he was not enrolled in school at all: 43 days from June 7 to July 19, and 129 days from August 25 to the end of the year.⁵ This totals 172 days.

Mr. T's total absence from Alaska in 2012, for all purposes, was about 327 days.⁶

III. Discussion

The qualifying year for the 2013 dividend was 2012.⁷ In order to qualify for a PFD, the applicant must 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 43.23.008.⁸ There are two of the allowable absences that potentially apply to Mr. 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.⁹ Since Mr. T was absent for more than 180 days (indeed, he was only present in the state for about 39 days), this allowable absence cannot, *by itself*, save his eligibility for the dividend. He needs to qualify for a second type of allowable absence as well.

The second potentially applicable provision is an absence "receiving secondary or postsecondary education on a full-time basis."¹⁰ This absence certainly applied to Mr. T's spring quarter at a combination of community colleges, and he contends that it also applies to his winter quarter at Los Angeles City College, since he could not have enrolled full-time for that short period. Even if he is right about the winter quarter, however, the full-time education provision certainly did not apply to the 172 days Mr. T spent working in California while not in school.

Unfortunately for Mr. T's application, the educational allowable absence brings with it a limitation. A person who claims an educational absence *cannot* add onto it the full 180 days of the open-ended allowance discussed above. Instead, a person who claims the educational

5 Testimony of Mr. T; Ex. 1, p. 3.

6 The exact number of days may be one or two more or less than this figure. He was in Alaska for about 36 days in July/August and for two or three days at the very beginning of January; at all other times he was absent.

7 AS 43.23.095(5).

8 AS 43.23.005(a)(6).

9 AS 43.23.008(a)(17)(A).

10 AS 43.23.008(a)(1).

absence can have no more than 120 additional (non-educational) days of absence under the open-ended allowable absence.¹¹ Mr. T had 172 non-educational days of absence.

Thus, regardless of how one works with the allowable absences, there is not a legal way to grant Mr. T a dividend.

IV. Conclusion

Because of his extended absences in 2012, Mr. T is not eligible for the 2013 PFD. The decision of the Permanent Fund Dividend Division to deny the application of B T for a 2013 Permanent Fund Dividend is therefore AFFIRMED. He has not been shown to have lost his Alaska residency, and nothing in this decision precludes him from eligibility for future PFDs.

DATED this 14th day of January, 2014.

By: Signed
Christopher Kennedy
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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 11th day of January, 2014.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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

11 AS 43.23.008(a)(17)(B).