

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

In the Matter of:	)	
	)	
D Z	)	
	)	OAH No. 14-0533-PFD
<u>2013 Permanent Fund Dividend</u>	)	Agency No. 2013-026-8375

**DECISION**

**I. Introduction**

D Z applied for a 2013 Permanent Fund Dividend (PFD).<sup>1</sup> The Permanent Fund Dividend Division (division) denied his application because Mr. Z had been absent from the state for more than 180 days during the 2012 qualifying year.<sup>2</sup> The division did not modify its determination during the informal appeal process, and Mr. Z requested a formal hearing.<sup>3</sup>

Mr. Z requested a hearing by written correspondence. Each party was given until May 9, 2014 to submit additional documents or explanation. Each party then had until May 23, 2014 to submit a written response to the materials submitted by the other party.<sup>4</sup> Both the division and Mr. Z submitted additional information by May 9<sup>th</sup>. Neither party responded to the other party's initial May 9<sup>th</sup> submission.

Based on all of the information in the record, Mr. Z has not shown that the division's eligibility determination was incorrect.

**II. Facts**

It is undisputed that Mr. Z works for an air cargo company repairing 747 aircraft, and that his job requires extensive travel. At times, he will leave Anchorage and then return to Anchorage on the same day.<sup>5</sup> The most he would be gone at one time would be 19 days in a month.<sup>6</sup> Mr. Z often travels on company aircraft,<sup>7</sup> so his commercial airline travel records do not show all of the dates for his departures or returns to Alaska.

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<sup>1</sup> Exhibit 1.  
<sup>2</sup> Exhibit 2.  
<sup>3</sup> Exhibit 14.  
<sup>4</sup> Notice of Hearing by Correspondence dated April 9, 2014.  
<sup>5</sup> Exhibit 6, page 2.  
<sup>6</sup> Exhibit 8, page 2.  
<sup>7</sup> Exhibit 6, page 2.

Mr. Z's PFD application showed he was absent from Alaska for more than 180 days during 2012.<sup>8</sup> After his application was denied, Mr. Z wrote to the division and explained that he had calculated his absence incorrectly, and that he had not been absent from Alaska for more than 180 days.<sup>9</sup>

### III. Discussion

Alaskans are eligible to receive a PFD each year if they meet certain requirements specified in state law. One requirement is that the applicant "was, at all times during the qualifying year, physically present in the state or, if absent, was absent only as allowed in AS 43.23.008[.]" The allowable absences enumerated in statute include a catch-all allowance:

- (17) For any reason consistent with the individual's intent to remain a state resident, provided the absence, or cumulative absences do not exceed
  - (A) 180 days in addition to any absence or cumulative absences claimed under (3) of this subsection if the individual is not claiming an absence under (1), (2), or (4) – (16) of this subsection;
  - (B) 120 days in addition to any absence or cumulative absences claimed under (1) – (3) of this subsection if the individual is not claiming an absence under (4) – (16) of this subsection but is claiming an absence under (1) or (2) of this subsection; or
  - (C) 45 days in addition to any absence or cumulative absences claimed under (1) – (16) of this subsection if the individual is claiming an absence under (4) – (16) of this subsection.<sup>[10]</sup>

As applied to Mr. Z's situation, this provision allows up to 180 days of cumulative absences for any reason if an applicant is not claiming any absence under any of the other enumerated reasons.<sup>11</sup>

#### The Department of Revenue

will count whole days when determining the number of days an individual was absent from Alaska. The department will count the day an individual arrives or returns to Alaska as a day absent unless the individual previously left Alaska that same day. The department will count the day an individual leaves Alaska as a day an individual was in Alaska, unless the individual previously arrived or returned to Alaska that same day.<sup>[12]</sup>

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<sup>8</sup> Exhibit 1, page 2.

<sup>9</sup> Exhibit 3, page 2.

<sup>10</sup> AS 43.23.008(a)(17).

<sup>11</sup> *In re J.S.*, OAH No. 12-0122-PFD (Commissioner of Revenue 2012). Prior PFD cases may be found on line at <http://aws.state.ak.us/officeofadminhearings/Category.aspx?CatName=PFD>.

<sup>12</sup> 15 AAC 23.163(j). *In re M.C.*, OAH No. 08-0011-PFD (Commissioner of Revenue 2008).

Under this regulation, a person who leaves Alaska at the start of the day and returns before that day is over is not absent. A person who is out of Alaska at the start of the day, returns to Alaska, but then leaves Alaska before the day is over is considered absent that day.<sup>13</sup>

It is Mr. Z's burden to prove he is eligible to receive a PFD.<sup>14</sup> The division relied on the information in Mr. Z's original application, and found he was not eligible. It then became Mr. Z's burden to prove that the division's determination was incorrect.<sup>15</sup>

In his written correspondence, Mr. Z states that his airport badge is used to open doors at the Anchorage airport, and that there would be records of his use of that badge for the days he was present and working in Anchorage. He was not able to get copies of those records, but believes that the Administrative Law Judge could obtain them. It is not the judge's role to gather evidence. Similarly, Mr. Z argued that he served on a jury, attended plays, and received medical treatment on various days during 2012. There is no dispute that Mr. Z was present during portions of 2012. It is, however, his burden to gather evidence to show he was present for at least 186 days.<sup>16</sup>

Mr. Z also argued that because of his schedule and use of company aircraft, it was difficult to establish all of his departure and return dates. There is no doubt that he is correct. However, it is not impossible for Mr. Z to keep a calendar and a variety of contemporaneous receipts, boarding passes, and other records to show his presence in Alaska on various dates. While it is possible that the division would question the reliability of such evidence, he could submit corroborating statements from others, and if necessary, appeal the division's decision and request an evidentiary hearing at which he could present sworn testimony from himself and others.

Mr. Z did send partial records. He submitted his Alaska Airlines mileage account statement for March 3, 2012 through November 24, 2012.<sup>17</sup> He also submitted invoices for flight crew travel that occurred in June, October, and November.<sup>18</sup> Using these records, Mr. Z's absences are shown here:

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<sup>13</sup> Mr. Z notes that if he reports leaving and returning on the same day, the division will write to ask him to correct the information. The division may do that, but Mr. Z could simply explain to the division that he did in fact leave and return on the same day.

<sup>14</sup> 15 AAC 23.173(a).

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

<sup>16</sup> 2012 was a leap year with 366 days. 366 – 180 days of allowable absence = 186.

<sup>17</sup> Exhibit 5.

<sup>18</sup> Exhibit 9.

Leave Alaska	Return to Alaska	Days Absent
3/3/2012	3/12/2012	9
4/22/2012	5/11/2012	19
5/22/2012	6/10/2012	19
6/21/2012	8/15/2012	55
9/4/2012	unknown	
10/25/2012	11/13/2012	18
unknown	11/24/2012	

Using this information, Mr. Z was absent for over 100 days during these nine months. However, these records are incomplete. It is likely that Mr. Z did return to Alaska between June 21<sup>st</sup> and August 15<sup>th</sup>, but it is not possible to say how long he was in Alaska during that return. Nor is it possible to determine how long he was absent after his September 4<sup>th</sup> departure, or how long he was present before his November 24<sup>th</sup> departure. It is also possible that he left and returned multiple times in addition to the dates shown here. Without additional information, it is simply not possible to determine how many days Mr. Z was absent from Alaska during 2012.

Mr. Z initially informed the division that he was absent from Alaska from the first to the 20<sup>th</sup> day of each month, except for December when he returned on the tenth.<sup>19</sup> This was a total of 217 days. Mr. Z submitted additional information to show that the information he submitted to the division was incorrect. He has not, however, shown how many days he was actually present in Alaska.

#### IV. Conclusion

The division determined that Mr. Z was not eligible for a 2013 PFD because he had been absent from Alaska for more than 180 days during the 2012 qualifying year. Mr. Z has not met his burden of proving the division's determination was incorrect. Accordingly, that decision is **AFFIRMED**.<sup>20</sup>

Dated this 28<sup>th</sup> day of May, 2014.

*Signed*  
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 Jeffrey A. Friedman  
 Administrative Law Judge

<sup>19</sup> Exhibit 1, page 2.

<sup>20</sup> Nothing in the record of this case indicates that Mr. Z is no longer an Alaska resident for purposes of future PFD applications, and no finding on that issue is made here.

**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 24<sup>th</sup> day of June, 2014.

By: Signed  
Signature  
Christopher Kennedy  
Name  
Administrative Law Judge  
Title

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