

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

In the Matter of :)	
)	
N G)	
)	OAH No. 14-1293-PFD
<u>2013 Alaska Permanent Fund Dividend</u>)	Agency No. 2013-000-3793

DECISION

I. Introduction

N G filed an application for a 2013 Alaska Permanent Fund dividend. The Permanent Fund Dividend Division denied the application on the grounds that she had been absent from Alaska during the qualifying year for more than the allowable time.¹ Ms. G appealed the decision. The Division upheld its denial after an internal informal appeal.² Ms. G filed a formal appeal³ and the case was referred to the Office of Administrative Hearings for a hearing.

A hearing was held on August 14, 2014. Ms. G and Pete Scott, representing the Division, participated. Because Ms. G was absent during the qualifying year for more than the time than allowed under AS 43.23.008(a)(17)(C), the Division's decision to deny her application is affirmed.

II. Facts

Ms. G has applied for and been approved for the Permanent Fund Dividend from 2001 through 2012.⁴ Ms. G is a teacher. In 2012, Ms. G agreed to teach in Taiwan for the 2012/2013 school year.⁵ Ms. G unexpectedly left Taiwan to care for her brother, who was in Washington and was just diagnosed with life-threatening cancer.⁶ Ms. G remained in Washington caring for her brother through the end of 2012.⁷ Ms. G was absent from Alaska 187 days in 2012.⁸ She was out of the state and not caring for her brother for a total of 89 days in 2012.⁹

¹ Ex. 5. The Division originally denied Ms. G's 2013 PFD application because it did not have enough information to verify Ms. G's brother's condition. It also denied her application because her formal appeal was untimely filed. The Division conceded both of these issues prior to hearing. The single issue at hearing is whether Ms. G was absent from the state longer than the time allowed by statute.

² Ex. 9.

³ Ex. 12.

⁴ Ex. 1, p. 5.

⁵ Ex. 14.

⁶ Ex. 1; position statement.

⁷ Position statement. Ms. G remained in Washington for a portion of 2013 as well, but that is not relevant to this proceeding.

III. Discussion

AS 43.23.005(a) establishes certain statutory requirements for eligibility for a permanent fund dividend. In addition to Alaska residency, required by AS 43.23.005(a)(2) and (3), AS 43.23.005(a)(6) requires that the individual was absent from the state during the qualifying year for no more than the period allowed by AS 43.23.008(a). The Division does not dispute that Ms. G is an Alaska resident. However, the Division argues that she was absent from Alaska during 2012 for more than the time allowed by AS 43.23.008(a). Specifically, the Division argues that Ms. G is ineligible pursuant to AS 43.23.008(a)(17)(C), which provides that an Alaska resident who is absent from Alaska for more than 45 days in addition to any absences claimed under AS 43.23.008(a)(1)-(16) is ineligible for the dividend.

In this case, according to the Division's calculations Ms. G was absent from Alaska for 187 days in 2012.¹⁰ Ms. G did not challenge the Division's calculations at hearing. The Division concedes that Ms. G is entitled to claim allowances for 98 days of absence while in Washington caring for her brother, pursuant to AS 43.23.008(a)(7). However, Ms. G was absent from Alaska for 89 days¹¹ in addition to the allowed absence to care for her brother. AS 43.23.008(a)(17)(C) only allows an absence of 45 days in addition to Ms. G's allowable absence to care for her brother. Ms. G was absent from Alaska forty-four more days than are allowed under 43.23.008(a)(17)(C).¹²

IV. Conclusion

Ms. G was absent from Alaska during the qualifying year for more than 45 days in addition to the time allowed under AS 43.23.008(a)(1)-(16). She is ineligible for the 2013 Alaska Permanent Fund dividend pursuant to AS 43.23.008(a)(17). The Division's denial is affirmed.

DATED August 15, 2014.

Signed _____
Bride Seifert
Administrative Law Judge

⁸ Position statement, p. 4.

⁹ Position statement, p. 4. From June 23, 2012 – September 19, 2012, Ms. G was traveling outside of Alaska or working in Taiwan. Ms. G was in Alaska January 1-June 22, 2012, and October 4-8, 2012. She was caring for her brother from September 20 – October 3, 2012, and from October 9 – December 31, 2012.

¹⁰ Position statement, p. 4.

¹¹ The specific dates are May 22-June 18 (28 days), June 21-July 2 (12 days), September 11-13 (3 days), and December 19-22 (4 days).

¹² Position Statement; (187 total days absent – 98 allowable absence to care for brother = 89 non-allowable absence days; 89 – 45 = 44 days of non-allowable absence) .

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 of this decision's distribution date.

DATED: September 12, 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.]