

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

In the Matter of)	
)	
S C)	
)	OAH No. 15-0042-PFD
<u>2014 Permanent Fund Dividend</u>)	Agency No. 2014-061-5889

DECISION

I. Introduction

S C has made her principle home in Alaska for some time, but since early 2012 has been attending medical school in the West Indies. Her 2014 application for a Permanent Fund Dividend (PFD) was denied because, in the view of the PFD Division, her absence from the state for more than 180 days during the qualifying year was for a reason not allowable under PFD law. After the Division held to this view through an informal appeal, Ms. C requested a formal hearing. She attended her hearing in person on March 6, 2015.

After the hearing, the record was kept open for the PFD Division to make a prompt supplemental filing about a legal issue and for Ms. C to provide both (1) documentation that she had registered for and was scheduled to take the USMLE Step 1 exam (or, alternatively, documentation that she is certified, has paid the \$865 registration fee for the exam, and her application was pending); and (2) letters or publications indicating that, if she is successful in the exam, her medical school credits would be accepted by a Title IV institution, as discussed more fully below. Ms. C was given until April 30 for her supplemental materials. However, on March 18, 2015, Ms. C gave notice that “I will not be able to meet what is requested.”

Because Ms. C is not able to demonstrate that the Division’s denial is in error, this decision affirms the denial.

II. Facts

The facts of this case are not in dispute. Ms. C was absent from Alaska for about 228 days in 2013. All of the absence was attributable to her enrollment in No Name School. That institution is not accredited by an accrediting agency that the United States Secretary of Education recognizes under 34 C.F.R. Part 602, is not a Title IV institution recognized under 20 U.S.C. §§ 1001 – 1155 and 34 C.F.R. Part 600, and is not an institution for which Nellie Mae student loans are issued.

III. Discussion

In this appeal, Ms. C has the burden of proving that the denial of her PFD was incorrect.¹ Specifically, she needs to prove that she qualifies for the allowable absence she is claiming.

The qualifying year for the 2014 dividend was 2013.² In order to qualify for a Permanent Fund Dividend in 2014, the applicant had to have been physically present in Alaska all through the qualifying year, or only have been absent for one of the 17 allowable reasons listed in a statutory section entitled “Allowable Absences,” AS 43.23.008.³ There are two of the allowable absences that potentially apply to Ms. C.

One of the specifically allowable absences is an absence for any reason consistent with Alaska residency. Vacations and the like fit under this absence. However, an absence for this open-ended reason cannot exceed 180 days under any circumstances.⁴ Since Ms. C was absent for more than 200 days, this allowable absence cannot, by itself, save her eligibility for the dividend. She would need to qualify for a second type of allowable absence as well.

The second potentially applicable provision is the one Ms. C claimed when she submitted her application: an absence “receiving secondary or postsecondary education on a full-time basis.”⁵ The Department of Revenue has adopted a regulation, 15 AAC 23.163(c)(1), defining the phrase “receiving secondary or postsecondary education on a full-time basis.” With respect to postsecondary education, that definition requires that the educational institution qualify under one of four avenues, considered in turn below.

First, an institution qualifies if it is “accredited by an accrediting agency that the United States Secretary of Education recognizes under 34 C.F.R. Part 602.”⁶ There is no dispute that No Name School does not fall in this category.

Second, an institution qualifies if it is “a Title IV institution recognized under 20 U.S.C. 1001 – 1155 (The Higher Education Act of 1965) and 34 C.F.R., Part 600.”⁷ Again, there is no dispute that No Name School does not fall in this category.

¹ 15 AAC 05.030(h).

² AS 43.23.095(5).

³ AS 43.23.005(a)(6).

⁴ AS 43.23.008(a)(17)(A). The maximum length of the catchall absence is reduced somewhat if the applicant is claiming certain other kinds of absences in the same year. *See* AS 43.23.008(17).

⁵ AS 43.23.008(a)(1).

⁶ 15 AAC 23.163(c)(1)(B).

⁷ 15 AAC 23.163(c)(1)(C)(i).

Third, an institution qualifies if it is non-accredited but students attending it “may qualify as eligible to receive a student loan from Nellie Mae.”⁸ Again, there is no dispute that No Name School does not fall in this category.⁹

Finally, an institution qualifies if its “credits or degrees are accepted by at least three Title IV institutions recognized under 20 U.S.C. 1001 – 1155 (the Higher Education Act of 1965) and 34 C.F.R., Part 600.”¹⁰ This was the focus of the hearing and post-hearing proceedings in this case, because Ms. C testified that she understands that one No Name School student, in the past, passed the Step 1 United States Medical Licensing Examination and was then able to transfer the No Name School credits to an accredited U.S. medical school where the student then enrolled for further study. However, it eventually became clear that Ms. C will not be able to sign up for the Step 1 exam in the near future, and that she cannot produce documentation that any accredited school would accept her credits were she to sign up for and be successful on the exam.¹¹ Accordingly, she cannot meet her burden of proving that she fits within the allowable absence provision.

Because she spent 228 days outside Alaska in the qualifying year for the 2014 dividend, and has not carried her burden of showing that her absence was allowable, there is not a legal way to grant Ms. C a 2014 dividend.

IV. Conclusion

Because of her extended absence, Ms. C is not eligible for the 2014 PFD. She appears to have remained an Alaska resident, and nothing in this decision precludes her from eligibility for future PFDs in years in which she is not disqualified by an extended absence.

The decision of the Permanent Fund Dividend Division to deny the application of S C for a 2014 permanent fund dividend is AFFIRMED.

DATED: April 21, 2015.

By: Signed
Christopher Kennedy
Administrative Law Judge

⁸ 15 AAC 23.163(c)(1)(C)(ii).

⁹ See Ex. 7, p. 1 (inquiry to Faith Guthert of ACPE).

¹⁰ 15 AAC 23.163(c)(1)(C)(ii).

¹¹ See Order Extending Record Closure (March 16, 2015); e-mail from S C to K D (March 18, 2015).

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 19th day of May, 2015.

By: Signed
Signature
Andrew M. Lebo
Name
Administrative Law Judge
Title

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