

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

IN THE MATTER OF	)	
	)	
K W. L	)	
	)	OAH No. 14-1264-PFD
<u>2013 Permanent Fund Dividend</u>	)	Agency No. 2013-028-5329

**DECISION & ORDER**

**I. Introduction**

This case is Mr. K W. L's appeal of the Permanent Fund Dividend Division's (Division's) denial of his 2013 permanent fund dividend (PFD) application because he was on disqualifying absences from Alaska in 2012. Mr. L timely applied for a 2013 permanent fund dividend. The Division determined that Mr. L was not eligible, and it denied the application initially and at the informal appeal level. Mr. L requested a formal hearing by correspondence. Administrative Law Judge Mark T. Handley reviewed and decided the appeal. Bethany Thorsteinson represented the Division and filed the agency record as well as a position paper.

Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that Mr. L is disqualified from receiving a 2013 PFD. Mr. L was absent attending college, but he was in less than full-time student status for too long in 2012 to qualify for a 2013 PFD.

**II. Facts**

Mr. L had problems documenting the periods of time in 2012 that he was absent from and in Alaska when he was in part-time and full-time student status at college in West Virginia, and whether he paid in-state or nonresident tuition. In his request for a formal hearing, Mr. L explained that his difficulties getting his school to send in the information that the Division had asked him to provide.<sup>1</sup> In an Education Verification Form dated July 22, 2014, the provost of No Name Community & Technical College verified that Mr. L had attended as a part-time student from January 17, 2012 through May 11, 2012 and May 21, 2012 through July 26, 2012. The provost also verified that Mr. L had attended as a full-time student from August 20, 2012 through December 14, 2012.<sup>2</sup> Contact between the Division and the college indicates that Mr. L began the spring 2012 semester as a full-time student but dropped down to part-time status after six days.<sup>3</sup>

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<sup>1</sup> Exhibit 11, pages 10 & 11.

<sup>2</sup> Exhibit 15, page 1.

<sup>3</sup> Exhibit 12, page 1, Exhibit 15, page 1 & Division's Position Paper at page 4.

The evidence in the record shows that it is more likely than not that Mr. L was absent, living in West Virginia as a college student for more than 180 days in 2012, and that Mr. L was absent, living in West Virginia as a part-time college student for more than 120 days in 2012. Mr. L dropped down to nine credits, which his college considers part-time status, during spring semester of 2012 and did not become a full-time student again until the fall semester. Mr. L was a full-time student in West Virginia for only 123 days of the 334 days that he was absent from Alaska in 2012.<sup>4</sup>

### **III. Discussion**

Several requirements must be met to be eligible for a PFD. Some of these requirements are listed in Alaska Statute 43.23.005. One of the requirements 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 Alaska Statute 43.23.008.”<sup>5</sup>

Alaska Statute 43.23.008(a) lists a number of reasons a person can be absent from Alaska and still qualify for a dividend. The list includes reasons such as military service, education, serving in Congress, caring for a terminally ill family member, receiving continuous medical treatment, and a few other reasons. Reason number (17) allows absences for any reason consistent with Alaska residency, so long as the cumulative absences total fewer than 180 days, or fewer than 120 days in addition to time as a full-time student, or fewer than 45 days in addition to absences for other listed reasons.

Absences from Alaska that do not meet the requirements of Alaska Statute 43.23.008 disqualify an individual from PFD eligibility. Alaska Statute 43.23.008(a)(17)(B) disqualifies individuals absent more than 120 days in addition to absences for the full-time educational reasons listed under Alaska Statute 43.23.008(a)(1)-(2), if absent more than 180 days cumulatively during the PFD qualifying year. Therefore, a college student absent more than 180 total days and more than 120 days with less than full-time student status during the qualifying year is not eligible for a PFD.

Mr. L’s 2012 absences fall into this category. No law gives the PFD Division, or the administrative law judge, the legal authority to grant PFDs to people who were absent for reasons, no matter how good, that are disqualifying under the provisions of Alaska Statute 43.23.008(a)(17).

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<sup>4</sup> Exhibit 15 & 11.

<sup>5</sup> AS 43.23.005(a)(6).

Mr. L did not maintain a full-time course load during his extended absence in 2012. Under the law he does not qualify for a 2013 PFD.

**IV. Conclusion**

Mr. L's 2012 absences from Alaska fell within a category of absences that are disqualifying for the purpose of PFD eligibility. Mr. L therefore does not qualify for a 2013 dividend.

DATED this 8<sup>th</sup> day of October, 2014.

By: Signed \_\_\_\_\_  
Mark T. Handley  
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 3<sup>rd</sup> day of November, 2014.

By: Signed \_\_\_\_\_  
Signature  
Mark T. Handley \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

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