

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

|                                     |   |   |
|-------------------------------------|---|---|
| In the Matter of                    | ) |   |
|                                     | ) |   |
| C T (Minor)                         | ) |   |
|                                     | ) |   |
| <u>2013 Permanent Fund Dividend</u> | ) | OAH No. 13-1865-PFD<br>Agency No. 2013-051-6231 |

**DECISION & ORDER**

**I. Introduction**

C T’s 2013 Permanent Fund Dividend (PFD) was denied because the Permanent Fund Dividend Division (Division) determined that he was absent from the state more than 180 days during the qualifying year without proof of an allowable absence. Following an unsuccessful informal appeal, A and F T, C’s parents, requested a formal hearing by correspondence.<sup>1</sup>

The Division’s denial of C T’s application is affirmed because he was absent from the state for more than 180 days without a qualifying exception.

**II. Facts**

A T timely applied for C T’s 2013 PFD.<sup>2</sup> On April 26, 2014, the Division denied C’s application because he was absent from the state from June 20 through December 28, 2013, or 191 days, during 2012, the qualifying year.<sup>3</sup> The Ts requested an informal appeal.<sup>4</sup> The Division upheld its original decision in the informal appeal because C was absent 191 days without proof of a qualifying absence.<sup>5</sup> The Ts requested a formal hearing by correspondence.<sup>6</sup>

The parties had until February 5, 2014, to submit to the Office of Administrative Hearings (OAH) documents or other information for consideration.<sup>7</sup> The Division submitted exhibits and a position statement. The T’s did not submit any additional documentation. The parties had until February 19, 2014, to respond to the other side’s submissions. Neither party submitted responses.

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<sup>1</sup> Exhibit 10.  
<sup>2</sup> Ex. 1.  
<sup>3</sup> Ex. 4.  
<sup>4</sup> Ex. 5.  
<sup>5</sup> Ex. 9.  
<sup>6</sup> Ex. 10.  
<sup>7</sup> Notice of Hearing by Correspondence (January 3, 2014).

C's PFD application listed secondary education as the reason for the absence.<sup>8</sup> However, the reason C was out of state was not to attend school but to be with his father, F T, who was caring for his dying mother.<sup>9</sup>

The education exception does not apply if a child is living with an ineligible parent and education is not the primary reason for the absence.<sup>10</sup> C was living with his father.<sup>11</sup> The Division denied C's PFD application because Mr. T was found ineligible for his PFD.<sup>12</sup> While providing care for a terminally ill family member is an allowable absence,<sup>13</sup> supporting documentation must be supplied.<sup>14</sup> Mr. T was found ineligible because he never submitted the Physician Statement form for terminally ill family members.<sup>15</sup> Mr. T never appealed his own PFD denial.<sup>16</sup>

The Division attempted to work with both of C's parents to get the documentation necessary for both C and Mr. T to receive their PFDs.<sup>17</sup> The Division agreed to extend the deadline for Mr. T to file an appeal of his PFD denial in order for Mr. T to have a chance to qualify, thereby allowing C the opportunity to qualify as well.<sup>18</sup> After extending the appeal deadline, the Division informed Mr. T that if the necessary documentation and appeal request was not filed by February 4, 2014, C T's PFD appeal would go forward as scheduled.<sup>19</sup> The Division did not receive a response from Mr. T.<sup>20</sup>

C's parents argue that C should qualify for the PFD because he was with his father, who had a qualifying absence.<sup>21</sup> The Ts also assert that the Division should consider Ms. T as C's PFD-eligible substitute sponsor in order for C to qualify.<sup>22</sup>

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<sup>8</sup> Ex. 1.

<sup>9</sup> Ex. 10; Ex. 12.

<sup>10</sup> 15 AAC 23.163(d).

<sup>11</sup> Ex. 10.

<sup>12</sup> Ex. 4; Ex. 9.

<sup>13</sup> Alaska Statute 43.23.008(6).

<sup>14</sup> 15 AAC 23.173(b); 15 AAC 23.993(21), "terminally ill" means any condition that the attending physician indicates in writing is a terminally ill condition in the physician's opinion.

<sup>15</sup> Ex. 9; Ex. 12. The Division sent Mr. T the appropriate forms in September 2013 and January 2104. The Physician Statement form was never returned. The T's did turn in Mr. T's mother's death certificate (Ex. 10), but that is not sufficient in itself.

<sup>16</sup> Ex. 12.

<sup>17</sup> Ex. 12.

<sup>18</sup> Ex. 11; Ex. 12.

<sup>19</sup> Ex. 12.

<sup>20</sup> Division's Formal Hearing Position Statement (February 5, 2014).

<sup>21</sup> Ex. 10. Ms. T stated both in the request for formal appeal and to Division employees that Mr. T did not want to file his own appeal because he does not like paperwork. The Division explained to both Mr. and Ms. T that C's PFD application depended on Mr. T's eligibility (Ex. 12).

<sup>22</sup> Ex. 10.

### III. Discussion

In order to qualify for a PFD, a resident must be present during the entire qualifying year or absent under a qualifying exception.<sup>23</sup> Providing care for an individual's terminally ill family member may qualify as an allowable absence.<sup>24</sup> A minor dependent of a person caring for a terminally ill family member may also qualify for an allowable absence.<sup>25</sup> However, the applicant must provide proof of eligibility in order to qualify for the PFD with an allowable absence.<sup>26</sup> While Mr. T did provide a Child Certification form and a copy of his mother's death certificate,<sup>27</sup> he did not provide the Physician's Statement as requested by the Division. He did not provide written evidence from the attending physician that his mother's condition was terminal.

Attending secondary or post-secondary education may also qualify as an allowable absence.<sup>28</sup> The individual must demonstrate that the primary reason for the absence was to obtain a secondary education.<sup>29</sup> An individual who lives with an ineligible parent while attending an out-of-state school has not demonstrated that the primary reason for absence is secondary education.<sup>30</sup>

C's PFD application listed secondary education for the reason for his absence.<sup>31</sup> In order to qualify for the PFD, C needed to demonstrate that education was the primary reason for his absence.<sup>32</sup> The primary reason for C's absence was to be with his grandmother and father while his father cared for his terminally ill mother.<sup>33</sup> Even if the purpose of the absence was in dispute, C was living with an ineligible parent, which creates a presumption that he would not qualify for the education allowable absence.<sup>34</sup>

In order for C to qualify for the PFD, he would have to show that he met a qualifying exception,<sup>35</sup> and that he was with his PFD-eligible father.<sup>36</sup> Alaska law also allows for a child to

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<sup>23</sup> Alaska Statute 43.23.005(a)(6).

<sup>24</sup> AS 42.23.008(a)(6).

<sup>25</sup> AS. 42.23.008(1)(13).

<sup>26</sup> 15 AAC 23.173(b).

<sup>27</sup> Ex. 10, p. 4.

<sup>28</sup> AS 43.23.008(a)(1).

<sup>29</sup> 15 AAC 23.163(d).

<sup>30</sup> 15 AAC 23.163(d).

<sup>31</sup> Ex. 1.

<sup>32</sup> 15 AAC 23.163(d).

<sup>33</sup> Ex. 1; Ex. 5; Ex. 10.

<sup>34</sup> 15 AAC 23.163(d).

<sup>35</sup> As 43.23.003

<sup>36</sup> 15 AAC 23.113.

qualify if in the physical custody of a parent who would have been eligible for a dividend had the parent timely filed.<sup>37</sup> This is not the case with Mr. T. Mr. T timely filed. He was given instruction on how to appeal, what needed to be filed in order to successfully appeal, and was given deadline extensions in order to request an appeal. He chose not to appeal his PFD denial.

Because C's PFD application approval was contingent on being in the custody of a PFD-eligible parent, C's PFD application was correctly denied. Furthermore, because C was in the physical custody of his father during his absence, Ms. T is not an eligible substitute sponsor. C did not meet his burden of proof that he met the requirements of an allowable absence.<sup>38</sup>

#### **IV. Conclusion**

The Division's decision to deny C T's 2013 PFD application is affirmed.

DATED April 16, 2014.

By: Signed  
Bride Seifert  
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 14<sup>th</sup> day of May, 2014.

By: Signed  
Signature  
Bride A. Seifert  
Name  
Administrative Law Judge  
Title

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

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<sup>37</sup> 15 AAC 23.113(b)(1).

<sup>38</sup> 15 AAC 05.030(h), the person requesting the hearing has the burden of proving that the action by the department to which that person objects is incorrect.