

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

In the Matter of )  
 )  
 E X ) OAH No. 15-0934-PFD  
 ) Agency No. 2014-066-9210  
\_\_\_\_\_ )

**PROPOSED DECISION**

**I. Introduction**

E X's application for a 2014 Permanent Fund Dividend (PFD) was denied. After a full hearing and based on the evidence in the record, the denial is upheld because Mr. X's extended absences from Alaska during 2013 were not for the reasons deemed "allowable" under the statutes governing the PFD program.

**II. Material Facts**

Mr. X has periodically lived and worked in Alaska over the past several decades.<sup>1</sup> In July 2012, Mr. X moved from California to No Name to work in the construction industry.<sup>2</sup> After experiencing various employment conflicts and other difficulties,<sup>3</sup> he returned to California on September 24, 2012.<sup>4</sup> Mr. X next returned to Alaska on June 28, 2013,<sup>5</sup> and remained in Alaska until November 26, 2013.<sup>6</sup> He did not return to Alaska again until March 2014.<sup>7</sup>

On March 31, 2014, Mr. X submitted an application for a 2014 Permanent Fund Dividend.<sup>8</sup> On his application, he wrote that his most recent period of Alaska residency had begun on June 28, 2013.<sup>9</sup> The Permanent Fund Dividend Division initially denied Mr. X's PFD application based on the June 2013 residency date listed on his application.<sup>10</sup>

During the informal appeal process, the denial decision was upheld on the basis of the June 2013 residency date, and also on the separate basis that Mr. X had been absent from Alaska

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1 Testimony of E X and Exhibit 4.

2 Testimony of E X and Ex. 17, pp. 2-3, 5, 9.

3 Testimony of E X and Ex. 27, 32.

4 Testimony of E X and Ex. 17, pp. 3, 9.

5 Testimony of E X and Ex. 17, pp. 6, 9; Ex. 18, p. 6.

6 Testimony of E X and Ex. 1, p. 2; Ex. 17, p. 9.

7 Testimony of E X and Ex. 1, p. 2.

8 Ex. 1. The last Dividend year in which Mr. X had collected a PFD was 1999. Exhibit 4. He submitted applications for Dividend years 2000, 2001 and 2002, all which were denied, and then did not apply again until Dividend year 2014. Ex. 4.

9 Ex. 1, p. 3.

10 Ex. 5, p. 3; Ex. 6, p. 1.

for more than 180 days during 2013 without establishing that his absences were allowable under the laws governing PFD eligibility.<sup>11</sup>

Mr. X appealed. Mr. X contends that the “June 28, 2013” entry on his application was an error, and that he actually meant to indicate that his residency began in 2012.<sup>12</sup> Mr. X also contends that his absences from Alaska during 2013 – from January 1, 2013 through June 28, 2013, and then from November 26, 2013 through December 31, 2013<sup>13</sup> – are allowable absences because he was receiving medical care out of state and also because his physician has recommended that he spend winter in sunnier climates.<sup>14</sup>

### **III. Procedural History**

Mr. X filed his formal appeal on July 9, 2015. A hearing was held before the Office of Administrative Hearings on September 3, 2015. Mr. X appeared in person, represented himself, and testified on his own behalf. The Division was represented by PFD Appeals Manager Robert Pearson, who participated by telephone.

At the close of the hearing, the Division’s Exhibits 1 - 18 were admitted into evidence. Exhibit 19, a six-page compilation of documents which Mr. X brought to the hearing, was admitted without objection. The record was left open until Friday, September 11, for either party to submit further evidence or argument, and specifically, for Mr. X to submit any additional evidence regarding the basis for his absences during 2013. Mr. X submitted twelve additional exhibits – Exhibits 21 – 32 – as well as two proposed modifications to existing exhibits.<sup>15</sup> The record closed, and the matter was taken under advisement.

### **IV. Applicable Law**

Alaska Statute 43.23.005(a) identifies the eligibility requirements for a Permanent Fund Dividend. Those requirements include that an individual must be a “state resident” on the date

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11 Ex.14.

12 *See, e.g.*, Ex. 21, p. 3.

13 Mr. X testified that he did not return to Alaska until June 28, 2013, an absence of 178 days during 2013. Testimony of E X; Ex. 17, p. 9; Ex. 18, p. 6. He further testified that he left Alaska on November 26, 2013, and did not return for the rest of 2013, an additional absence of 36 days during 2013. Testimony of E X and Ex. 19, p. 4; Ex. 17, p. 9.

14 Testimony of E X; Ex. 21, p. 1; Ex. 17, pp. 1, 7; Ex. 23.

15 Mr. X’s proposed Exhibit 21 is written argument, not an evidentiary exhibit. This document is not admitted as an exhibit, but is accepted as Mr. X’s written closing argument. Likewise, Mr. X’s proposed alterations to Exhibits 1 and 10 are not admitted as exhibits, but are accepted as further written argument. Mr. X’s remaining exhibits are accepted into the record under the broad admissibility standard set out in 2 AAC 64.290(a).

of application;<sup>16</sup> have been a state resident during the entire qualifying year;<sup>17</sup> and either have been physically present in the state at all times during the qualifying year, or, if absent, have been absent only as allowed in AS 43.23.008.<sup>18</sup>

There are three “allowable absences” that potentially apply to Mr. X, or which he seeks to invoke in his appeal. First, AS 43.23.008(a)(5) provides that an otherwise eligible individual who is absent from Alaska during the qualifying year remains eligible if the individual’s absence is for the purpose of receiving continuous physician-recommended medical treatment or convalescence. Next, subsection (a)(7) provides that an otherwise eligible individual who is absent from Alaska during the qualifying year remains eligible if the individual’s absence is for the purpose of “providing care for the individual’s terminally ill family member.” Lastly, subsection (a)(17)(C) provides that an otherwise eligible individual may be absent from Alaska “for any reason consistent with the individual’s intent to remain a state resident,” provided that the cumulative absences “do not exceed 45 days . . .” in addition to any allowable absences for purposes of obtaining medical treatment or caring for terminally ill family members.

## **V. Discussion**

The qualifying year for the 2014 dividend was 2013. In order to qualify for a Permanent Fund Dividend in 2014, Mr. X had to have been physically present in Alaska all through the qualifying year, or absent for one of the allowable reasons listed AS 43.23.008.<sup>19</sup>

### **A. Mr. X Did Not Meet His Burden of Proving Allowable Absences for Continuous Medical Treatment.**

Alaska Statute 43.23.008(a)(5) provides that an otherwise eligible individual who is absent from the state during the qualifying year remains eligible if the absence was for the purpose of “receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician who treated the illness[.]”

At the hearing, Mr. X first alleged that his absence was due to “receiving continuous medical treatment” for a longstanding workplace injury from a doctor in No Name, California.<sup>20</sup>

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16 AS 43.23.005(a)(2).

17 AS 43.23.005(a)(3).

18 AS 43.23.005(a)(6).

19 AS 43.23.008(a)(6). Because the absence issue alone resolves the question of Mr. X’s eligibility for a 2014 PFD, it is not necessary to reach the separate issue of his Alaska residency.

20 Testimony of E X.

However, Mr. X presented no evidence about the nature, context or duration of any such treatment. The only exhibit specifically referencing dates of treatment identifies treatment received on two dates in January 2014 – outside of the relevant year for eligibility purposes.<sup>21</sup> And in argument submitted during the informal appeal process, Mr. X indicated that he had not actually been seen by the No Name doctor during his 2013 absence.<sup>22</sup> Accordingly, Mr. X did not meet his burden of proving that any medical treatment he received in No Name during 2013 rose to the level of “continuous medical treatment” under AS 43.42.008(a)(5).

At the hearing and in his written closing argument, Mr. X also argued that his 2013 absences were allowable under AS 43.23.008(a)(5) because his medical providers have advised him to spend winter months outside of Alaska due to seasonal affective disorder. However, subsection (a)(5) expressly excludes “treatment or convalescence ... based on a need for climatic change.”<sup>23</sup> To the extent to which Mr. X is arguing that his time spent out of state constitutes either “continuous medical treatment” or required “convalescence” for his seasonal affective disorder, AS 43.23.008(a)(5) flatly precludes this argument.<sup>24</sup>

The legislature specifically chose to exclude periods of out-of-state medical treatment or physician-recommended convalescence “based on a need for climatic change,” carving out only this exception – those medical-related absences that are “based on a need for climatic change” – from the entire category of medical absences otherwise covered under AS 43.23.008(a)(5). Mr. X’s arguments that this exclusion does not cover absences for “seasonal affective disorder” – including, in Mr. X’s case, absences supported by physician’s notes recommending “7-8 months in a climate with more sunshine during the winter”<sup>25</sup> – are unpersuasive. There is nothing in the legislative history to suggest that the legislature intended its “need for climatic change” language

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21 *See* Ex. 2.

22 Ex. 17, p. 6.

23 AS 43.23.008(a)(5).

24 Even if the claim were not barred by the plain language of the statute, which it is, Mr. X still would not have met his burden of proof for an allowable absence under AS 43.23.008(a)(5). Mr. X did not present evidence establishing either that he was receiving “continuous medical treatment” or “convalescing as recommended by the physician who treated [his] illness” during either of his lengthy absences from Alaska during 2013. Mr. X presented vague doctor’s notes from 1998 and 2015 stating, generally, that he has been recommended to spend winter months in sunny locations. *See* Ex. 17, pp. 1, 7; Ex. 23. Even if this claim were not otherwise barred, this would be insufficient proof of a specific need for continuous medical treatment or physician-ordered convalescence from January through June 2013, nor in November and December 2013.

25 *See* Ex. 23.

to do anything other than bar exactly the type of claim made by Mr. X in this case.<sup>26</sup>

Accordingly, for the reasons set forth herein, Mr. X has not met his burden of showing that any of his absences during 2013 are allowable under AS 43.23.008(a)(5).

**B. Mr. X Did Not Prove that His Absences During 2013 Were Otherwise Allowable Under AS 43.23.008(a)(1)-(16).**

Neither at the hearing nor in his written materials did Mr. X clearly explain what he was doing during any specific period of time either during the first six months of 2013 or upon leaving Alaska in late November 2013. Mr. X testified that he was variously visiting his elderly father, receiving dental work, and resolving some legal issues associated with a traffic ticket he had received in San Francisco. He did not provide specific dates for any of these items. More fundamentally, however, he did not provide any evidence that any of these items fell under any of the enumerated “allowable absence” exceptions in AS 43.23.008(a)(1)-(16).

Mr. X argued that he is entitled to an allowable absence exception under AS 43.23.008(a)(7) for the two and a half weeks spent visiting his elderly father in early 2013. Mr. X variously characterized this trip as a visit and as “caregiving,” but did not describe any caregiving activities or give any detail whatsoever about the date, nature or duration of this visit. He also did not establish that his father was “terminally ill” during this time. To the contrary, while Mr. X testified that his father died less than a year after this visit, he also testified that the death was caused by an unexpected heart attack.<sup>27</sup> The exception under subsection (a)(7) is expressly limited to those absences for “caregiving for a terminally ill family member.” This is significantly narrower and more specific than the broader category of absences for the purposes of visiting elderly family members who are in poor health. Mr. X not prove that he had a qualifying absence under subsection (a)(7).<sup>28</sup>

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26 See generally, *Tea ex rel A.T.*, 278 P.3d 1262, 1265 (Alaska 2012) (“When construing statutes, we consider three factors: ‘the language of the statute, the legislative history, and the legislative purpose behind the statute.’ We have held that ‘the plainer the language of the statute, the more convincing any contrary legislative history must be ... to overcome the statute's plain meaning’”) (quoting *Oels v. Anchorage Police Dep’t Emps. Ass’n*, 279 P.3d 589, 595 (Alaska 2012)).

27 Testimony of E X and Ex. 29.

28 Of note, even if Mr. X were entitled to a 20-day allowable absence under subsection (a)(7), he would still not be eligible for a 2014 PFD for the reasons described in Section C, below. Indeed, as explained in footnote 29, an allowable absence under Subsection (a)(7) would reduce the allowable number of days for other absences under Subsection (a)(17) from 180 days to 45 days.

The remaining absences described by Mr. X did not appear to fall under any of the identified exceptions in Subsection (a)(1)-(16), and no evidence or argument to the contrary was presented. Mr. X thus did not prove any allowable absences under AS 43.23.008(a)(1)-(16).

**C. Mr. X's Absences Outside the Scope of AS 43.23.008(a)(1)-(16) During 2013 Exceed the Allowable Amount for 2014 PFD Eligibility.**

Mr. X was absent from Alaska for a total of 214 days in 2013. As set forth above, Mr. X did not meet his burden of proving any of these absences fell under the enumerated exceptions in AS 43.23.008(a)(1)-(16). Alaska Statute 43.23.008(a)(17) provides a "catch-all" exception for absences outside of the 16 specifically enumerated options but which are "consistent with an intent to remain an Alaska resident." However, those absences cannot exceed, at most, 180 days.<sup>29</sup> Even if all of Mr. X's absences during 2013 were "consistent with an intent to remain an Alaska resident," he was still absent for too many days to be eligible for a 2014 PFD.

**V. Conclusion**

Because of his extended absences in 2013, Mr. X is not eligible for the 2014 PFD. The decision of the Permanent Fund Dividend Division to deny Mr. X's application for a 2014 Permanent Fund Dividend is therefore AFFIRMED. Nothing in this decision precludes Mr. X from eligibility for future PFDs.

DATED: September 18<sup>th</sup>, 2015

*Signed* \_\_\_\_\_  
Cheryl Mandala  
Administrative Law Judge

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<sup>29</sup> 43.23.008(a)(17)(A). As noted in footnote 28, if Mr. X had successfully shown an entitlement to an exception for medical treatment or to care for a terminally ill family member, his other allowable absences under (a)(17) would be limited to 45 days. 43.23.008(a)(17)(C).

## 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 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 28<sup>th</sup> day of October, 2015.

By: Signed  
Signature  
Jerry Burnett  
Name  
Deputy Commissioner  
Title

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