

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

In the Matter of )

E N )

) OAH No. 14-2067-PFD  
) Agency No. 2014-067-3939

**DECISION**

**I. Background**

E N first came to Alaska in 1963 in a jeep, hauling a gold dredge. He retained a deep connection with the state during his working years, and six years ago he returned to Alaska to live. He is a snow bird, going to the lower 48 in winter to visit family and attends to business interests there.

There is no factual dispute at all in this case. Mr. N is completely frank, and he owns up to exactly what happened.

Mr. N did not understand how the Department of Revenue administers the 180-day absence rule, discussed more fully below. He thought he needed to be in Alaska more than 180 days, not that his absences needed to be less than 180 days. In 2013, the qualifying year for the 2014 dividend, he was absent when the year began and remained outside the state until about 2:00 p.m. local time on March 19, 2013.<sup>1</sup> He then remained in the state until approximately 7:00 p.m. local time on September 19, 2013.<sup>2</sup> He stayed out of state for the rest of the year. In absolute time, he was outside the borders of Alaska for approximately 180 days and 19 hours during 2013.

Mr. N honestly disclosed these arrival and departure dates on his application for the 2014 dividend, and marked the “yes” box next to the question whether he had been “gone from Alaska more than 180 days total.”<sup>3</sup> The purpose of his first absence was “snowbird”; the purpose of his second was either to attend to a rental property or to get medical treatment, or some combination of the two.<sup>4</sup>

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<sup>1</sup> Ex. 4, p. 14. The time of day given assumes (without deciding) that entering Alaska airspace qualifies as reentering Alaska.

<sup>2</sup> *Id.*

<sup>3</sup> Ex. 1, pp. 1-2.

<sup>4</sup> Ex. 1, p. 2; Ex. 3, p. 3.

Mr. N admits that, according to the Department’s counting methodology, he was absent, from Alaska, 181 days in 2013.

A hearing took place on March 18, 2015. Mr. N attended in person and argued his case clearly.

## **II. Discussion**

The qualifying year for the 2014 dividend was 2013.<sup>5</sup> A PFD applicant must meet several eligibility requirements.<sup>6</sup> One of the eligibility requirements is that a person must have been physically present in Alaska throughout the qualifying year, or only absent as allowed by Alaska Statute 43.23.008.<sup>7</sup>

Most of the allowable absences in AS 43.23.008 relate to specialized reasons to be out of state, such as serving in the military or serving in Congress. Only two possible allowable absences relate to Mr. N.

The first is the allowable absence for “receiving continuous medical treatment . . .” provided by AS 43.23.008(a)(5). This category could only apply (if at all) to Mr. N’s second absence, the one from September through December. However, if Mr. N were to take advantage of that provision to account for his second absence, he would be limited to only “45 days in addition” to that absence for miscellaneous purposes.<sup>8</sup> His “snowbird” absence in the first two and a half months of the year was much more than 45 days, and so he would be ineligible.

The more promising category of allowable absence for Mr. N to use is the catchall category in AS 43.23.008(a)(16)(A): a person may be allowably absent “for any reason consistent with the individual’s intent to remain a state resident” up to a maximum of 180 days, provided the person did not take other kinds of allowable absences, such as the medical absence.<sup>9</sup>

A Department of Revenue regulation, 15 AAC 23.163(j), requires the department to “count whole days when determining the number of days an individual was absent from Alaska.” The regulation also provides that the department must “count the day an individual arrives or

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<sup>5</sup> AS 43.23.095(6).

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

<sup>7</sup> AS 43.23.005(a)(6).

<sup>8</sup> AS 43.23.008(a)(17)(C).

<sup>9</sup> When claimed in combination with other allowable absences, the 180 days is often reduced. AS 43.23.008(a)(16)(B), (C).

returns to Alaska as a day absent unless the individual previously left Alaska that same day.” The day the individual leaves Alaska does not count as a day absent.

The Department has no discretion in its application of 15 AAC 23.163(j). It is required to follow its own regulation.<sup>10</sup> While this rigidity in application is sometimes frustrating, it does promote the consistent administration of a program with 600,000 beneficiaries.

As explained at the hearing, the department’s regulation interpreting AS 43.23.008 probably is not the only possible interpretation of that statute. The department could have decided that only days spent *entirely* outside Alaska would be counted as days of absence, or, conversely, that any day spent *partly* outside Alaska would be counted as a day of absence. There may be plausible interpretations of the statutory language under which Mr. N might have only 180 days of absence, rather than 181, and would have remained eligible. However, if Mr. N wants to argue for an interpretation other than what is in the department’s regulation, he would have to do that in the Superior Court. At this level, the regulation is absolutely binding.

When the regulation is applied, Mr. N had 78 days of absence at the beginning of 2013, with March 19, the day he returned, counted as one of these 78 days. He had another 103 days at the end of the year, with September 19, the day he departed, not counted as part of that total. 78 plus 103 is 181 days of absence, one too many for eligibility.

### **III. Mr. N’s Question**

Mr. N has asked on what day he needed to return to Alaska in order to be eligible for a PFD. He said that no one has been able to give him a straight answer to that question.

In order to be eligible under the PFD division’s regulatory interpretation of AS 43.23.008, Mr. N needed to return no later than 11:59 p.m. on December 30, 2013.

### **IV. Conclusion**

Due to an overlength absence during the qualifying year, 2013, E N is not eligible for a 2014 PFD. He apparently remained an Alaska resident in 2013, and nothing in this decision precludes him from eligibility for future PFDs. The decision of the Permanent Fund Dividend Division to deny the application of E N for the 2014 Permanent Fund Dividend is **AFFIRMED**.

DATED this 26th day of March, 2015.

*Signed*  
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Christopher Kennedy  
Administrative Law Judge

<sup>10</sup> *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska Supreme Court 2010).

## 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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 24th day of April, 2015.

By: Signed  
Signature  
Christopher Kennedy  
Name  
Deputy Chief Administrative Law Judge  
Title

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