

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

In the Matter of)	
)	OAH No. 15-1067-PFD
Q J)	Agency No. 2014-058-6891
)	
<u>2013 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

Q J submitted an application for a 2013 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division (Division) denied her application based on its determination that 1) she had not provided information requested by the Division; and 2) she had intentionally provided deceptive information.

Ms. J completed the informal appeal process and then requested a formal hearing. A hearing was held on October 16, 2015. PFD Appeals Manager Robert Pearson represented the Division. Ms. J represented herself. The record was kept open until November 13, 2015, for Ms. J to submit additional documentation and for the Division to respond to any additional documents submitted. Ms. J submitted two additional documents on November 5, but the Division did not file any response. The record closed on November 13, 2015.

Ms. J intentionally provided deceptive information to the Division. The denial of her PFD application is affirmed.

II. Facts

Ms. J submitted her online application on March 27, 2014.¹ She said that she had not been absent from Alaska for 90 days or more during the 2013 qualifying year. However, she also indicated that she was absent from Alaska on the date she applied.² Because she was absent when she applied, she was required to submit additional information.³ The additional, pertinent information that she provided with her application is that she was absent from Alaska attending post-secondary education at University X from June 15, 2013 through July 29, 2013.⁴

Because she said she was absent for educational purposes, Ms. J was asked to provide an Education Verification Form.⁵ After a series of email communications, Ms. J was able to have

¹ Exhibit 1, page 1.
² *Id.*
³ Pearson testimony.
⁴ Exhibit 1, page 2. Per Ms. J's testimony, University X is located in Virginia.
⁵ Exhibit 4.

this form completed by the school. University X sent it directly to the Division.⁶ University X stated that Ms. J had been enrolled as a full time student from January 14 – May 10, 2013, from May 17 – May 21, 2013, and from August 14 – December 13, 2013.⁷ The verification form also said that Ms. J was enrolled in an online or distance education program.⁸

Because the enrollment dates were different than the absence dates listed on her application, the Division asked for additional information.⁹ Ms. J was unaware at that time that University X had failed to list her June 15 – July 29, 2015 enrollment dates.¹⁰ She informed the Division that she was enrolled in an online program, but had to take some courses in person. One was the six-week course she disclosed on her application.¹¹ Ms. J added that after she finished her course in Virginia, she travelled to New York to visit family.¹²

The Division was still uncertain as to the dates of Ms. J’s absences. After noting the discrepancy between the Educational Verification Form and the dates reported on the application, the Division asked, on November 28, 2014, for more information. “Please report the specific dates where you departed Alaska and the specific dates that you returned to Alaska during 2013.”¹³

The Division then denied Ms. J’s application on December 26, 2014.¹⁴ Ms. J’s request for an informal appeal was received on January 20, 2015.¹⁵ She submitted her credit card statements for May, July, August, and October to document when she was out of state.¹⁶ The Division upheld its denial because “[y]ou intentionally failed to disclose your reportable absence of more than 90 days during 2013 on your 2014 PFD application.”¹⁷ Ms. J requested a formal hearing.¹⁸ Prior to the hearing, the Division added an additional reason for denying the

⁶ J Testimony.

⁷ Exhibit 6.

⁸ *Id.*

⁹ Exhibit 7.

¹⁰ J testimony. This is because University X sent the form directly to the Division and a copy was not provided to Ms. J until after she requested a formal hearing.

¹¹ Exhibit 7, page 2.

¹² *Id.*

¹³ Exhibit 7, page 5. This information had also been requested in emails dated October 24 and November 4, 2014. Exhibit 7, pages 2 and 3.

¹⁴ Exhibit 8.

¹⁵ Exhibit 9, page 1.

¹⁶ Exhibit 10; J testimony.

¹⁷ Exhibit 11, p. 1.

¹⁸ Exhibit 12.

application: the failure to provide all of the information requested by the Division.¹⁹ The hearing was held on October 16, 2015.

The parties dispute how many days Ms. J was absent. The Division calculated that she was absent for at least 132 days.²⁰ This calculation, however, was based in part on dates she was enrolled in University X's online program. There is no reason to believe that a person necessarily is out of Alaska when attending an online program.²¹ Although Ms. J stated that her program required her to be on campus on occasion, there is no evidence in this case that suggests she was in Virginia during all of her dates of enrollment.

On the other hand, Ms. J did testify that she left Alaska in April or May of 2013, attended coursework on campus in Virginia for about a week, spent additional time doing coursework, and then traveled to New York to visit family.²² Her credit card statement shows she was in Alaska on May 15, 2013, and that she was in Virginia on May 19, 2013.²³ Her credit card statements show that she was in New York in July and August of that year. Those statements show a purchase in California on August 27, 2013.²⁴ Ms. J testified that this purchase was at the airport on her way back to Alaska. Accordingly, she was absent from Alaska at least from May 19 through August 27, a period of 100 days. She had also disclosed being absent for an additional seven days beginning on December 24, 2013.²⁵

III. Discussion

An individual must meet several requirements to be eligible for a PFD. One of those requirements is to be physically present in the state for the entire qualifying year or, if absent, absent for an allowable reason.²⁶ A person who does not claim any other allowable absence, except a military absence, may be absent for up to 180 days as long as the absence is consistent with the intent to remain a resident.²⁷ In this case, while there is a dispute as to how many days

¹⁹ Division's Position Statement, p. 1.

²⁰ Exhibit 2.

²¹ See *In re MT*, OAH No. 11-0191-PFD (Commissioner of Revenue 2011) (discussing situations where online course work can occur in Alaska or outside of Alaska). This and other PFD decisions may be found at <http://doa.alaska.gov/oah/Decisions/pfd.html>.

²² J testimony.

²³ There was an ATM cash transaction in No Name A on May 1, and a debit card transaction in No Name B on May 15. Exhibit 10, page 1. There was a purchase in Virginia on May 19. Exhibit 10, page 2.

²⁴ Exhibit 10, page 7.

²⁵ Exhibit 7, 4.

²⁶ AS 43.23.005(a)(6).

²⁷ AS 43.23.008(a)(17)(A).

Ms. J was absent, it was for fewer than 180 days.²⁸ In addition, there is no evidence that her absence from Alaska was inconsistent with the intent to remain a state resident.

The question in this case is not whether Ms. J's absence was allowable, but whether she provided deceptive information related to her 2013 absence. She made the following statements about her absence:

- Attending University X from June 15 to July 29 (PFD application and hearing testimony).
- Left Alaska on March 27 and returned to Alaska on June 28 (November 4 email).
- Attended school in Virginia on dates shown in verification form, visited son, and returned to Alaska in time for fishing (informal appeal, Exhibit 9, page 2).
- Had shoulder surgery in Alaska in March then left for Virginia for intensive course (informal appeal, Exhibit 9, page 3).
- Not absent for over 90 days unrelated to school (formal appeal, Exhibit 12, page 2).
- Did not leave Alaska until May (hearing testimony).
- Only had to be on campus for one week, but arrived a few days early (hearing testimony).
- She was in Virginia for about two weeks in June (hearing testimony).

Her credit card statements show that she was still in Alaska in mid-May and was in New York for most of July and August.²⁹

Regarding her travel to Virginia for school, Ms. J testified that she was not aware until just prior to the hearing that University X had failed to accurately list her enrollment dates on the verification form. After the hearing, she submitted an October 2, 2015 letter from University X³⁰ which stated that she was enrolled and attending two “residential intensive courses” on campus in Virginia from June 17 to June 21, 2013 and June 24 to June 28, 2013 (presumably she would have needed to stay in Virginia between the end of the first course and the start of the second

²⁸ A person who claims any absence for educational purposes may be absent for 120 days in addition to any allowable educational absence. AS 43.23.008(a)(17)(B). Because she only had to be on campus for about one week, Ms. J comes closer to exceeding this limit but it is likely true that her non-educational absence was less than 120 days.

²⁹ Ms. J did not try to hide the fact that she was in New York. She stated in her emails that she traveled to New York after her University X coursework, and she submitted her credit card statements showing her presence in New York.

³⁰ This letter was one of the two documents submitted by Ms. J after the hearing. The second document was a one-page billing statement from No Name Clinic in Alaska, which appears to show she was in Alaska on December 28, 2012, January 30, 2013, February 28, 2013, and March 12, 2013. This document, however, is of little help in clearing up the confusion regarding Ms. J's absences from Alaska in 2013.

one).³¹ Even if this addition to the list of enrollment dates had been provided to the Division earlier, however, it would not have helped the Division determine when Ms. J was absent and how much of the absence was for educational purposes. She was not in Virginia for most of the other dates she was enrolled, and she was only required to be in Virginia for her intensive courses.

Ms. J testified that she did not keep records of her travel dates. She said that, as a student, she mostly lives out of her car, and stays with friends. She does not have space to keep and store receipts. She acknowledged that she “made up” her dates of school attendance when she listed them on her initial application, because she didn’t have documentation.³² While the Division would have preferred to have copies of boarding passes or other written evidence of her exact dates of travel, that evidence would not have been necessary. She could have informed the Division that she left in mid-May before her on-campus class began, stayed in New York after that class, and returned at the end of August, and her credit card statements would have confirmed that. Instead of doing that, however, Ms. J provided false information.

It is important to the integrity of the PFD program that answers given on PFD applications be accurate. The application form asks about current location and about absences totaling more than 90 days so that the PFD Division can evaluate circumstances that may affect residence or eligibility. Those who do not accurately report their absences interfere with the Division’s ability to perform this task.

The Department of Revenue has provided by regulation that it “will deny an application if the department determines that an individual has intentionally provided deceptive information such as failing to disclose a reportable absence to the department.”³³ In addition, the Division has the discretion to ask any applicant for additional information before approving or denying an application.³⁴ The Division needs accurate information about a person’s absences in order to correctly approve or deny applications.

Although Ms. J responded to the Division’s requests for more information, her answers were inconsistent, incomplete, and inaccurate. And although she argued at the hearing that her responses were not intentionally deceptive, she admitted that her answers on the initial

³¹ These dates do little to add clarity or certainty regarding Ms. J’s absence during that part of 2013, given her statement in her application that she was enrolled in Virginia and engaged in school activities from June 15 to July 29.

³² J testimony.

³³ 15 AAC 23.103(j).

³⁴ 15 AAC 23.173(b).

application were “made up.” This amounted to, at best, reckless indifference to the truthfulness of her responses. Ms. J’s reckless indifference to the accuracy of her responses amounts to an intentional deception.³⁵ The Division properly denied Ms. J’s application for intentionally providing deceptive information.³⁶

IV. Conclusion

Ms. J provided inaccurate information on her PFD application. In response to requests from the Division for more information about her absence, she provided incorrect information. The Division properly denied her application for a 2014 PFD for providing deceptive information. The denial of her application is AFFIRMED.

Dated this 19th day of November, 2015.

Signed

Andrew M. Lebo
Administrative Law Judge

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 15th day of December, 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.]

³⁵ *In re M E & C M*, OAH NO. 13-1625-PFD (Commissioner of Revenue 2014), page 3.

³⁶ 15 AAC 23.103(j).