

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

In the Matter of)
)
 J J) OAH No. 15-1234-PFD
) Agency No. 2014-057-5048
_____)

DECISION & ORDER

I. Introduction

This case is J J’s appeal of the Permanent Fund Dividend Division’s denial of his 2014 PFD application because his absences in 2013 were disqualifying.

Mr. J timely applied for a 2014 permanent fund dividend. The Division determined that Mr. J was not eligible, and it denied the application initially and at the informal appeal level. N J, who is Mr. J’s mother and has his power of attorney, requested a formal hearing. Ms. J participated and represented her son. The hearing was held on October 20, 2015. Bethany Thorsteinson represented the Division and filed a position paper.

Administrative Law Judge Mark T. Handley was appointed to hear and decide Mr. J’s appeal. Having reviewed the evidence in the record, the Administrative Law Judge concludes that because Mr. J’s extended absences from Alaska in 2013 did not meet the statutory requirements of the limited types of extended absences that are not disqualifying. Mr. J does not qualify for a 2014 PFD.

II. Facts

Mr. J was a longtime Alaskan. Ms. J explained that her son has a mental disability and suffers from depression. Mr. J is seeking social security disability benefits. He currently lives by himself in Alaska in a house that was built for him close to his parents. Ms. J helps him manage his financial affairs and he eats most of his meals with them.¹

In 2013, Mr. J, was absent from Alaska most of the year. Mr. J’s parents had become concerned about his depression in 2012 and sent him down to live with his aunt in Colorado in September of 2012. Mr. J did not return to Alaska until August 8, 2013.²

At the hearing, Ms. J explained that her adult son went to Colorado for his mental health, because he had been close to his aunt in the past and they were willing to have him come stay with them and work on their farm. Eventually Mr. J had to move back to Alaska because things were

¹ Exhibit 9B & Recording of Hearing.
² Exhibit B, page 1 & Recording of Hearing.

just not working out the way that everyone had hoped. Ms. J admitted that Mr. J was not receiving continuous medical care during his absence. However, Ms. J explained that the purpose of his absence was to help him with his medical condition, by giving him an opportunity to develop new interests that might take off. Ms. J explained that Mr. J was receiving some counselling from his aunt, as a parent would provide counselling to a troubled teenager, but he was not receiving any regular counselling or treatment from a medical professional during his absence.³

Based on the evidence in the record I find that during 2013, the qualifying year for a 2014 dividend, Mr. J was absent from Alaska for more than 180 days, in order to stay with his relatives in the hope that this would help him with his depression.⁴

The Division determined that Mr. J was absent from Alaska for 214 days in 2013. There is no dispute about the length or the purpose of Mr. J's absence.⁵

III. Discussion

Eligibility for permanent fund dividends 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.”⁶ 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. Reason number (17) allows absences for any reason consistent with Alaska residency, so long as the cumulative absences total fewer than 180 days, or fewer than 120 days in addition to time in school, or fewer than 45 days in addition to absences for other listed reasons.

Reason number (5) allows absences for receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician who treated the illness if the treatment or convalescence is not based on a need for climatic change. Ms. J did not show that Mr. J was absent receiving continuous medical treatment or convalescing as recommended by a physician who treated his illnesses.

³ Recording of Hearing.

⁴ Exhibit 3, pages 3 & 5.

⁵ Division's Formal Hearing Position Statement page 4 & Exhibits 2 & 4.

⁶ AS 43.23.005(a)(6).

Under the language of that statute, being disabled and depressed while being absent from Alaska is not an allowable absence, even if the Alaskan is absent in the hope that the change will improve serious medical conditions. The statute's language covering convalescing implies that the convalescing must generally be to recover outside Alaska after receiving treatment outside Alaska. That language does not cover periods of illness without treatment outside Alaska when the absence is not a physician recommended period of recovery from a medical procedure.

Absences from Alaska that do not meet the requirements of Alaska Statute 43.23.008 disqualify an individual from PFD eligibility. Alaska Statute 43.23.008(a)(17)(C) disqualifies individuals absent more than 45 days in addition to absences for reasons listed under Alaska Statute 43.23.008(a)(4)-(16), if absent more than 180 days cumulatively during the PFD qualifying year. Therefore, an individual absent more than 180 total days and more than 45 days when not absent for any reason listed Alaska Statute 43.23.008(a)(4)-(16) during the qualifying year is not eligible for a PFD.

Mr. J's 2013 absences fall into this category. Ms. J was absent more than 180 days in 2013 and he was absent at least 45 days in 2013 when he was not receiving continuous medical treatment or convalescing as those terms are described in the PFD eligibility statutes. The PFD eligibility requirements are very strict regarding absences from Alaska for reasons, no matter how good, that are disqualifying under the provisions of Alaska Statute 43.23.008(a). These provisions are fairly technical, somewhat difficult to understand, and can catch people by surprise.

Ms. J apparently misunderstood how the medical absence applied to her son's situation. Mr. J's extended absence in 2013 was obviously for very good reasons, but he does not qualify for a dividend for 2014.

IV. Conclusion

Mr. J's 2013 absences from Alaska do not fall within the category of absences that are allowable for the purpose of PFD eligibility. Mr. J therefore does not qualify for a 2014 PFD. The decision of the Division to deny the application of J J for a 2014 permanent fund dividend is upheld.

DATED this 27th day of October, 2015.

By: Signed
Mark T. Handley
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 3rd day of December, 2015.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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