

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

In the Matter of:	)	
	)	
U E	)	OAH No. 14-0939-PFD
	)	Agency No. 2013-001-4292
<u>2013 Permanent Fund Dividend</u>	)	

**DECISION AND ORDER**

**I. Introduction**

U E applied for the 2013 Permanent Fund Dividend (PFD). The Permanent Fund Division (Division) denied the application both initially and at the informal appeal level. Ms. E requested a formal hearing. Ms. E testified in person at the hearing while the Division appeared telephonically.

The qualifying year for the 2013 PFD application is calendar year 2012. The basis for the denial was the Division's belief that Ms. E made an inaccurate answer on her 2013 PFD application, which intentionally misrepresented her reportable absence of over 90 days during 2012. The evidence at the formal hearing showed that Ms. E had been absent from the State of Alaska for more than 90 days during 2012. However, the evidence also showed that Ms. E's answer on the 2013 application stating that she had not been absent from Alaska for more than 90 days was inadvertent, rather than intentional. The denial of Ms. E's 2013 PFD application is therefore reversed.

**II. Facts**

Ms. E has been an Alaska resident since 2001. She has an elderly cognitively impaired mother who lives in Washington State. During 2011 and 2012, she spent considerable amounts of time in Washington caring for her mother.

**A. Ms. E's 2012 PFD Application**

Ms. E filed an application for her 2012 PFD. On that application, she stated that she had not been absent from Alaska for more than 90 days during 2011, the qualifying year for the 2012 PFD. The Division began investigating her application in June 2012.<sup>1</sup> It then denied her application in November 2013, finding that she had been absent for a total of 192 days in 2011,

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<sup>1</sup> Exs. 12, 13.

and thus had intentionally misstated the amount of her absences on her application.<sup>2</sup> Ms. E did not appeal the denial.

### **B. Ms. E's 2013 PFD Application**

Ms. E filed an application for her 2013 PFD. On that application, she stated she had not been absent from Alaska for more than 90 days during 2012.<sup>3</sup> In response to a question on the supplemented schedule, she had answered that she had not filed for divorce in another state in 2012.<sup>4</sup> However, she had filed for divorce in Washington State in December 2012.<sup>5</sup> The Division investigated the 2013 application. It denied this application after an informal review was conducted. The Division found that Ms. E had been absent from Alaska for more than 90 days in 2012, yet had failed to disclose this fact on her 2013 PFD application.<sup>6</sup> The Division deemed this failure to disclose to be intentional.<sup>7</sup>

Ms. E did not disagree with the Division's finding that she had been absent from Alaska for more than 90 days and had failed to disclose it. She, however, disputed that the failure to disclose was intentional. Ms. E explained that she had trouble obtaining records from Alaska Airlines. She also testified that she had been absent from Alaska at various times in 2012 to care for her severely cognitively impaired mother. Ms. E at the hearing was distraught and tearful and clearly overwhelmed by the stress of caring for her elderly mother. She was not good with records or dates. Her difficulty in keeping track of events was demonstrated by her written correspondence where she stated that two events occurred in December 2010: her mother being in a car accident and her father dying.<sup>8</sup> In other written correspondence, Ms. E again refers to 2010 as her mother "started getting bad 2010 – after dad passed Mom got real bad."<sup>9</sup> However, at hearing, Ms. E testified that her father passed away in 2011 and that her mother's car accident occurred in December 2011.<sup>10</sup> The change in these dates demonstrates that Ms. E has difficulty keeping track of events, as there would have been no advantage for Ms. E to change the dates in

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<sup>2</sup> Ex. 16, pp. 1- 2.

<sup>3</sup> Ex. 1, p. 1.

<sup>4</sup> Ex. 2, p. 2, Part C, Question P.

<sup>5</sup> Ex. 3, p. 6.

<sup>6</sup> The Division's *Informal Appeal Decision* states a varying number of days, none of which exceed 180 days. *See, e.g.*, Fact 4 - 139 days, Fact 5 - 129 days, Fact 10 -122 - 123 days. Ex. 15, pp. 4 - 6.

<sup>7</sup> *See* Ex. 7, p. 2.

<sup>8</sup> Ex. 3, p. 2.

<sup>9</sup> Ex. 15, p. 7.

<sup>10</sup> Recording at 15:00 and 16:00.

her testimony. Based upon Ms. E's overall testimony and the observation of her demeanor at this in-person hearing, Ms. E was a credible witness.

### **III. Discussion**

In order to receive a PFD, in addition to other criteria, the applicant must be: (1) an Alaska resident at the time of application; (2) a state resident during the entire qualifying year; and (3) physically present in the state except for allowable absences.<sup>11</sup> A qualified applicant is eligible to receive a dividend if his or her absence from the state does not exceed 180 days.<sup>12</sup> As part of the application process, the applicant is required to disclose if he or she has been absent from the state for more than 90 days. The Division "will deny an application" if it determines that an applicant "has intentionally provided deceptive information such as failing to disclose a reportable absence."<sup>13</sup>

As found above, Ms. E was a credible witness. Her testimony that she did not intentionally fail to disclose her absence of more than 90 days during 2012 was credible. She was not a good historian and was clearly overwhelmed by her family circumstances and caregiving responsibilities. This finding is further supported by the fact that, because her absences were less than 180 days, she had no motive to lie on her application. The Division's argument was that Ms. E's previous conduct concerning her 2012 application – where she did not inform the Division that she was absent for more than 90 days in 2011 when she had actually been absent for 192 days – coupled with the failure to disclose her Washington state 2012 divorce filing – shows a pattern of dishonesty. However, given the individual facts of this case, specifically Ms. E's difficulty with keeping track of events, the Division's argument is not persuasive. In addition, it would take more than one prior occurrence to establish a clear pattern.

Ms. E had the burden of proof to establish that she did not intentionally misrepresent the fact that she was absent from the state for more than 90 days on her 2013 PFD application.<sup>14</sup> She met her burden of proof.

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<sup>11</sup> AS 43.23.005(a).

<sup>12</sup> AS 43.23.008(a)(17). While there are exceptions to this rule, they do not apply in this case.

<sup>13</sup> 15 AAC 23.103(e) and (j).

<sup>14</sup> 15 AAC 05.030(h).

**IV. Conclusion and Order**

IT IS HEREBY ORDERED that Ms. E's application for a 2013 permanent fund dividend is granted.

DATED this 26th day of September, 2014.

*Signed* \_\_\_\_\_  
Kathleen Frederick  
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 27th day of October, 2014.

By: *Signed* \_\_\_\_\_  
Signature  
Kathleen A. Frederick  
Name  
Administrative Law Judge  
Title

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