

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

In the Matter of )  
 )  
 K & X N )  
 )  
2014 Permanent Fund Dividend )

OAH No. 15-1030-PFD  
Agency No. 2014-063-2494/2116

**DECISION**

**I. INTRODUCTION**

K and X N are husband and wife. They both applied for a 2014 Permanent Fund Dividend (PFD). Both of their applications were denied. They requested an informal appeal. The informal appeals were denied. The Ns requested a formal hearing.

Based on the evidence in the record, the PFD Division’s decision to deny Mr. and Ms. N’s applications is upheld. Although Ms. N was receiving medical treatment outside Alaska during 2013, and Mr. N was accompanying her, they are both disqualified from eligibility for 2014 because their absence from the State of Alaska in 2013 was greater than allowed by statute.

**II. FACTS**

The Ns are long time Alaskans who have continuously owned a home in the state of Alaska for a number of years. They left the state of Alaska in 2006 to care for elderly and ill family members. Ms. N began cancer treatment while out of state in 2010.

The Ns received PFDs through 2008. Their application for a 2009 PFD was denied. They returned to their home in Alaska on August 2, 2013.<sup>1</sup> They applied for the 2014 PFD on March 31, 2014. The PFD Division initially denied their application on November 28, 2014. The Ns filed a request for an informal appeal. While the informal appeal was pending, the PFD Division made repeated requests for information, which included a request for information relating to Ms. N’s medical treatment for cancer.<sup>2</sup> Ms. N submitted identical signed doctor’s statements, completed for each PFD year 2011 through 2014, that said she was treated from an unspecified date of 2010 through an unspecified date in 2013.<sup>3</sup>

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<sup>1</sup> Ex 7, p. 3.  
<sup>2</sup> Ex. 5.  
<sup>3</sup> Ex. 7, pp . 14 - 18.

The PFD Division ultimately denied the Ns' informal appeal for a variety of reasons, which included a failure to provide adequate documentation, and that they had failed to overcome the presumption that their extended absence from the state had severed their residency.

At hearing, the Ns provided a copy of a physician's statement that Ms. N had been treated for cancer outside the state and that the last date of her cancer treatment ended on June 18, 2015.<sup>4</sup> Mr. N admitted that he had taken the form previously signed by the physician on March 4, 2015, which did not contain a specific ending date of treatment, and wrote in the ending date.<sup>5</sup> He testified that he spoke to "M" at the physician's office, who told him Ms. N was last treated on June 18, 2015, and wrote that date on the form. "M" was called at hearing. She declined to testify and requested that her supervisor handle the matter. A G, the supervisor, testified, based upon her review of Ms. N's records, that the last date Ms. N was treated by the physician was May 30, 2013. Both Mr. and Ms. N testified that she was treated in June 2013.

Given the hearsay nature of Mr. N's testimony, his admission that he altered a document previously completed by the physician, and "M's" unwillingness to testify, Ms. G's testimony, which is based upon her review of Ms. N's records, is more credible than either Mr. N's or Ms. N's testimony. It is therefore more likely true than not true that Ms. N's last date of medical treatment by the physician was May 30, 2013.<sup>6</sup>

### **III. DISCUSSION**

Eligibility for a PFD requires meeting several requirements. They are listed in Alaska Statute 43.23.005(a). 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>7</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.

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<sup>4</sup> December 9, 2015 fax, p. 4.

<sup>5</sup> See Ex. 2, p. 15, and December 9, 2015 fax, p. 4.

<sup>6</sup> The Ns were provided an opportunity to submit post-hearing documentation in support of their claim. While they did submit such documentation, which was received on December 28, 2015, those documents were stricken. See Order Striking Supplemental Exhibits, dated January 6, 2016.

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

Absences from Alaska that do not meet the requirements of Alaska Statute 43.23.008 disqualify even Alaska residents from PFD eligibility. Alaska Statute 43.23.008(a)(17)(A) disqualifies individuals absent more than 45 days in addition to absences for reasons listed under Alaska Statute 43.23.008(a)(1)-(16), if absent more than 180 days cumulatively during the PFD qualifying year. Therefore, an individual absent more than 180 total days, when not absent for any reason listed Alaska Statute 43.23.008(a)(1)-(16) during the qualifying year is not eligible for a PFD.

As the individuals challenging the Division's decision, it is the Ns' burden to establish that it is more likely than not that they are eligible for a 2014 PFD.<sup>8</sup>

Mr. and Ms. N were absent from Alaska during 2013 until they returned on August 2, 2013. This was an absence of over 180 days. However, if an otherwise eligible applicant is absent from Alaska for continuous medical treatment during a qualifying year, he or she is allowed to be absent for the duration of that treatment plus 45 additional days. This same period of absence is allowed for a spouse who accompanies an applicant/patient.<sup>9</sup>

Ms. N's last date of continuous medical treatment, as discussed above, was May 30, 2013. Because 2013 was the qualifying year for the 2014 PFD, she would have had to return to Alaska by July 14, 2013, 45 days after May 30, 2013. However, she did not. Her return date was August 2, 2013. Because she was gone from Alaska for more than 180 days in 2013, and her absence exceeded the allowable time for a medical treatment exception, she is not eligible for a 2014 PFD. Because Mr. N's absence was identical to Ms. N's, he is similarly not eligible for a 2014 PFD.<sup>10</sup>

#### IV. CONCLUSION

The Division's decision to deny the application of both Mr. and Ms. N for a 2014 PFD is AFFIRMED.

DATED this 6<sup>th</sup> day of January, 2016.

By: Signed  
Lawrence A. Pederson  
Administrative Law Judge

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<sup>8</sup> 15 AAC 05.030(h).

<sup>9</sup> AS 43.23.008(a)(5), (13), and 17(C).

<sup>10</sup> The Division raised additional arguments regarding residency and failure to supply documentation. It is not necessary to address these arguments because the length of Mr. and Ms. N's absence from Alaska during 2013 is fully dispositive of this case.

## 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 12<sup>th</sup> day of February, 2016.

By: Signed  
Signature  
Jerry Burnett  
Name  
Deputy Commissioner  
Title

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